



Gift Deed and Power of Attorney

Necessity of GIFT DEED

Gift deed is a transfer of certain exciting movable or immovable property made voluntarily and without consideration by one person called the donor and accepted by or on behalf of the donee. Gift deed is usually made out of love and affection.

A gift deed related conditions:-

1. Gift deed must be accepted during the lifetime of the donor and after the death of the donor acceptance of gift deed by the donee would not be valid.
2. In case if a gift comprises of existing and future property the gift in regard to future property is void.
3. Also in case of gift to more than one donee out of which one does not accept then it shall be void as regard to the interest related to that particular donee.
4. In case of gift deed of several things out of which one is burdened and others are not burdened by obligation the donee can take nothing by the gift unless he accepts it fully along with the obligation.
5. If in case the gift deed is in the form of two or more different gift deeds then in such case the donee may accept one and refuse the other even if the one is beneficial and the other had obligations to it.
6. In case if the donor gives away his entire property then in that case the donee is personally liable to the time of the gift related to that particular property.

Execution of Gift Deed:-

- In case of immovable property transfer should be made by a registered instrument signed by and on behalf of the donor and also attested by two witnesses also on payment of applicable stamp duty according to the state where property is situated.
- In case of moveable property transfer can be made by registered instrument or on by delivery.

Gift deed is needed:-

In case of the transfer of property moveable or immovable for which no consideration is received or paid either in cash or kind and mainly out of love and affection to the relatives or other person.

If the property is transferred by a gift deed by and between relatives regarding property situated in Maharashtra stamp duty of 2% is applicable as compare to deed of sale where by higher stamp duty is required to be paid asin case of deed of conveyance. Also in case of gift deed by an NRI to his or her relative who is an Indian Resident of a property situated in Maharashtra has to pay 2% stamp duty.

The registration of a gift deed for property situated in Delhi stamp duty @ 4% in case if the donee is a female and 6% in case if the donee is a male has to be made along with registration fees of 1 % of the total value of the consideration is required to be made.

Gift deed under Income Tax Act:-

Gifts are not regarded as income chargeable to tax generally gift deed is excluded from tax when it is made to a relative as stated below:-

1. Son or daughter of the donor
2. Parents of the donor
3. Parents siblings i.e. uncle and aunty of the donor
4. Siblings i.e. brother and sister of the donor
5. Spouse of the siblings i.e. sister in law and brother in law of the donor
6. Spouse of daughter and son i.e. daughter in law and son in law of the donor
7. Spouse parents i.e. father in law and mother in law of the donor
8. Spouse sibling and their respective spouse i.e. spouse sister and her husband and spouse brother and his wife .

A Gift Deed made by an NRI to an Individual Indian Resident falling in any of the above stated relation are also exempted from tax and the donee can utilize it for any of his personal purpose. In this case an NRI should be regarded in respect of the definition provided in the income tax act i.e. is to say any of the following persons:-

1. If he or she is not in India in that year for a period amounting in all to 182 days or more.
2. In last four years preceding that year not been in India for a period or periods amounting in all to 365 days or more , and has not been in India for 60 days or more in that year.

Necessity of issue of Power of Attorney

Power of Attorney is an instrument empowering a specified person to act for and in the name of the person executing it. Power of Attorney is a formal document whereby a person assigns to another to act on his behalf and to represent him with clear description of limits and powers. Since it is a formal document need to be notarized and attested by two witnesses. The person assigning power and his right is called the principal and the person acting upon is his agent. Power of attorney is only assignment of certain power limited to the extent mentioned and assigned by the principal and accordingly agreed by the agents. A married woman can also assign her right to another person by executing power of attorney and appointing an Agent. Power of Attorney is revoked on the death of the Principal .during the lifetime of the principal it can be revoked as agreed between the Principal and Agent.

Power of Attorney can be made by any person who is competent to enter a contract. Power of Attorney is of two types:-

1. General Power of Attorney: - a general power of attorney is an instrument by which the Principal assign general power to the agent to act on his behalf in regard to the subject matter. This enables the agent to do what ever is necessary.
2. Special Power of Attorney: - a special power of attorney is when a principal assign specific power to do specific act on his behalf and on happening of the specific act or condition the power of attorney stand revoked. Special power of attorney is to be acted upon in a single or specified transaction in the name of the principal.

Power of Attorney is advisable:-

1. A person due to ill health or due to old age if is not in a position to take active part in regard to his property or business then he can assign his part of responsibility to a trusted person to act as his agent on his behalf.
2. In case if a person is on a visit to abroad and very important formal signature and presence is required in India then he can appoint an agent to act on his behalf for that period of time of visit.
3. In case of an NRI it is advisable that he execute a Power of Attorney in the favour of his friend or relative or any trust worthy person in India whereby the power of attorney holder can operate bank account for local disbursement i.e. for expenses but cannot make remittance outside India nor can make a gift or extend loan to any person resident in India or resident outside India. Also in case of property to take care, to pay all property related taxes, to pay society maintenance and other expenses and not assigning power beyond maintaining the property whereby you can be secured and safe about your savings and property in India.
4. Power of Attorney is advisable as it limits the power of the agent to whatever is assigned to him and in no case can he go beyond the orbit.
5. Power of Attorney is only assignment of responsibility and the agent is answerable to the principal for his act and to maintain proper record in regard to expenditure, saving and current status. Also in court of law agent will be liable to reply for his part of act as acted upon by him in execution of the power of attorney.
6. A maintenance responsibility can be assigned but in no situation a property can be transferred even with consideration by a deed of power of attorney and any such assignment is regarded as illegal and not binding in law. Power of Attorney as the word state is assigning of power to the attorney and nothing beyond it. The property can be transfer only by sale deed on payment of applicable stamp duty.
7. No rights or liabilities between two parties can be generated by a Power of Attorney only assignment of few right to act on his behalf is assigned by the Power of Attorney
8. A Power of Attorney can also be issued in case if you are residing abroad or in different State due to work or other reason unable to frequently attain and update the proceeding then in such situation an agent can be appointed to act on your behalf and you can assign him power to follow court proceeding and keep you updated about the same.