

## **NOMINEE VERSUS LEGAL HEIR**

All of us have heard the saying – ‘**Nothing is certain but Death and Taxes**’. So how much ever we do not like to deal with taxes, we have to manage them. Similarly, though death is not a pleasant topic to think or talk about, we have to understand that it is an eventuality. Therefore it is important that we plan our estate such that it is distributed appropriately.

Many people think that they can nominate someone for their investments and assets and they have finished the task. That is not enough!

### **Nominee to hold but Legal heir to own**

On a holistic interpretation of judicial precedents over the years and the position of law on this point now, it can be settled that

**Legal heir** is the ultimate, rightful owner of the property of a deceased individual (either through intestate or testamentary succession);

A person who is named **nominee** of the property of the deceased, shall actually receive and hold the property of the deceased (till the matter of inheritance or succession is decided) immediately upon the demise of the individual.

However, there are exceptions to this.

<b>Class of Asset</b>	<b>Details</b>
Employee Provident Fund	When one opens an EPF account, a nomination has to be given. The nominee will inherit the fund. The legal heir has no right on it.  As per the EPF rules one has to appoint a family member as nominee.
Public Provident Fund	The nominee gets only custody of the amount. The legal heirs are entitled to own it.
Deposits with a bank	The legal heirs will get the ownership of the deposits on the death of the account holder. The nominee will again be just a custodian.
Mutual Funds	The legal heirs get the mutual fund units. Mutual fund houses ask us to fill out a nomination form. But nominees are only custodians.

<p>Shares</p>	<p>On the death of the sole shareholder/all joint shareholders, nominee becomes entitled to all the rights in the shares of the company to the exclusion of all other persons.</p> <p>There has been a bit of confusion on the transfer of ownership of shares after the death of the owner due to some court cases. In some cases, the nominee has got the ownership rights and in some cases, the legal heirs have got the ownership.</p> <p>Hence, it is advisable that the Will of the Testator should contain provisions relating to bequest of his interest in shares and, as far as possible, the legatee should be the nominee of the Testator.</p>
<p>Shares of co-operative society</p>	<p>The legal heirs will get the ownership rights in case of death of the original owner. The nominee will again be just a custodian.</p>
<p>Life Insurance</p>	<p>In case of life insurance, the claim amount goes to the legal heirs or beneficial nominees (if any) after the death of the insured.</p> <p>If a policy holder names his parents, or spouse, or his children, or his spouse and children, or any of them, as the nominee, such person(s) shall be called the beneficial nominee. They shall not act as a mere caretaker or trustee but shall in fact be treated as the ultimate beneficiary of the monies payable by the insurer, to the exclusion of other legal heirs.</p> <p>However, it is not mandatory to nominate a beneficial nominee, and if the nominee is a person other than those specified above, the general rule would prevail, and such nominee would hold the monies as a caretaker/ trustee for the legal heirs.</p>

## Takeaway

A Will is a 'supreme' document that specifies the exact intentions of the testator with respect to the succession of his properties. A Will wields the power to override or supersede any arrangements or nominations made during an individual's lifetime.

It is, therefore, critical to ensure that an individual, despite making nominations, also creates a Will. It is also prudent from a practical perspective, to ensure that contents of the Will are harmonized, with the nominees and legal heirs under the Will being the same persons.

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