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A “Nominee Trust” Isn’t a Typical Trust

Many people may have heard of nominee trusts, but some may not know how they differ from typical trusts. The defining feature of a nominee trust is that the trustees have no power to act without the authorization of the beneficiaries (the actual owners of the trust property). The trustees of a typical trust, however, usually have some discretionary power over the trust assets.

The nominee trust is generally used to hold real estate, in which case the trust must be recorded at the registry of deeds. Although the trust must have beneficiaries, they do not need to be listed in the trust instrument. In fact, they are usually listed in a separate “Schedule of Beneficial Interests,” which may remain confidential since it need not be recorded. This feature makes the nominee trust an attractive option for those who wish to avoid revealing the true owners of the subject real estate. A nominee trust can also be used to 1) simplify title where there are several owners of real estate, 2) avoid passing title to real estate through a probate estate, which can be time consuming and expensive, and 3) give away real estate over time without having to file a deed each time a gift is made.

Because the beneficiaries truly own and control the trust property, it is the beneficiaries who are responsible for taxes attributable to the trust property and who are entitled to the benefit of any related tax deductions.

The nominee trust is an extremely cost-effective real estate holding device in comparison with some other options. The recording fee for the trust is \$225.00 in Massachusetts with no annual reporting requirement. A Massachusetts limited liability company (“LLC”), on the other hand, costs \$500.00 to file and \$500.00 to renew each year. A nominee trust does not, however, provide the same limited liability to its trustees and beneficiaries that an LLC can provide. Trustees and beneficiaries of a nominee trust could be personally liable in tort and contract for claims in connection with the trust property, which means that a nominee trust may not be an appropriate vehicle for properties particularly vulnerable to such claims (e.g., commercial or rental property).

If you are seeking owner anonymity, simplification of title or a vehicle for making gifts, the nominee trust may be an attractive option for you.



Don't miss this critical step!

Estate plans only work if your assets are coordinated with your documents. The beneficiary designations on your retirement accounts and life insurance are a critical piece of this puzzle. Failing to have beneficiaries named, or having them named incorrectly, can lead to adverse tax consequences and to assets being distributed to unintended beneficiaries. You should review all of your beneficiary designations periodically to ensure both

primary and secondary beneficiaries are named, and that they are in accordance with your wishes. It is common for people to think their beneficiary designations read one way only to find upon review that they read another way. Moreover, if you move your accounts from one custodian to another, existing designations may not carry over, and financial organizations do not always follow up to ensure that proper (or any) beneficiary designations are in place. Checking your designations periodically is an easy but important part of the ongoing estate planning process.

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One of the largest estate planning firms in New England, our attorneys have been recognized for their exceptional experience in the field. The firm carries the highest professional rating in the national Martindale-Hubbell Law Directory and is listed in the Bar Register of Preeminent Lawyers. Many individual attorneys are listed in the Best Lawyers in America and New England, Massachusetts and Rhode Island Super Lawyer lists.

Please feel free to contact the firm if you would like to discuss the matters highlighted in this newsletter, or any other legal matters.

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