Business Standard

Nominee versus legal heir

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A nominee is simply a custodian for most assets, except in case of equities.

Last week, when the Supreme Court ruled that a nominee may not necessarily be the beneficiary of a deceased person's proceeds, it opened a debate regarding the status of a nominee vis-à-vis a legal heir.

Y P Trivedi, senior Supreme Court counsel, said: "The well-known theory is that a nominee is merely a trustee, not the owner. He/she may temporarily possess the money, but will have to hand it over to the heir when the situation arises."

For most investments, the legal heir is entitled to the deceased's assets. For instance, Section 39 of the Insurance Act says the appointed nominee will be paid, though he/she may not be the legal heir. The nominee, in turn, is supposed to hold the proceeds in trust and the legal heir can claim the money.

Similarly, Reserve Bank of India (RBI) guidelines specifies that the deceased's nominee would receive the money in the capacity of a trustee of legal heirs. The same applies for all other financial transactions such as public provident fund, mutual funds and others where the nominee plays the role of a trustee rather than the owner.

But, it is different in case of stocks. Recently, the Bombay High Court ruled that a nominee shall be eligible to acquire the shares of a deceased shareholder instead of legal heirs. Commenting on the ruling, Sambhav Ranka and Chittaranjan Dattar of Nishith Desai Associates have written in their newsletter, "This judgment highlights a clear distinction between nominations made under the Companies Act vis-à-vis the Insurance Act and the Maharashtra Co-operative Societies (MCS) Act."

Under Section 109A of the Companies Act, if the nomination is made under procedure prescribed by law, the nominee will be entitled to become the rightful owner of shares. And, such right shall exclusively favour the nominee and exclude all other persons.

In case of property, the MCS Act (under Section 30) says in event of the death of a member of a society, the shares of the deceased will be transferred to the nominee. But, this transfer cannot result in vesting of the flat with the nominee. He/she is merely a trustee for the deceased's estate. Some twists to the tale include:

Case 1: Self-acquired property: A will is the deciding factor. In its absence, the property will be classified as 'inherited property'. "The property, consequently, will have to be shared equally between the successors," said Uday Wavikar, senior consumer lawyer.

Case 2: Inherited property: All members of the immediate family will get an equal share of the pie. Say, a person inherits a flat from his father (by a will). However, he cannot will the property only to his son. The property has to be equally divided between the person, his wife and his children.

Case 3: Joint ownership of self-acquired property: The surviving owner becomes the sole owner. In case of a divorced couple, each owner will have an equal share of the property. However, if any one partner had purchased or built the property solely with his/her funds and opted for joint ownership, he/she can produce the details of investment in court and ask for sole ownership.

Besides these special situations, a will takes precedence over other

nominations. The legal heir mentioned in the will is the only person entitled to the deceased's assets, except in case of equities, where the nominee gets the money.

Therefore, financial planners insist that making a will is a very important part of financial planning. It enables you to distribute your assets in the way you wish to and also reduces the risks of undue litigation or disputes.

Typically, a will can be either typed or hand-written (without even a stamp duty or registration). But, legal experts advise to register your will to avoid any future problems.