

NOMINATION UNDER VARIOUS LAWS & ITS EFFECTS



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“Nominee– A party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others.”- Black's Law Dictionary

Nomination is often confused with transmission of ownership of property after demise. As there is no codified law relating to Nomination, different statutes governing the different asset classes provide for nomination and each of these laws uses different language which has given rise to litigations. In this article we shall look at nomination in respect of some of the important assets classes.

Share and ownership premises in Co-operative societies

A member of a co-operative housing society dies with a nominee in place for his shares in the housing society but also has legal heirs other than the person he has nominated. In such a situation, who is entitled to the shares and therefore, in turn, the apartment or the flat? There has been remarkable ambiguity in respect of legal rights of nominees vis-à-vis the legal heirs.

In this regard, the observations of Bombay High Court are worth noting as under:

In the matter of Ramdas Shivram Sattur v. Rameshchandra and others ((2009) 3 Bom CR 705), the Hon'ble Bombay High Court, clarifying the legality of the nominee, held that, Section 30 of The Maharashtra Co-operative Societies Act, 1960 which prescribes provision on transfer of interest on death of member, does not lay down any special rule of succession altering the rule of succession laid down under the personal law. It further stated that the role of the nominee who has been validly appointed under the provisions of the Act is only to represent the legal heirs of the deceased member while dealing with the society, and no interest in the property is created in favour of the nominee to the exclusion of those who in law are entitled to the estate of a deceased member.

The Act has since been amended by way of an Ordinance in 2019 later enacted as a part of the law through an amendment in the same year. As per the newly introduced Section 154B-13 of the Maharashtra Co-operative Societies Act, 1960 (which overrides section 30 mentioned above), a society can transfer the interest of a deceased member in the flat only when testamentary documents or succession certificate or heirship certificate or document of family arrangement has been produced by the legal heirs of the deceased member or person(s) entitled to the flat.

The amendment under this section further clarifies and clears the doubts that a nominee shall only be admitted as a provisional member in place of the deceased member till the time legal heirs or person(s) entitled to the flat are admitted as members

The concept of “provisional member” has been newly incorporated and the term has been defined under section 154B-1(18) as a person who is duly admitted as a member of a society temporarily after death of a member on the basis of nomination till the admission of legal heir(s) as the member of the society in place of deceased member.

In light of the recent Maharashtra Co-operative Societies (Amendment) Act, 2019 the long-standing controversy of nomination vs. succession has been put to rest once and for all. It can be concluded that the method of nomination in a co-operative housing society does not create any right, title and interest of the nominee in the property of the deceased person. The nominee merely performs the function of receiving and holding the property of the deceased person until the time the legal heir(s) of the deceased person is established and the property is transferred in favour of such legal heir(s).

The above view is supported by the Supreme Court in the case of *Indrani Wahi v. Registrar of Co-operative Societies and Others* (2016) 6 SCC 440). Indrani Wahi (being a married daughter) was made a nominee by her father. The Deputy Registrar of Co-operative Societies did not accept her membership on the ground that Indrani Wahi being a married daughter did not fall within the definition of 'family' under the West Bengal Co-operative Societies Act, 1983. The dispute travelled up to the Supreme court and the Hon'ble Supreme Court while allowing the transfer of share and interest of the father in the society in favour of Indrani Wahi as a nominee, also specifically observed in this regard that such a transfer in favour of a nominee would have no relevance to the issue of title between the inheritors or successors to the property of the deceased and it would be open to the other members of the family to pursue their case of succession or inheritance, in consonance with law.

Hence, while the issue has been set to rest in the state of Maharashtra by the amendment in law, in case of absence of similar clarifications in other state laws, reliance can be placed on the clarity provided by Hon'ble courts for related issues.

Securities

a. Held in Physical form

The Companies Act, 2013 read with rule 19 gives the power to holder of securities in a company to nominate any person to whom his securities shall vest in the event of his death. Nomination can be done by submitting Form SH-13. In case the shares are held by joint holders, they can together nominate one person as nominee.

In the event of demise of all the joint holders, the nominee can apply for transfer of the securities in his name by submitting the documents required or opt to sell the securities as the deceased holder could have done.

The nominee becomes entitled to the same dividends or interests and other advantages to which he would have been entitled to if he were the registered holder of the securities except that he cannot exercise his rights in respect of meetings of the company till the time he becomes a registered holder of those securities.

b. Held in dematerialized form:

If the securities are held in dematerialized form, the nomination is required to be recorded by Depository Participant (DP). In case of demat accounts, up to three persons can be made nominees to a single account. In case of multiple nominees, the account holder can inform the percentage ratio of each of the nominee. If no percentage is informed, it will be taken as equal entitlement of each of the nominees.

There was raging controversy whether, in case of shares, the nominee becomes the ultimate beneficiary and owner of the shares or holds the shares merely as a custodian and trustee to be handed over to the beneficiaries who are entitled to them as per the Will of the account holder or, in absence of a Will, as per the Succession laws governing the deceased.

This controversy was created by the decision of the single member Bench of the Bombay Court in case of Harsha Nitin Kokate Vs. The Saraswat Cooperative Bank Ltd. & Ors . wherein the Hon'ble Court had held that as the shares 'vest' in the nominee as per the Companies Act, the nominee becomes the ultimate owner. However, the division bench of the Bombay High Court has brought to rest the controversy in the case of Shakti Yezdani V. Jayanand Salagaonkar by holding that the decision in case of Harsha Kokate is incorrect. Relying on the several decisions of the Supreme court in matter of nomination versus succession, the Bombay HC held that the provisions of the Companies Act cannot be said to create a third mode of succession besides testamentary and non-testamentary succession. The court held that object of the provisions of the Companies Act is not to either provide a mode of succession or to deal with succession. The object of the Section 109A is to ensure that the deceased shareholder is represented by some-one as the value of the shares is subject to market forces. As regards company, various advantages keep on accruing to shareholders. For example, allotment of Bonus shares. General meetings held by the Companies in which a shareholder is required to be represented.

Nomination in Bank accounts, bank deposits and Safe deposit locker

Under the Banking Regulations Act, 1949, account holders can make nominations in respect of their savings account, bank deposit and a Safe deposit locker. This facility is not available for Current accounts, CC account and Overdraft account.

In case of joint accounts, all the account holders together have to make the nomination of one person.

In case of a safe deposit locker jointly held by more than one person, each of the joint holder can appoint a nominee and in such case there can be more than one nominee.

There is no restriction that only family members can be nominee.

Nomination in case of Mutual Funds

As per SEBI Mutual Funds Regulations, 1996, every mutual fund has to provide unit holders facility of nomination for the units held by them. In case of joint holders of unit, the joint holders have to jointly nominate the nominee. There is no restriction that only family members can be nominee.

Nomination in respect of Employees Provident fund

Under the Employees' Provident Funds Scheme, 1952, the amount standing to the credit of a deceased employee in his EPF account vests in the nominee. Employee can only nominate a family member as nominee. If the employee does not have a family at the time of making the nomination, he can appoint any other person as nominee but subsequently if the employee acquires a family than the earlier nomination becomes invalid and a fresh nomination form will have to be submitted.

"family" means – (i) in the case of a male member, his wife, his children, whether married or unmarried, his dependant parents and his deceased son's widow and children. It is further provided that if a member proves that his wife has ceased, under the personal law governing him or the customary law of the community to which the spouses belong, to be entitled to maintenance she shall no longer be deemed to be a part of the member's family for the purpose of this Scheme, unless the member subsequently intimates by express notice in writing to the Commissioner that she shall continue to be so regarded;

and (ii) in the case of a female member, her husband, her children, whether married or unmarried, her dependant parents, her husband's dependant parents and her deceased son's widow and children

More than one family member can be made nominee and the percentage share of each can be specified.

Nomination in Public Provident Fund account (PPF)

In case of a PPF account opened under the Public Provident Fund Scheme, 1968, the account holder can nominate more than one person and also mention share of each of the nominees. It is important to note that a non-resident cannot be appointed as a nominee to a PPF account. Also no nomination can be done for PPF account of a minor.

Nomination for Gratuity

As per The Payment of Gratuity Act, 1972, an employee can nominate only family members to receive the Gratuity amount. Family members in case of a married male are defined to mean wife, children, dependent parents, dependent parents of his wife and widow and children of his deceased son.

Family members in case of a married female means husband, children whether married or unmarried, dependent parents, dependent parents of her husband and widow and children of her deceased son.

If at the time of making nomination, employee did not have a family, he can nominate any other person as nominee. But subsequently if he acquires a family, his earlier nomination becomes invalid and he will have to make a fresh nomination in favour of a family member.

More than one family member can be made nominee and percentage share of each can be specified.

LIC

Section 39 of the Insurance Act, 1938 provides that the holder of a Policy of Life Insurance on his own life may when effecting the policy, or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death.

Facility of nomination is available only to holders of policies of life insurance.

Except in case of a wife appointed as Payee under a Policy of Life Insurance under Married Women's Property Act, 1937, the nominee under a Policy of insurance takes the amount on behalf of the assured or his estate and not beneficially and such amount becomes a part of the estate of the deceased - Sarbati Devi Vs. Usha Devi AIR 1984 SC 346.

To summarise;

Nomination is a facility or arrangement to ensure smooth transmission of asset of the deceased to a person identified by him during his lifetime. Once the payment is made or asset is handed over to the nominee, it discharges the concerned entities from any obligation vis-à-vis the legal heirs of the deceased. That is the reason why nomination is being made mandatory by various statutes.

There have been legal disputes about whether the nominee becomes the rightful owner of the asset or only holds the asset as trustee on behalf of the legal heirs of the deceased. Various decisions of the Supreme Court have set the controversy to rest and the position now is that nominee is merely trustee and holds the assets on behalf of the rightful legal heirs both in case of testamentary (where there is a WILL) as well as non-testamentary succession (where there is no WILL).

However, to avoid legal disputes between the legal heir and the nominee it is advisable that the Will and the nomination be in sync with each other and the persons whom you desire to ultimately give that asset is the beneficiary in WILL and also the nominee.

Nomination can be made in favour of a minor. In this case, the name of the person who will be guardian to the minor till he attains majority also needs to be declared. However, in respect of assets of a minor no nomination can be done by the Guardian. It is the privilege of the minor after becoming major to appoint a nominee.

Who can be made a nominee is dependent on the laws applicable to the different assets. As seen above, in case of EPF and Gratuity laws, only Family members can be nominated. Similarly, a non-resident cannot be made nominee in a PPF account. Hence, while filling up the nomination form, these rules need to be kept in mind.

Nomination once made can be revised by filing a fresh nomination form.

To conclude, Nomination is a convenient mode of ensuring smooth transition of your assets to your legal heirs in a timely manner. In the absence of a nomination, the transmission is hassle some and time consuming as it will entail demands for legal documents like probated Will or Succession certificate and NOCs of legal heirs etc which will be a time consuming and expensive proposition. Making a Will and ensuring appropriate nominations in all your assets is the most effective mode of ensuring a hassle free transmission of hard earned wealth to your near and dear ones.

