

# What is a Nominee Trust and How Can I Use it as Part of my Estate Plan?

## Services

### Estate Planning

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A “Nominee Trust” is an [estate planning](#) tool that is unique to Massachusetts. It is essentially a realty trust in which the trust holds the property for the beneficiaries, but the beneficiaries are able to exercise control over the real property. Given this a Nominee Trust is not a “true trust” such as an irrevocable trust, which is controlled by a trustee. In an irrevocable trust you relinquish ownership in the trust property and the control over the trust property is given to a trustee for the benefit of the trust beneficiaries. In a Nominee Trust the beneficiaries direct the trustee and may even serve as the trustee. Also, unlike an irrevocable trust, the beneficiaries of an NT may terminate the trust at any time and take full ownership of the trust property as tenants in common. A Nominee Trust is often used as way to provide anonymity to property ownership because the beneficiaries of a Nominee Trust are not listed with the Registry of Deeds. This will enable the property to pass to your beneficiaries in a manner that avoids probate, possible creditor claims, and reduces costs.

In a recent decision issued by the Supreme Judicial Court of Massachusetts [Guilfoil v. Sec’y of Exec. Office of Health & Human Servs. 486 Mass. 788 \(2021\)](#), the Court clarified that MassHealth cannot reach the interest of a deceased beneficiary of a Nominee Trust. In the Guilfoil case, an individual had a life estate in her property as a beneficiary of a Nominee Trust with her five children having a remainder interest. The Court stated that there was no ability to reclaim ownership of the property’s remainder interest and the life estate was not a countable asset for MassHealth purposes. This means that the individual was able to maintain eligibility for MassHealth long term care benefits and to protect the asset for the benefit of the beneficiaries of the trust. With this decision, if you are trying to preserve your house for your family as part of a plan for future Medicaid/MassHealth eligibility, the Nominee Trust is an even more attractive and cost-effective options to consider.

In summary, Nominee Trusts provide anonymity, avoidance of probate, the ability of the beneficiaries to decide to terminate the trust and take title to the trust property, in addition to protecting your real property from MassHealth. If you are looking for a cost-effective tool to preserve your real property for the benefit of your loved ones, we recommend considering this as part of your Estate Plan.

Please feel free to contact our office at [\(508\) 880-6677](tel:5088806677) to speak with one of our experienced attorneys today about how we can assist you in creating an Estate plan that is customized to fit your specific needs and budget.