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USING A BARE TRUSTEE OR NOMINEE TO ACQUIRE PROPERTY

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In Ontario, a common way to acquire commercial property is to register title to the property in the name of a corporation as opposed to the name of individuals. In most cases, the corporation that is the registered owner of the property is also the beneficial owner of the property; however, this is not always the case.

Subject to certain exceptions, the law of trusts provides the possibility to protect the beneficial owners of property from certain actions of the registered owner of a property. This can be accomplished by registering the property in the name of a “bare trustee”, also known as a “nominee”.

There are essentially two types of trusts that can own property. The first type involves a trustee who is the registered owner of the property. This trustee has the right to manage the property in accordance with the authority given to it in a document that is commonly referred to as a “declaration of trust”. In this first case, the declaration of trust states that the trustee has the right to make decisions with respect to how the property will be operated without seeking approval from the beneficial owners. The second type involves a bare trustee or nominee who has no discretion or authority whatsoever with respect to the operation and management of the property. In the second case, the “declaration of trust” will typically provide that the bare trustee or nominee has no authority in dealing with the property other than to do what the beneficial owners specifically direct it to do.

This raises certain legal issues. For example, what liability will be imposed on a beneficial owner for a contract, such as a loan, that is entered into by a bare trustee or nominee involving the property? As a result, when contracting with a property owner that is a corporation, especially in loan transactions, it is prudent to investigate the corporation to determine if it is a beneficial owner of the property or simply a bare trustee or nominee.

There are also certain reasons why it would be advantageous to acquire property by way of a bare trustee or nominee. The following is a list of certain situations where the use of a bare trustee or nominee would be recommended:

- 1) ease of transacting: where property is owned by several parties, for example by a joint venture comprised of several individuals or other legal entities, a corporate nominee can facilitate dealing with the property as in many cases it will limit the number of signatures required to enter into various agreements relating to the property.
- 2) confidentiality: in Ontario, ownership of property is kept in a public record and can be accessed by virtually anyone. Where certain parties are interested in keeping their ownership interest confidential, they may do so by placing the registered ownership of property into the hands of a bare trustee or nominee.
- 3) liability: subject to certain exceptions, the ownership of property by a nominee can help limit the liability of the beneficial owners, especially in cases where third parties are unaware of the existence of the trust relationship.



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These are only a few of the reasons why anyone who is considering the purchase of commercial property may want to consider the advantages of using a bare trustee or nominee as the registered owner of the property. For more information on this topic, please feel free to contact the author.

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