

## **Membership and Membership Transfer**

### **1 How can a sub-lettee, licensee, caretaker or possessor of a flat or part thereof who has been admitted as a nominal member of the Society resign from his membership?**

A sub-lettee, licensee, caretaker or possessor of a flat or part thereof, who has been admitted as a Nominal member of the Society may resign his nominal membership at any time, by writing a letter of the resignation addressed to the Secretary of the Society, through the member who has been given the permission by the Committee to sub-let, given on leave and licence or caretaker basis the flat or part thereof or part with its possession in any other manner.

### **2 How can a Nominal member occupying the flat on behalf of a firm, company or any other Body Corporate resign from his membership?**

A Nominal Member, occupying the flat on behalf of a firm, company or any other body corporate, may resign his nominal membership, at any time, by writing a letter of resignation addressed to the Secretary of the Society through the firm, the company or any other body corporate, on whose behalf he is occupying the flat.

### **3 Can a minor or a person of unsound mind become a member of a Society?**

A minor or a person of unsound mind who inherits shares and/or interest of a deceased member in the capital/property of the society, or if a minor or person of unsound mind is nominated, he may be eligible for admission to membership of the Society through his guardian or legal representative, on through an application in the prescribed form, along with submission of proper undertakings/ declarations, in the prescribed forms, as mentioned in the application.

### **4 How can a member obtain a “No Objection Certificate” from the Society?**

Normally, a “No Objection Certificate” of the Society is not required or mandatory for the transfer of shares and interest of the transferor to the transferee. However where such a certificate is required by the transferor or transferee, he can apply to the Society and the Committee of the Society will then consider such an application on merit within one month from the making of such application.

### **5 When will the Transferee be eligible to exercise his rights as a member of the Society?**

As per Bye-law No. 40 of the Model Bye-laws of the Society, the transferee will be eligible to exercise the rights of membership on receipt of the letter in the prescribed form from the Society; subject to the provisions of the MCS Act 1960 & Rules made there under.

**6 Is a managing committee can charge premium while transferring flat in a name of the person in family?**

According to provision under bye-laws no. 38, premium cannot charge while transferring the flat in the name of a person in the family.

**7 Is there any difference in procedure in case the land on which the Society is situated is given by Government/CIDCO/MHADA or any other authority?**

In case the society has been given land by the Government/ CIDCO/ MHADA or any other authority for constructing houses thereon, then notwithstanding anything contained in the bye-laws, admission of a person to membership of the Society, direct or as a result of transfer of shares and interest of the existing member in the capital/property of the Society, shall be subject to the approval of the concerned competent authorities such as collector of the District.

**8 If A is a non residential Indian, and a member of the housing society and given a power of attorney in the name of B and B has applied for membership in place of A, then is the society approved the membership of B?**

The society cannot approve the membership on the basis or power of Attorney.

**9 Within how many days does the Secretary have to communicate the decision of the Committee to the resigning Associate member?**

The Secretary has to communicate the decision of the committee, accepting the resignation of the Associate Member, to the member and his Associate member within 15 days of the decision taken by the committee. If the resignation is rejected, the Committee records the reasons thereof in the minutes of its meeting and the Secretary has to communicate the same to the member and his associate member within the time specified above. If the resignation is not granted within the specified period, then the same is deemed to be accepted.

**10 When can the Committee or the General Body of a Society refuse an application for membership or transfer of shares?**

A meeting of the Committee or the General Body, as the case may be, do not usually have the power to refuse any application for admission to membership or transfer of shares and interest in the capital/property of the Society except on the ground of non compliance of the provisions of the Act, the Rules and the Bye-laws of the Society or any other law or order issued by the Government in exercise of the statutory powers vested in it.

**11 What is the maximum limit of number of members in a Society?**

The number of members in the Society is limited to the number of flats constructed in the building. Number of members in excess of the number of flats shall neither have any right, title or interest in the society's property nor shall they be eligible for voting. It is binding on the committee to induct the members to the extent of the number of flats.

**12 How will the resigning member know if any payment is due from him towards the Society?**

The Secretary of the society shall, where any charges are found payable by the member of the Society, intimate the same to the member giving him full details and reasons of dues thereof, within 15 days of the receipt of the notice of resignation, and advise him to make the full payment thereof within 30 days from the date of the intimation so given.

**13 How can a sub-lettee, licensee, caretaker or possessor of a flat or part thereof who has been admitted as a nominal member of the Society resign from his membership?**

A sub-lettee, licensee, caretaker or possessor of a flat or part thereof, who has been admitted as a Nominal member of the Society may resign his nominal membership at any time, by writing a letter of the resignation addressed to the Secretary of the Society, through the member who has been given the permission by the Committee to sub-let, given on leave and licence or caretaker basis the flat or part thereof or part with its possession in any other manner.

**14 Within how many days does the Secretary have to communicate the decision of the Committee to the resigning sub-lettee, licensee, caretaker or**

**possessor of a flat or part thereof who has been admitted as a nominal member?**

The Secretary of the Society has to communicate the decision of the Committee accepting the resignation, to the member concerned and his sub-letter the licensee, the caretaker, or as the case may be, the possessor of the flat or part thereof, within 15 days of the decision by the Committee. If the resignation is rejected, the Committee records the reasons therefor in the minutes of its meeting and the Secretary has to communicate the same to the member concerned and his sub-letter, licensee, or caretaker etc. within the time specified above. If the committee does not take any decision thereof within 3 months, the said registration shall be deemed to have been accepted.

**15 What are the duties of the Society on receiving such letter of resignation from the Nominal member occupying the flat on behalf of a firm, company or any other Body Corporate?**

The Secretary of the Society has to place the letter of the resignation given by the nominal member duly recommended by the firm, the Company or any other body corporate, before the Committee members during the meeting of the Committee, held next after the receipt of the letter of resignation for acceptance by the Committee.

**16 What kind of transfer is deemed to be unauthorized or void?**

Any transfer which is made in contravention of the Act, Rules or the bye-laws is deemed to be unauthorized and void and will not be effective against the society.

**17 Who is a Member?**

The term Member is defined in the Bye-law No.3 (xxiv) of the Model Bye-laws of the Society. "Member" is a person who joins in an application for the Registration of a Co-operative Society which is subsequently registered, or a person who is duly admitted to membership of a society after the Registration of the Society and which includes a Nominal as well as an Associate member.

**18 What are the limitation /percentage of respect of the membership to the firm, companies, and autonomous bodies in the co. operative housing societies?**

More than 50 percent membership cannot be given to the firm, companies in the co. operative Housing society.

**19 How can an Associate Member resign from his membership?**

An Associate Member can resign from his membership of the Society at any time by writing a letter of resignation and submitting the same to the Secretary of the Society, through the member, with whom he was holding the shares of the Society jointly.

**20 Can a managing committee charged premium while transferring the gale in the name of the person in family?**

Under provision in bye-Laws No. 38, premium cannot be charged while transferring the gala in the name of the person in family.

**21 Is a member can transfer shares, rights and interest hold by him within a period of one year?**

Under provisions in section 29(2) of the Maharashtra Co. operative society Act. 1960, any member cannot transfer any part hold by him in the capital or property of the society or interest which he hold not less than one year.

**22 What do you mean by Premium?**

The term Premium is defined under the Bye-law No. 3(xxvii) of the Model Bye-laws of the Society. 'Premium' means and includes the amount payable to the society by the member who is transferring his shares and interest in the capital/property of the Society, in addition to the transfer fees to be paid by him as provided under the Bye-law No. 38(e)(ix).

**23 What happens to the shares and interest of the resigning member? OR How are the shares and interest of the resigning member dealt with?**

The society acquires the shares and interest of the member in the capital/property of the Society on acceptance of the resignation of the member under Bye-law No. 27 and pays him the value thereof as provided under the Bye-law No.66.

**24 What documents have to be submitted by the Transferor/Transferee for effective compliance of transfer of shares and interest in the capital/property of the Society?**

The Transferor/Transferee has to submit following documents and make the compliance as under:

- (i) application for transfer of his shares and interest in the capital/property of the Society, in the prescribed form along with the original share certificate;
- (ii) application for membership of the proposed transferee in the prescribed form;
- (iii) resignation of outgoing member in the prescribed form byelaws No.27 (a) Appendix No. 13;
- (iv) Registered agreement duly stamped;
- (v) valid reasons for the proposed transfer;
- (vi) undertaking to discharge the liabilities to the society by the transferor;
- (vii) payment of the transfer fee of Rs. 500/-;
- (viii) remittance of the entrance fee of Rs. 100/- payable by the proposed transferee;
- (ix) Payment of amount of premium at the rate to be fixed by the General Body meeting but within the limits as prescribed under the circular, issued by the Department of Co-operation Government of Maharashtra from time to time;

No additional amount towards donation or contribution to any other funds or under any other pretext shall be recovered from transferor or transferee;

- (x) submission of 'No objection' certificate, required under any law for the time being in force or order or sanction issued by the Government, any financing agency or any other authority;
- (xi) the undertaking/declaration in compliance with the provisions of any law for the time being in force in such form as is prescribed under these bye-laws.

Note: The condition at Sr. No. (ix) above shall not apply to transfer of shares and interest of the transferor in the capital/property of the society to the member of his family or to his nominee or his heir/legal representative after his death and in case of mutual exchange of flats amongst the members or a registered gift deed executed by the member.

## **25 What are the conditions to be fulfilled for becoming an Associate member of the Society?**

Any individual, a firm, a company or a body corporate, registered under any law for the time being in force, who/which is eligible to be an associate member and

who/which is intending to become an Associate member and who/which has made an application in the prescribed form for such membership on that behalf, along with the entrance fee of Rs.100/- may be admitted as an Associate member by the Committee.

**26 What action to be taken if the society denied membership of the Co-operative Housing Society not conveyed the decision regarding membership?**

If the Co-operative Housing Society did not convey the definite positive or negative decision regarding membership within 3 months from the date of receiving application for membership then by forwarding an application to the Dy/Asstt/Registrar of the concerned Housing Society can demand for the Deemed Membership the Registrar may pass legitimate order in regard by taking an appeal of the applicant and member.

**27 How can a person become a Nominal Member?**

Any Sub-lettee, a licensee or a care-taker, or occupant who/which is eligible to be a nominal member and who applies through the original member for such membership in the prescribed form, applicable to him/it, along with entrance fee of Rs. 100/- may be admitted as such nominal member by the Committee of the Society.

**28 What is the remedy if the society denied in accepting the membership application?**

If the society denied in accepting the application by forwarding such an application to the Dy/Assistant Registrar office under section 23 (1) (a), there is a provision to forward the same to the society through the office of the Dy./Asstt. Registrar. However, the cheque of the prescribed should also be attached with such an application. Provision is there to give the said application in the prescribed format 'H1' under rule 19 A to the office obligatory to inform the division clearly to the member within 60 days of the date of application received through the office of the Dy./Asstt. Registrar whether the society has approved the membership or not? And if the society has not given decision then the provision to appeal to the Dy/Asst Registrar has been provided in the same section.

**29 When the members of the society start to exercise his membership right?**

Even if an application for membership of society is given and the society also approved it the member can exercise his right membership only after paying necessary fee to the society. Otherwise even though the society approves membership the right of membership could not be exercised till payment of necessary fee is made.

**30 Within how many days does the Secretary have to communicate the decision of the Committee to the resigning nominal member?**

The Secretary of the Society has to communicate the decision of the Committee, accepting the resignation, to the firm, company or the body corporate and the nominal member, within 15 days of the decision by the Committee. If the resignation is rejected, the Committee records the reasons therefor in the minutes of its meeting and the Secretary has to communicate the same to the firm, company or the body corporate and the nominal member within the time specified above. If the committee does not take any decision thereof within 3 months, the said registration shall be deemed to have been accepted.

**31 What are the remedies if an application for membership is rejected by the housing society?**

A person whose application is rejected by the society then, he may submit an appeal before the concerned Registrar of societies under section 23(2) of the Maharashtra Co. Operative societies Act.

**32 When is the resignation accepted without any encumbrance?**

In the event that there are no charges of the society outstanding with or to be paid by the member, the Committee accepts the resignation of the member and the Secretary of the Society communicates the same to the member within a period of 3 months from the date of the receipt of the notice of the resignation. In case nothing is communicated by the Committee to the resigning member during the said period, then it will be deemed that the resignation is duly accepted.

**33 On what ground can the resignation of a member be rejected?**



The resignation of a member of the Society will be accepted only after the member has made payment of the charges due and payable by him to the society in full.

### **34 What is the procedure to be followed for disposal of applications received for transfer of shares?**

The Secretary and the Committee of the Society have to follow the procedure for disposal of applications for transfers of shares and/or interest of members in the capital/ property of the society as laid down under the bye law No. 65.

On receipt of the applications, the Secretary of the society shall scrutinise them and bring any short comings therein to the notice of the members concerned within 7 days of their receipt for compliance.

(a) The Secretary shall place all the applications, complete in all respects, or incomplete, before the meeting of the Committee or the general body, as the case may be held next after receipt of the applications.

(b) The committee or the General Body, as the case may be, shall consider all such applications at its meetings and take decisions thereon;

(c) The committee shall ensure that all the applications received by the Secretary of the Society are disposed off within the maximum period of 3 months from the dates of their receipt ;

(d) If the Committee or the General Body, as the case may be, rejects any applications, it shall record, in the minutes of its meetings, the reasons for rejection of the applications.

(e) The Secretary of the society shall communicate the decisions of the Committee or the General Body, as the case may be, to the applicants concerned within 15 days of the decisions of the committee or the General Body, as the case may be, with reasons, where the applications are rejected by the Committee or may be, with reasons, where the applications are rejected by the committee or the General Body, as the case may be if the society does not communicate the decision to the applicant within three months from the date of receipt of application for membership, including nominal or associate membership, the applicant shall be deemed to have been admitted as a member as provided under Section 22(2) of the MCS Act 1960.

### **35 What are the provisions regarding membership in the Co-operative Housing Society?**

Eligibility for the membership in co-operative Housing Societies is mentioned in section 22(1) Accordingly, any person who is eligible for executing contract under Indian Contract Act 1872, Membership of the Co-operative Housing Society can get to any firm, company or society constituted by law or the registered under societies registration Act 1960 or society, registered under Co-operation law, State Government as Central Government, Local Authority Public Trust. However it is necessary that ownership rights as a flat owner or gala owner of the Housing societies should have to be acquired by legal documents In addition, the following conditions should have to be fulfilled for the membership under rule 19 of the Co-operative law.

1. It is necessary to make an application for membership in prescribed documents format with prescribed documents under bye-laws and co-operation Act for membership of society.
2. It is necessary to give an approval to the membership application first by the managing committee and by the general body meeting.
3. Necessary to have a eligibility under law, rues bye-laws

It is necessary to attached resolution giving powers with an application of membership by company, firm, trust local authorities etc. other than person.

### **36 What happens if the member who proposes to transfer his share and interest in the capital/property of the Society is not eligible to do the same?**

In the event that the member who proposes to transfer his shares and interest in the capital/property of the Society is ineligible to carry out the said transfer, the Committee has to direct the Secretary of the Society to inform the member accordingly within 8 days of such decision by the Committee.

### **37 When is the application for transfer of shares and interest in the capital/property of the society deemed to have been admitted?**

In the event, the decision of the Committee/General Body Meeting as the case may be, on the application for transfer of shares and/or interest in the capital/property of the society is not communicated to the applicant within 3 months of its receipt, the transfer application is deemed to have been accepted and the transferee shall be deemed to have been admitted as a member of the society as provided under Section 22(2) of the Act.

**38 What are the duties of the Society on receiving such letter of resignation from an Associate Member?**

The Secretary of the Society has to place the letter of the resignation given by the Associate member, which has been duly recommended by the member, before the Committee members during the meeting of the Committee, held next after the receipt of the letter of resignation for acceptance by the Committee.

**39 What documents have to be submitted by the Transferor/Transferee for effective compliance of transfer of shares and interest in the capital/property of the Society?**

The Transferor/Transferee has to submit following documents and make the compliance as under:

**40 What is the time prescribed for giving notice of intention of transfer by a member of the Society?**

A member who desires to transfer his shares and interest in the capital/property of the Society has to give 15 days' notice of his intention to do so to the Secretary of the Society in the prescribed form, along with the consent of the proposed transferee in the prescribed form.

**41 Can the Associate or Nominal member have a right to occupy the Flat?**

The Associate or Nominal member may be given the right to occupy the flat after taking the consent of the member and permission from the Society, and subject to the conditions set out by the Society.

**42 A & B have jointly purchased the share in 60:40 proportions. A's name shown first on the share certificate and B's name is on the second number. A has nominated the name of C. Whether the B's name come first on the share certificate after the death of A or so?**

If the society approved the application of "A" then after the death of "A" the name of "C" Come first on the share certificate the name of "B" remained second.

**43 What is the period of notice prescribed for resignation of membership from the Society?**

As provided under Rule 21 (1) of the MCS Act, 1961, a member may resign his membership after giving three months notice, in the prescribed form to the Secretary of the Society.

**44 A & B have jointly purchased the share in 60:40 proportions. A's name shown first on the share certificate and B's name is on the second number. A has nominated the name of C. Whether the B's name come first on the share certificate after the death of A or so?**

If the society approved the application of "A" then after the death of "A" the name of "C" Come first on the share certificate the name of "B" remained second.

**45 Who is a Nominal Member?**

A Nominal Member is a person who is admitted to the membership of the Society after its registration in accordance with the Bye-laws.

**46 What is the remedy if the society denied in accepting the membership application?**

If the society denied in accepting the application by forwarding such an application to the Dy/Assistant Registrar office under section 23 (1) (a), there is a provision to forward the same to the society through the office of the Dy./Asstt. Registrar. However, the cheque of the prescribed should also be attached with such an application. Provision is there to give the said application in the prescribed format 'H1' under rule 19 A to the office obligatory to inform the division clearly to the member within in 60 days of the date of application received through the office of the Dy./Asstt. Registrar whether the society has approved the membership or not? And if the society has not given decision then the provision to appeal to the Dy/Asst Registrar has been provided in the same section.

**47 Can the Associate or Nominal member have a right to occupy the Flat?**

The Associate or Nominal member may be given the right to occupy the flat after taking the consent of the member and permission from the Society, and subject to the conditions set out by the Society.

**48 Does a Nominal Member have any rights as a member of the Society?**

A nominal member has no rights as a member of the Society

**49 What are the duties of the Society on receiving such letter of resignation from a sub-lettee, licensee, caretaker or possessor of a flat or part thereof who has been admitted as a nominal member?**

The Secretary of the Society has to place the letter of the resignation given by the nominal member duly recommended by the member concerned, before the Committee members during the meeting of the Committee, held next after the receipt of the letter of resignation for acceptance by the Committee.

**50 What is Transfer Fees?**

Transfer Fees' is the sum of money payable by a transferor to the Society for the transfer of his shares along with occupancy right as provided under the Bye-law No. 38(e)(vii). The term Transfer Fees is defined under the Bye-law No. 3(xxvi) of the Model Bye-laws of the Society.

**51 What are the provisions regarding membership in the Co-operative Housing Society?**

Eligibility for the membership in co-operative Housing Societies is mentioned in section 22(1) Accordingly, any person who is eligible for executing contract under Indian Contract Act 1872, Membership of the Co-operative Housing Society can get to any firm, company or society constituted by law or the registered under societies registration Act 1960 or society, registered under Co-operation law, State

Government as Central Government, Local Authority Public Trust. However it is necessary that ownership rights as a flat owner or gala owner of the Housing societies should have to be acquired by legal documents. In addition, the following conditions should have to be fulfilled for the membership under rule 19 of the Co-operative law.

1. It is necessary to make an application for membership in prescribed documents format with prescribed documents under bye-laws and co-operation Act for membership of society.
2. It is necessary to give an approval to the membership application first by the managing committee and by the general body meeting.
3. Necessary to have a eligibility under law, rules bye-laws

It is necessary to attached resolution giving powers with an application of membership by company, firm, trust local authorities etc. other than person.

**52 If A & B jointly purchased the gala then that can exercised the membership rights?**

**Those whose name is first on the share certificate he can exercised the right of membership.**

**53 What are the rights of the co member?**

If the original member gave consent then the co. member can exercised the rights of the member.

**54 What are the formalities to be complied with in case of rejection of resignation of a member?**

When any resignation is rejected, the Committee has to record the reasons therefore and also communicate the same to the member concerned within 3 months of the date of receipt of notice of resignation.

## **55 How many types of membership in the Housing Societies? And Which?**

There are three types of membership of Housing Societies. They are as follow.

### **A Member –**

Whose name is included in the registration proposal by the Society or who has given membership after registration, such person/Institute, trust company are called member. Sole name of such members is on the share certificate. Similarly if other persons are joint members with them then the members name is mentioned on sr. No. 1

### **B Co. Member –**

If persons holding shares of the society jointly with original member then their name is on the sr. no. 2, 3, 4, 5 etc. serially.

### **C Nominal Member –**

Nominal member means the membership given by the society without issuing shares or share certificate. Such membership is given under section 91 or under other sections to make it feasible in taking legal action under co. operative law. Housing societies can give such a nominal membership to tenant or care taker.

### **D Sympathiser Members:-**

A person who agrees with the object of the society is called sympathiser member. However definition in this regard is not in the bye-laws of the housing societies.

Only member or in his absence and with his permission a co member can attend the meeting society's general body meeting and can participate in the election as voter or candidate. If the co-member is elected, he may also be office bearer. However these rights are not available to the nominal member or sympathizer member.

**56 What details have to be mentioned by the members in the Application for exchange of flats?**

The members, desiring to exchange their flats, have to make a joint application to the Secretary of the society, containing the following details:

- 1) The names of the members concerned;
- 2) The distinctive numbers of their respective flats;
- 3) The carpet areas (in sq. meters) of their respective flats;
- 4) The building number/numbers and name/names of the building/buildings in which their respective flats are situated;
- 5) The reason for exchange of flats;
- 6) Registered Deed of exchange with the necessary stamp-duty having been paid.

**57 Is a co member can take part in the general body meeting?**

Yes, in the absence of the original member, a co- member can take part in the proceedings of the society. However, the original member's written consent is necessary for this.

**58 What does the Secretary have to do once he receives the notice of intention from the member?**

The Secretary of the Society, on receipt of the notice of intention to transfer, has to place the same before the meeting of the Committee, held next after the receipt of the notice, and has to point out whether the member is prima-facie eligible to transfer his shares and interest in the capital/property of the Society in view of the provisions of Section 39(2)(a) of the MCS Act, 1960.

**59 What action to be taken if the society denied membership of the Co-operative Housing Society not conveyed the decision regarding membership?**

If the Co-operative Housing Society did not convey the definite positive or negative decision regarding membership within 3 months from the date of receiving



application for membership then by forwarding an application to the Dy/Asstt/ Registrar of the concerned Housing Society can demand for the Deemed Membership the Registrar may passed legitimate order in regard by taking an appeal of the applicant and member.

#### **60 Who is an Associate Member?**

An Associate Member is a member who holds jointly, a share of the Society with the other member, but whose name does not stand first in the share certificate.

**61 If A is a gala holder member of the housing society and in the meantime B has applied for the membership. In the application he mentioned that for purchasing the said flat his contribution was also paid. In such a situation the weather society give co-membership to B or not?**

if there is not NOC letter from the original member, then the society may deny the application of B. However if B gave his consent / NOC then B can be made co-member.