

Introduction

Some tips on managing your Housing Cooperative Society



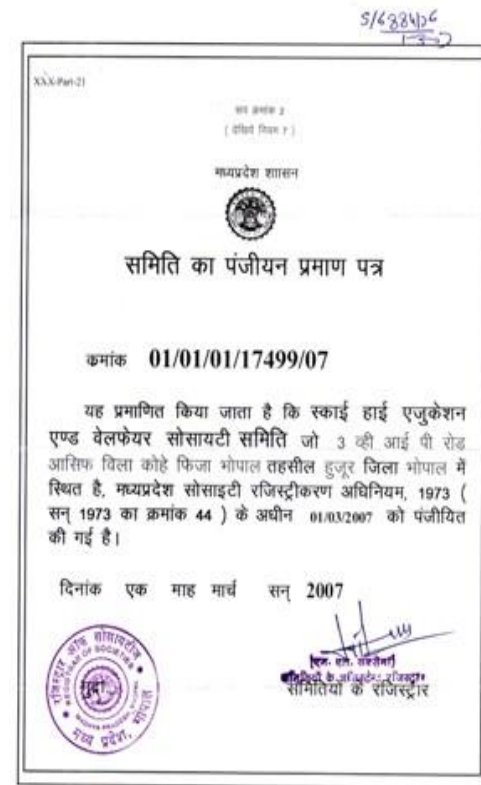
What is a Housing Society ?



- A Society with the Object to provide members with open plots for housing, dwelling houses or flats
- If dwelling units already acquired, to provide its members common amenities and services

Registration of Society

- May be registered with limited or unlimited liability.
- Minimum 10 Members from different families required
- Family means Spouse, Parents, son or unmarried daughter.
- Lesser numbers permitted conditionally



Membership

Who is a member ? S 2(19)

- **'Member'** means a person joining in an application for Registration of a CS OR
- A person duly admitted to membership of a Society after Registration AND includes Active Member, Associate member & Nominal Member
- **"Associate Member"** means a member who holds jointly a share of a society with others, but whose name does not stand first in the share certificate.



Membership

Who is a member ? S 2(19)

- **"Active member"** means a person who:
 1. Has purchased and/or owns the Unit &
 2. Who attends at least one General Body Meeting of the Society in the previous 5 consecutive Years
 3. Has at least paid the amount equivalent to one year of society Maintenance and Service charges, within a consecutive period of Five years.
- **"Nominal Member"** means a person admitted to membership as such gafter registration



Membership

Who can become a member ? S.22

- An individual competent to contract
- A firm, company or any other body corporate
- A society registered under Soc Reg Act, 1860
- A society registered under MCS Act
- State or Central Government
- A local authority ;
- A registered public trust
- A minor or lunatic by inheritance



Note : HUF Cannot be a member

Deemed Membership

Open Membership S. 23



- No refusal without sufficient cause
- Application can be made to Registrar if Society refuses to accept application
- Registrar to forward ApIn. within 30 days
- Failure to communicate decision in 60 days makes him deemed member.
- Appeal to Registrar against refusal possible

Note : If Society fails to inform applicant about its decision on the membership application within three months, he is deemed to be admitted as a member.

Types of Members

Ordinary Member

- First named holder
- Owner as per agreement or allotment
- Has right to Vote
- Has right to become MC member
- Primarily responsible for dues
- Can transfer shares if held singly
- Voting in person – no proxies allowed



Types of Members

Associate Member

- Holds shares jointly with others
- Application through original member
- Name does not stand first in share certificate
- Can vote and become a MC member in absence of Ordinary member
- Jointly & Severally liable for dues



Types of Members

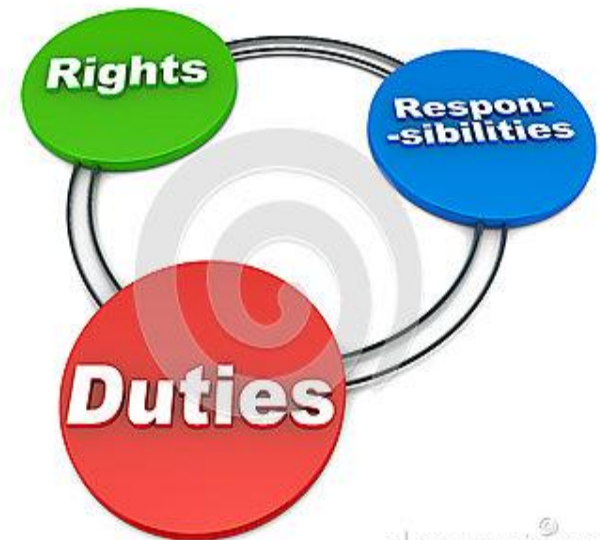
Nominal Member

- Usually created for Sublettees, Licensees, Caretakers.
- Application through original member
- Cannot Vote or hold office
- Must vacate premises upon expiry of agreement



Duties of Members

- Attend at least one General body meeting in 5 year block (GB can condone absence)
- Utilize minimum level of services at least once in 5 year block as specified in byelaws.
- Failure makes him non active & liable for expulsion but he can become active member again



Voting powers of Members

- Voting is personal, no proxies permitted
- Non active member cannot vote
- Member or Associate member in order of names can vote
- Individual member of Society (Other than Housing & Premises Society) can vote after completing two years as a member



Voting by Non Individuals

- Director/Officer duly appointed can vote on behalf of Company
- Partner duly appointed can vote for Firm
- Member duly appointed can vote on behalf of Local Authority
- Trustee duly appointed can vote on behalf of Public Trust



Procedure for Membership

Transfer Cases

- Give 15 days notice to Society [Form 20(1)] with Transferee's consent [Form 20(2)]
- Secretary to place application before next MC/GB
- Ineligibility to be intimated within 8 days of decision by MC



Procedure for Membership

Transfer Cases

- NOC not mandatory, but desirable
- Decision to be intimated in 15 days
- Max period for disposal is 3 months
- Applicant deemed member if not informed
- Entrance Fee Rs. 100/- , Transfer fees Rs. 500/-, Transfer Premium as decided by General body (max Rs. 25,000/-)



Membership of firms/Co's . . . 1

Conditions

- Resolution to apply for membership required
- HO/Branch is within area of operation or business activities conducted there
- Minimum 10 shares to be purchased
- Aims & objects not contrary to Society's



Membership of firms/Co's . . . 2

Conditions for Urban Housing Society

- Byelaws/Deed contain no prohibition for membership
- Company/Firm must be Corporate body or Registered Firm
- Constitution permits provision of houses by Firm/Co for employees & to utilise it's funds for that purpose
- Firm/Co can hold only for provision of residential houses to employees
- Firm/Co deposits cost of Const. with Society in advance



Membership of firms/Co's . . . 3

Conditions for Urban Housing Society

- Undertaking that employee shall become Nominal member
- Firms/Co's limited to 50% of total membership.
- Firms/Co's limited to 50% of total tenements.
- MC to have max 25% members from Firms/Company



Restrictions of holding / transfer

- Member can hold upto 20% of total Share Capital
- Member can hold shares upto Rs. 20,000/-
- Government, Society, Zilla Parishad can hold higher portion.
- Applies to transfers and transmissions both.
- Transfers in violation void under S. 6 (h) TOPA
- Shares must be held for one year minimum prior to transfer



Registration of transfer

- Instruments exempted from Registration u/s 41
 - Instruments dealing with rights in immovable Property > Rs. 100
 - Instruments acknowledging receipt or payment of any consideration for the above
- Instruments NOT exempted :
 - Gift of immovable property



Cessation of Membership

Ordinary Member

- On his resignation being accepted
- On transfer of his shares and interest
- On his death
- On his expulsion
- On being adjudged insolvent or any other disability
- When his whereabouts are not known for 7 years
- On cessation by legal attachment



Cessation of Membership

Nominal Member

- On his death,
- On resignation accepted
- On cessation of original members' membership
- On expiry of the term

Associate Member

- When the Original Member ceases to be a member.
- On his death

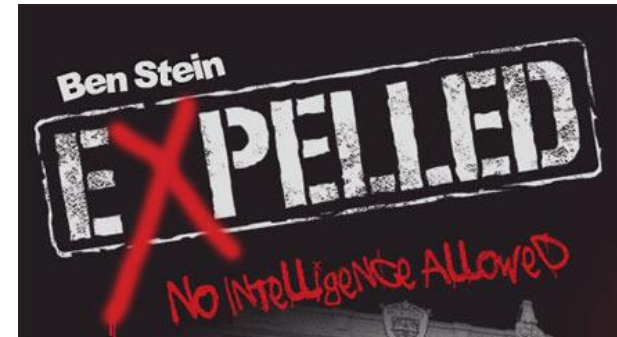


Expulsion of Member

Where the member has:

- Persistently not paid charges due
- Willfully deceived the Society by giving false information
- Used the premises for immoral / illegal purposes
- Regularly committed breaches of the provisions of the bye-laws
- Furnished false information
- Becomes a Non active member

Expulsion process shall be u/s 35 and Rule 28 and 29.



Nomination Rules

Section 30 Provides as follows :

- Society must transfer share/Interest to Nominee as per rules.
- If no nomination, transfer must be to person as appears to MC to be the heir/legal Representative.
- Nominee/Heir Legal Rep must be admitted as member
- Minor/Lunatic can inherit share
- Transfers are valid & effectual against demand by any person.



Nomination Rules

Rule 25 Provides as follows :

- Nomination can be made by document which must be deposited with Society in Member's lifetime
- Can also be made by statement signed by member, attested by one witness in book kept by society.
- Can be revoked/Varied by another nomination at any time.
- Name/Address of Nominee(s) & Changes to be entered in Register of Nominations.



No Nomination

Rule 25 Provides as follows :

- In case of no Nomination, Society must invite claims by public notice at Society's office.
- After inquiry & Considering claims/Objections, MC shall decide who, in it's opinion is heir/legal representative.
- Probate/Letters of Administration are not essential but Society must act fairly.



Nomination Procedure

New Model Byelaws 2014 [32 to 37] Provide as follows :

- Nomination in prescribed form
- Acknowledgement by Secretary is acceptance of nomination.
- Revocation/Varying by written application which cancels earlier nomination
- Fresh nomination(s) entails fee of Rs. 100/-



Nomination Procedure

New Model Byelaws 2014 [32 to 37] Provide as follows :

- Secretary to place Nomination in next MC meeting for recording in minutes.
- Entry in register within 7 days of meeting
- Society must transfer shares/interest to Nominee(s) in proportion of ownership.
- Nominees to apply jointly indicating which one should be ordinary member.
- Others will be Joint/Associate members unless nominees indicate otherwise.



Nomination Procedure

New Model Byelaws 2014 [32 to 37] Provide as follows :

- Nominees must file indemnity bond if one amongst them is to become a member
- Application to be made within 6 months of death of member.
- In absence of nomination, Public notice to be given on Notice board & 2 local newspapers inviting claims, etc.



Procedure for Subletting

- No permission for Sub letting required
- Society must be intimated at least 8 days in advance
- Copy of agreement and intimation to Police must be provided
- Application for Nominal membership should be made



Charges leviable by society. . . 1

Levy / Charge	Rate	Apportioned
Property Tax	As per Municipal Authority	As per Area
Water Charges	As per Water Department	As per no. of outlets
Repairs to Building	Minimum 0.75% of construction cost	As per rate decided in GBM
Sinking Fund	Minimum 0.25% of construction cost excl land	As decided in GBM
Lift Maintenance and Repair	Based on Actuals	Equally
Insurance, Lease Rent and NA Tax	Based on Actuals	Built up area of flat

Charges leviable by society. . . 2

Levy / Charge	Rate	Apportioned
Service Charges*	As fixed by GBM based on actuals	Equally
Non-Occupancy charges & Parking charges	As per rate fixed at GBM	Where applicable
Interest on Late Payment	Rate decided at GBM. Max. 21% Simple Interest	Where applicable
Transfer Premium	Rate decided at GBM. Maximum Rs.25,000/-	Where applicable

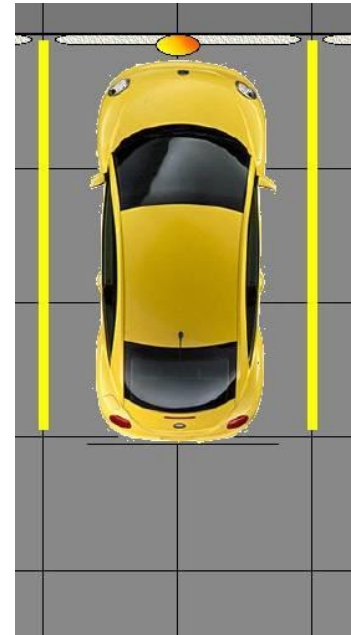
- *Service Charges include* Salaries to staff, Outgoings of Society, Printing, Stationery, Postage, Conveyance, Education Fund, Entrance Fees, Statutory, Internal and Reaudit
- *Service Charges also include* Meeting Expenses of MC, SC, GB, Legal charges, common electricity costs and any other charges approved by GB

MC Strength

Total Members	Strength of Committee						Quorum
	General	Women	SC/ST	OBC	VJ/NT SBC	Total	
Upto 100	6	2	1	1	1	11	6
Upto 200	8	2	1	1	1	13	7
Upto 300	10	2	1	1	1	15	8
Upto 500	12	2	1	1	1	17	9
Above 500	14	2	1	1	1	19	10

Controversies – Parking Space

- Unsold parking spaces to be allotted on first come first served basis by MC (Cannot be sold)
- State Govt demands Stamp duty on open & Stilt parking
- Bombay HC deems sale of any area outside of FSI illegal and void *ab initio* [Panchali CHS April, 2008]



Controversies - Open Space

- Sec 16 of MOFA : The provisions of this Act, except where otherwise provided, shall be in addition to the provisions of the Transfer of Property Act, 1882, and shall take effect **notwithstanding anything to the contrary contained in any contract.**
- Section overrides any agreement with Builder which is repugnant.
- Residual FSI belongs to Society after Registration [See clause 4 of Model agreement]



Controversies - Repairs

- Byelaw 160(a) specifies what repairs are the responsibility of the Society.
- Includes External water & drainage lines, Terrace & parapet walls, Roofs of all flats, Water leakages incl rain, Electric lines upto Flat main switch,
- All other repairs incl. leakage due to toilet, sink etc. are the responsibility of the members



