

## **Transfer of Shares & interest in the Capital / Property of the Society (Generally Sale, Gift , Release)**

154B-12 : A Member may transfer his share, right, title and interest of his property in the society by way of registered document by following the below procedure provided in bye laws no 38 :

- A. Any member desirous of transferring ownership of his residence should give a 15 day prior written notice to the Society's Secretary stating his intention...
- B. Secretary puts forth this notice in the next committee meeting. Member's eligibility to transfer shares is verified according to bye-laws.
- C. Any decision (of approval or disapproval) has to be taken by the managing committee within 30 days and has to be communicated to the member within 8 days of taking the decision. However, under exceptional circumstances, the time period can be extended to no longer than 8 days of taking the decision. However under exceptional circumstances, the time period can be extended to no longer than three months. If within that time period, no communication is sent to the member by the society, the person to whom the ownership is being transferred is deemed as the member of the society in place of the original member.
- D. A " No objection Certificate" is usually not needed from the Society in this matter, but if the member has requested an NOC, the society must provide it to him. A society should not have any objections if the member intends to transfer ownership to another, unless there has been a serious non-compliance of bye-laws by the owner. If it cannot provide the NOC, it has to inform the member of the reason in 15 days. The member can then appeal to the Registrar.
- E. The Transferor / Transferee shall submit following documents and make the compliance as under :
  - 1] application, for transfer of his shares and interest in the capital / property of the Society, in the prescribed form, along with the share certificate. ( APPENDIX-2) (APPENDIX-20(1)), ( APPENDIX-21), ( APPENDIX-22).
  - 2] application in the prescribed form for membership of the proposed transferee..(APPENDIX-20(2)), ( APPENDIX-23)
  - 3] resignation in the prescribed form Member / Transferor. ( APPENDIX-13)
  - 4] Registered agreement with Stamp duty paid.( APPENDIX-3)
  - 5] valid reason for the proposed transfer.
  - 6] undertaking to discharge all the liabilities to the society by transferor.
  - 7] Payment of the transfer fee of Rs 500 by the member and Rs 100 admittance fee paid by the transferee
  - 8] Submission of NOC from a financing agency ( if any )
  - 9] 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. ( APPENDIX-25(1))
  - 10] Premium amount of Rs 25,000 ( being the maximum amount to be paid, however could be less depending on what is decided in the General Body Meeting. However, the premium does not apply if the ownership of residence is being transferred to an heir/family member or if the members have decided to exchange flats between each other..

## **Transfer of Shares & interest in the Capital / Property of the Society ( Death claim)**

154B-13 : On the death of a Member of a society, the society shall transfer share, right, title and interest in the property of the deceased Member in the society to a person or persons on the basis of testamentary documents or succession certificate or legal heirship certificate or **document of family arrangement executed by the persons, who are entitled to inherit the property of the deceased Member** or to a person duly nominated in accordance with the rules :

Provided that, Society shall admit a nominee as a provisional Member after the death of a Member till legal heir or heirs or a person who is entitled to the flat and shares in accordance with succession law or under will or testamentary document are admitted as Member in place of such deceased Member.

Provided further that, if no person has been so nominated, society shall admit such person as provisional member as may appear to the Committee to be the heir or legal representative of the deceased member in the manner as may be prescribed.

Procedure to be followed by the Society to transfer membership upon death of the member provided in bye-laws no 34 & 35 :

#### **A1 When there is nomination ( Bye-laws no 34 ) :**

Society shall admit a nominee as a provisional member after the death of a Member till legal heir or heirs or a person who is entitled to the flat and shares in accordance with succession law or under will or testamentary document are admitted as Member in place of such deceased Member.

The nominees are required to submit an application for membership within six months from the death of a member. (Appendix-15) (Appendix-18)

If there are multiple nominees, they should decide whose name will be primary, generally it is in nomination form and the others become joint or associate members.

If there are multiple nominees and they wish to nominate only one among themselves as the member, they should give the society an indemnity bond, securing it against legal liability for its actions.

This nominee is a provisional member till legal heir or heirs or a person who is entitled to the flat and shares in accordance with succession law or under will or testamentary document are admitted as Member in place of such deceased Member.

#### **B1 When there is no nomination ( Bye-laws no 35 ) :**

##### **Sec 154-b-13 of Amended MCS Act, 1960**

When there is no nomination Society shall transfer share, right, title and interest in the property of the deceased Member in the society to a person or persons on the basis of will (needed probate if any objection / challenge is claimed / immovable property is in Mumbai) or succession certificate or legal heirship certificate. (Appendix-19).

#### **C1 When there is no nomination and nobody claims membership ( Bye-laws no 35 ) :**

When there is no nomination and nobody claims membership, then in that case Society shall invite claims or objections to the proposed transfer of shares and interest of the deceased Member, in the capital / property of the Society, by a public notice , in the prescribed form exhibited on the notice board of the society. It shall also publish such notice in at least two local news papers, having wide circulation. The entire expenses of publication of the notice shall be recoverable if from the value of interest of the deceased member in the capital / property of the Society. After taking into consideration the claims or objections received, in response to the said notice and after making such enquiries as the committee considers proper in the circumstances prevailing, the committee shall decide as to the person , who in its opinion is the legal heir or legal representative of the deceased Member. This person will give an indemnity bond along with his application for membership in the prescribed form indemnifying the society against any claims made to the shares and interest of the deceased Member in the capital / property of the society, at any time in future by any person. (Appendix-17) (Appendix-19)

If there is no claimant, the shares and interest of the deceased member in the capital / property of the Society shall vest in the Society.

154-b (1) (18) (c) "provisional Member" means 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 or heirs as the Member of the society in place of deceased Member ;