

Transfer of Shares to Nominee/s or Legal Heirs in case of death of a Member in a Co-operative Housing Society.

On death of a member in a Co-operative Housing Society, the most important issue which arises is, as to who will success to the shares and interest of the deceased member in capital / property of society. Practically, majority of disputes in Co-operative Housing Societies relate to this issue.

The Maharashtra Co-operative Societies Act, 1960 and Maharashtra Co-operative Societies Rules, 1961 provides two options namely; (1). Transfer to Nominee of the deceased member and (2). Transfer to the Leal Heirs of the deceased member. Standard Byelaws of Co-operative Housing Societies provide procedure under Byelaws 34 and 35.

Usually, on demise of a member his/her nominees or legal heirs expect the society to transfer share certificate to them or some of them and submit a copy of death certificate to the society. Most of the times, the society does not advise such nominees/ legal heirs about the procedure to follow. There cannot be any justifiable reasons for such approach of the societies. May be many of the office bearers may not be aware of correct procedure to be followed. The matters remain pending for years and some fine morning the nominees / legal heirs come up with complaints about society not having acted on their requests.

At the outset let me make it clear that if the procedure prescribed under Byelaws 34 or 35 is followed and the applicant is eligible to be member of society, there is generally, no reasons for the society to refuse admission and transfer of shares or keep the matter pending. You will find my article on the topic of "Various Applications / requests by members and time bound compliance by society". At the same time, the applicant can have recourse to appeal in case the application for membership and transfer of shares is not

attended by the society within 90 days. There is a concept of deemed membership under those circumstance.

Coming back to the transfer of shares,

- A. The nominee/s need to apply for membership and for transfer of shares and give some declarations as provided under Byelaws 34. The Hon. Secretary of the society need to revert to the applicant in case of some deficiencies or additional information. The Hon. Secretary need to put up the application in the meeting of the Managing Committee called after that.

The Managing Committee may approach a legal advisor for vetting of the documents, to avoid legal complications or for guidance for action as per the law. If the application is perfect in all respect, the Managing Committee may pass necessary resolution providing for the followings: -

- a. Resolution for admission of the applicants/s as members on cessation of membership of the deceased member.
 - b. Resolution for Transfer of Shares to the applicant.
 - c. Resolution authoring the Hon. Secretary to complete the formality of endorsement of share certificate and updating the statutory records such as Share Register, member register, members list etc.
 - d. The transfer will be complete on endorsement and updating of the statutory records.
 - e. Any transfer in violation of the act and rule will be illegal.
- B. In case there is no nomination or if the nominee does not come forward, the legal heirs may have to come forward and follow the procedure as per Byelaws 35. This procedure includes the followings:
 - a. Declaration by the legal about no objection to one or more of the legal heirs applying for membership and transfer of shares.

- b. Public notice inviting claim or objections to the transfer of shares to be given by the society. The expenses need to be borne and paid by the applicants.
- c. Application for membership by the selected legal heir/s.
- d. Indemnity bond to be given by such applying legal heir/s.
- e. Other declaration as per the Byelaws 35.

The Hon. Secretary will follow the same procedure and pass necessary resolutions as noted above.

In case of refusal of the application, the reasons of refusal shall be recorded in the minutes of the Managing Committee. The Hon. Secretary must convey the decision with reasons to the applicant within 15 days of such decision. In all the applications must be disposed of within three months of their receipt. The applicant will be deemed member if there is no response within 90 days. Such applicant shall approach the Dy. Registrar for necessary order for deemed membership.

Nominees or the legal heirs must follow this procedure for transfer of shares on death of a member in a Co-operative Housing Society.