

How can you transfer your co-op housing membership?

Anyone buying from a housing society member has to apply for transfer of membership by paying transfer fee, admission fee, share money etc

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htestates LEGAL REMEDIES

Societies are formed and registered to promote economic, social and cultural interests of its members. A society formed in Delhi with an objective to provide its members open plots under plot housing, dwelling units or flats (whether in a multi-storied building or otherwise) in a complex under group housing is referred to as a group housing society. Co-operative housing societies ('housing society') in Delhi are governed by the Delhi Co-operative Societies Act, 2003 (Act) and rules made therein.

Upon allotment and handover of possession of land by the government authority to the housing society, its management committee enters into arrangements with architects, builders etc, for development of the project on the plot in accordance with the terms and conditions of allotment.

After completion of construction/development, the apartment/dwelling unit/plot of land is allotted to the members

of the housing society. Members are thereafter required to make payments the apartment/unit/plot and other dues/charges as levied by the management committee. By virtue of their allotment, the members become owners of immovable property allotted to them.

One of the important questions that arise is how does transfer of membership in a housing society take place? The answer to this question is embodied in Section 91 of the Act, which explicitly states that a member of a housing society who has sold his plot or apartment shall cease to be member of the society from the date of sale of plot or flat to any person. However, certain conditions are required to be fulfilled for transfer of membership.

First, the instrument of sale/conveyance/transfer must be registered. Second, the buyer



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has to apply for transfer of membership by paying transfer fee, admission fee, share money etc as per the by-laws of the housing society. Once the application for transfer of membership is filed by the buyer, management committee of the housing society shall decide such application within 30 days of the receipt of application. However, if the management committee refuses to grant membership, the aggrieved person may file an appeal before designated registrar of housing society and the decision of the registrar in this

regard shall be final.

The other important question is, what happens to the share of a member in the event of his death and how does transfer of property take place? In such a case Section 28 of the Act comes into operation which provides that on the death of a member, a society shall transfer the share or interest of the deceased member to the person nominated by him, from amongst his blood relatives and only in case where no person is nominated by a deceased member the share of such member shall devolve upon the heir or legal representative of the

deceased member. The same has been upheld by the High Court of Delhi in the year 2008 in the case of Mayurdhwaj CGHS Ltd. Vs Registrar, Cooperative Societies and others.

A member can also nominate more than one person and he/she shall as far as practicable specify the share to be transferred to each nominee. Such other person nominated may only be his father, mother, brother, sister, son, daughter or spouse. Further, a member may, at any time, cancel or change his nomination.

However, it is important to note, that persons so nomi-

nated or legal heir/legal representatives of deceased person becomes entitled to such shares/interest only if they are qualified to become members and qualification of membership depends on provisions of the Act, rules and bye-laws framed by the Housing Society.

The author is senior partner at Zeus Law, a corporate commercial law firm. One of its areas of specialisations is real estate transactional and litigation work. If you have any queries, email us at ht@zeus.firm.in

htestates LAW BOOK Sunil Tyagi

I plan to lease my property in Gurgaon to an individual for a term of five years. How can I ensure that the lessee will not misuse my property by further sub-leasing it in favour of other persons?

-Brijesh Goel

In order to safeguard your property from being sub-let, you should incorporate a clause in the lease deed, expressly providing that during the term of lease, the lessee shall not sub-lease your property or create any rights or interest of whatsoever nature in the property in favour of any third party. Since the lease is for a term of more than one year, to ensure the enforceability of the terms of lease deed in law, it should be duly stamped and registered in the sub-registrar's office, within whose jurisdiction the property is situated.

I have been told that certain construction that I have done in my flat located in a group housing society is unauthorised. What is the meaning of unauthorised construction and how can I ascertain whether the construction carried out by me is unauthorised?

-Ketan Jaji

As per clarifications issued by DDA, any addition/alterations to group housing society flats other than what is sanctioned in the building plan for the group housing flat is termed as unauthorised construction. You can ascertain whether

the construction carried out by you is unauthorised through the sanctioned building plan which will be available with the appropriate managing entity/committee of your society.

I have given my flat in Delhi on rent to a family who have been staying there for last two years. There was no rent agreement but the amount of rent was agreed at the rate of ₹15,000 per month, which they were duly paying. Now I have asked them to vacate the house but they are not doing so. How can I get my house vacated legally?

-TK Mehra

The procedure for vacation of property in your case will be governed by the provisions of Transfer of Property Act, 1882. Since, there is no rent agreement, the tenancy between your tenant and you is a month-to-month tenancy. You can terminate the tenancy by issuing a notice. If the tenant does not vacate the property then you can approach the court in whose jurisdiction your property is situated and file an eviction suit to evict the tenant.

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htestates CHEQUE BOOK Harsh Roongta

I am planning to buy land. Can I apply for a home loan for this or do I have to apply only for personal loan or is there any bank that offers home loan for buying a plot?

-M K Vohra

To buy a piece of land to construct a house, you can get a plot loan based on your income and the title of the property. Plot loans are more restrictive and available only to non-agricultural plots bought from statutory authorities or approved developers.

Normally, lenders will not finance more than 60% to 65% of the total cost of the plot and the remaining 35% to 40% has to come from your own sources. Also, plot loans are more expensive and available for shorter tenures (5 to 15 years) unlike a regular home loan.

If you are planning to self-construct a house on the same plot you can take a composite loan. The composite loan is given to cover the cost of land as well as

cost of construction on such plot. By taking a composite loan brings more benefits in terms of financing as well as tax benefits. The loan financing in case of a composite loan goes up to 80-90% of the property value as compared to the plot loan's 60-65%. Moreover, you can get tax benefits under section 80C for the principle repayment and Section 24 for the interest paid on the composite housing loan, including the cost of the plot. Pure plot loans are not eligible for any tax benefits.

Some lenders are not comfortable funding self-constructed properties and hence, your choices will be limited. You can approach

SBI, Axis Bank, HDFC Ltd, ICICI Bank, etc for availing the composite loan.

What is the procedure to repay the full amount of the home loan? Please tell me the needful action

-Mahesh Rath

The bank will typically provide you the estimated amount, on payment of which the outstanding loan will be fully paid off. This amount includes the prepayment charge, if any, chargeable by your bank and will list the documents held by them which will be released on payment of the stated amount. This amount mentioned is typically calculated as on a future date, to enable time for you to arrange the

payment.

After the payment of all dues, the bank will return your original documents and issue a loan closure letter indicating that there is no outstanding amount to be paid. Please make sure you get the no dues certificate to obviate any issues in the future when you pay the full outstanding amount on your home loan.

Can I get a home loan of ₹15 lakh with a net salary of ₹27,250 but without provident fund deduction?

-Raman Aulakh

For a salaried person if you have Form no 16, that can be the proof of salary income sufficient for establishing your regular source of income. If the salary has

been directly credited into a bank account regularly then even if you do not have Form 16 or have not filed income tax returns, the proof of salary statement for last three year can be sufficient for establishing your regular source of income. It will be difficult to get the loan if the salary is being paid in cash and you have no such proofs.

Of course the amount of loan will depend on the annual income. If you are less than 40 years of age, you should be eligible for 4 to 4.5 times of your gross annual income as loan.

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