

# The Talmakiwadi Co-operative Housing Society Ltd.

(Regd. No. B 227 dt.5-4-41)

E-mail: [talmakiwadi@hotmail.com](mailto:talmakiwadi@hotmail.com)

Website: [www.talmakiwadi.com](http://www.talmakiwadi.com)

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8/4, Talmakiwadi, Javji Dadaji Marg, Tardeo Road, Mumbai 400 007 📞 +91 22 35427266

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Date : 10<sup>th</sup> March 2023

## CIRCULAR NO. 4

Dear Members,

Government of Maharashtra had issued a Gazette Notification no. 23 of 2019 dated 23 July 2019 which replaced the earlier Ordinance dated 09 March 2019 amending Maharashtra Co-operative Societies Act 1960 by introducing clauses relating to classes of membership and transferring rights and interests of a deceased Member.

Prior to the amendment, transmission of rights and interest of deceased member were transmitted to nominees registered in the books of the Society. The Society was following the earlier practice of transmission to nominees as the Model Bye-laws were not amended by the Government of Maharashtra.

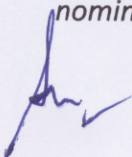
The contents of the notification were informed to the members vide Circular dated 15 November 2021 and also uploaded on the website of the society.

The Government notification did not stipulate a time period for the conversion of Provisional membership to Regular membership. We also needed clarity on Testamentary documents with regards to stamp duty and need for registration. Hence the managing committee approached a reputed Law firm who practice in the Supreme Court of India. The firm has provided us with a written opinion to the queries raised by us.

The gist of the queries and replies to the individual queries are mentioned herein below for the benefit of members. Members are requested to go through this circular since this has long reaching consequences.

**Query I** - In few cases the member has expired with their only child as registered nominee. The member's spouse has also expired and the nominee is the only surviving legal heir as per our knowledge. As per the Government notification the remedy mentioned for this is obtaining a succession certificate from the court for transfer of membership. This is a long drawn and cumbersome process hence the concerned members have requested us to check for a simpler solution for the transfer of membership. In this respect we request your valued opinion on how to proceed in the matter.

**Reply :-** As regards your Query, Scenario I, In the case of the member who expired, with their only child as nominee, member's spouse also expired, the nominee is only the surviving legal heir as per the Society's record, if that is so, there is no meaning in asking the only nominee to obtain "Succession certificate" from the Court for transferring the membership. Obviously, the nominee's parents have nominated him as member of the Society after their death. The



succession certificate is required if there is no nomination made by the member who has expired, or there is any reason to believe there are other claimants in the said property. Only in such cases Society must ask for a succession certificate, so that Court may look into the claims of various claimants in respect of that property, and after being satisfied the Court will grant a succession certificate, so that the succession certificate holder can get the right of getting membership. Whereas, in the given case by you, as the deceased member or the owner of the Flat had properly nominated their only child there is no question of any other person claiming the property, as the deceased member was competent enough to nominate their only child as the succeeding member of the Society. Therefore, the Society can act on such registered nomination, and such transfer made by the Society in the name of the only nominee of the deceased, and that too the nomination is registered in the records of the Society, the transfer of such property and the shares in the name of the nominee is perfectly OK. It is in the interest of the Society that an indemnity must be obtained from the nominee indemnify the Society for any loss or claim by any third party in respect of transfer of membership, the Indemnity Bond executed may be enforced against the executants.

**Action needed:**

1. On the death of a member the registered nominee submits an application for membership as a Provisional member.
2. This would be taken up in the MC meeting for decision.
3. After admission as a Provisional member in case the individual claims to be the only legal heir, he would be required to submit an Indemnity as mentioned above.
4. Based on the legal opinion provided to the Query 2, any sale of tenement by such members will be allowed after a period of 3 years after being admitted as a Provisional member.

**Query 2** - In the past the membership has been transferred in many cases to registered nominees. These include old cases where transfers have taken place after 1941. In some cases transfers have happened between spouses without registered agreements in the past.

**Reply :-** The elected and nominated members of the Managing Committee have the powers to manage the affairs of the Society as per the Housing Societies By-laws. Whenever transfers of the Flats are approved by the Managing Committee, from time to time, and not objected to by any member of the Society for a reasonable period, say three years, those transfers are binding in respect of the Society and its members. Mainly, what is required is the Managing Committee passes the necessary Resolution in the Society's General Body meeting, for which there is no objection from the members in respect of the transfer of shares and interests from amongst the members. Therefore, since your Society was registered in the year 1941, any transfers of membership made on the basis of 'registered nomination you need not dig into such transfers made by the Society, if there are no objections received from any members. If there is no objection on transfer from any of the members within the stipulated period of 3 years, that transfer is effective and legal. The transfer between spouses can be done without following any legal necessities to execute any document and register it. It is meaningless for the present Managing Committee to act on such a case, wherein since inception of the Society there is no any legal claim made by other than by the registered nominee, which is perfectly in order for the Society to transfer the shares in the name of the nominee, and any claim from



*a third party must be received by the Society within a reasonable period of time as prescribed by law.*

**Query 3** - Member has expired and as per the provision mentioned in Government notification the legal heirs intend to enter into a Family arrangement. In this respect, please guide us on whether the family agreement needs to be stamped and registered.

**Reply :-** *Regarding Member expired, as per the provision mentioned by the Government Notification the legal heirs enter into a Family Arrangement, if the descendants are direct blood relation. However registration charges needs to be paid to the Sub-Registrar's Office and document needs to be registered.*

**Action needed – Family arrangement needs to be executed by all legal heirs and registered with the Sub registrar's office.**

*In all the above scenarios, it is in the interest of the Society that an indemnity must be obtained from the nominee indemnify the Society for any loss or claim by any third party in respect of transfer of membership, the Indemnity Bond executed may be enforced against the executants.*

**Query 4 - Right of Provisional Member :** Please guide whether Provisional members can give their flat on leave and license and what is the time period for which the Provisional member should submit documents to become a regular member.

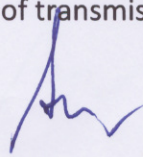
**Reply :-** *The provisional members can attend the General Body meeting and cast their vote in the meeting. As the "provisional member" is not the absolute owner of the Flat, he is holding the right as "Trustee" of the other claimants, if any. Therefore, till his membership is confirmed by submitting the requisite documents, succession certificate and/or other requisitions of the Society, he will not be treated as a Regular member of the Society, only that gives the right to alienate the property, as parting with the possession of the Flat on Leave & License basis or on any other basis is not in order. Only the "absolute owner" of the property has got the right to alienate by means of Lease, sale etc.*

*In our opinion, it is ideal that the Society discourages the provisional member from letting the premises, as he has no legal right.*

*It should be made clear to the members or provisional members, who have already given their Flats on Lease, that on expiry of the Lease Agreement or Leave & License Agreement, that the Agreements should not be renewed.*

**Action needed from Provisional members – Refrain from giving the tenement on Leave & License till such time documents are submitted to the society for regular membership. Also in case anyone has given tenement on Leave & License renewal of the agreement will not be allowed.**

Members may please take note of the above Legal opinion and be guided by this in respect of transmission of rights and interest on the shares of deceased members.



**We have been receiving queries from members in respect of Will, Gift Deed and Release deed.**

**Will and Gift Deed can be prepared during the lifetime of a member, the Release deed can be prepared during the lifetime of the member or after the demise of the member.**

**The Will and Gift Deed will have to be executed by the member whereas the Release deed is executed by the legal heirs of the member.**

**While the Gift deed comes into effect immediately on the execution of the document; Will and Release deed come into effect only after the demise of the member**

It is important that members have a clear understanding of some legal terms with regard to Housing society inheritance:

**Inheritance** – The practice of transferring property, title, debts, rights, and obligations to a descendant upon the death of an individual either by way of 'will' or through the prevalent laws of succession is called inheritance.

**Will** – Under the Indian succession Act 1925, a will is defined as a legal document or declaration indicating the will of the person. The person who makes the will is called a testator and the person for whom the will is made is called the legatee.

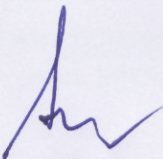
Though the registration of a Will is not compulsory, it can be registered with the sub-registrar. If, at any time, the testator wishes to withdraw the Will, he can do so. A Will also can be sealed and kept in safe custody.

On the death of the testator, an executor of the Will or a heir of the deceased testator can apply for probate. The court will ask the other heirs of the deceased if they have any objections to the Will.

If there are no objections, the court will grant probate. A probate is a copy of a Will, certified by the court, and is conclusive evidence that the Will is genuine.

**Gift Deed** - A Gift Deed is the document through which a person voluntarily gifts a movable/immovable property to a person. A Gift Deed minimizes the chances of disputes in property inheritance cases. The registration of a Gift Deed involves charges set by the state government. The article to be gifted can be a movable or immovable property. A gift deed is a valuable document in succession matters as it differs from a valid 'Will' made by the property owner.

Unlike a Will, the Gift Deed is immediately executable, and one does not require a court to get it enforced. Hence, a Gift Deed saves time compared to a settlement through a will. Under a Gift Deed, the person gifting the property is called a Donor, and the receiver is called 'Donee.'



According to the transfer of property Act 1882, a gift **Deed** is valid only if registered. The registration of a Gift Deed includes the donor's signature and the donee and attestation by two witnesses (mandatory).

The registration of a gift deed involves payment of the requisite stamp duty.

#### **Difference between Gift Deed and Will**

<b>Particulars</b>	<b>Gift deed</b>	<b>Will</b>
Time Period	Gift deed is made when donor is alive and is functional for lifetime	Will is operational only after death of property owner
Revoked	A gift can be revoked only under special circumstances	Can be revoked any number of times
Registration	It is mandatory to get gift deeds registered under Section 123 of Property Transfer Act and Section 17 of the Registration Act.	Registering a will is not mandatory
Charges	Stamp duty and registration charges should be paid on gift deed	No stamp duty and registration charges are incurred. However charges will have to be incurred for obtaining a Probate.
Act	Gift deed falls under the umbrella of Income Tax Act	Will is governed by the Succession law

**Release Deed** – After death of the member in case there are more than one legal heir, the legal heirs will have to arrive at a Family settlement regarding the distribution of assets belonging to the deceased member. The Family Arrangement is executed by all legal heirs of the deceased wherein one amongst them is identified as Legal heir for the property and the other legal heirs release/ relinquish their rights in his/ her favour. The Release Deed/ Family arrangement would be required to be registered with the Sub Registrar's office.

In case the legal heirs do not arrive at a consensus they approach the competent court for issuing a succession certificate.

A notarized copy of the Release deed/ Family arrangement or Succession certificate will be required to be submitted to the society for transmission of membership to the legal heir.

In case members have any further queries, they are requested to write to us at [talmakiwadi@hotmail.com](mailto:talmakiwadi@hotmail.com).

**On behalf of the Managing Committee, TCHS**

**Mr. Shivdutt Halady**  
Hon. Secretary

**Mr. Mahesh Kalyanpur**  
Chairman