

Nomination by members of society- Guidelines

This is regarding Nomination in a cooperative Housing Societies U/S 30 and rule 25 of the “MCS Act, 1960 & (MCS Rule-1961)” as per “Model” bye-law no 32 to 37.

1. Purpose of a Nomination, in a Society.

(a)	U/S 30 read with rule 25, the “Sole purpose” of making Nomination is to determine the person with whom the Society shall deal with the “Share or interest of the deceased member in the capital property of a society”.
(b)	“Capital Property of a Society” , means the amount of share money (Rs.250/- or Rs.500/- or whatever), as recorded in the society Share Certificate/Share Register.
(c)	“Capital Property of a Society” , does not mean the “Property/Flat of the Owner as member”
(d)	It also means that the Society has to decide as to who shall be liable for payment of the society dues etc....(means liabilities of its registered member), on demise of the member is the liability of nominee.

2. Some important points of Nomination

(a)	The nominee member of a society for which he is nominee, such Flat/Premises cannot be Sold or Rented? Leased or Alienated or transferred or whatever, on the basis of any Nomination in the society, as the Nominee, he has no legal rights in the Flat /Premises, immovable property of the deceased member during his life time.
(b)	The Nomination Form is never a Testamentary Document (Will) and cannot be taken as the last Testamentary Wish of the deceased member, irrespective of any criteria. There is no concept of “Nomination” under the Succession laws in India, as yet. Hence the Flat/Premises of Deceased cannot be bequeathed by using a Nomination Form, irrespective of any criteria. And further the property of the deceased cannot be succeeded/usurped on the strength of any Nomination Form. As a Nominee, a nominee is not a successor.

3. Who “cannot” Nominate

The Flat/Premises in the names of non-individuals i.e. (registered Legal Entity), cannot nominate, in any manner and such flat cannot be sold or rented/Leased or Alienated or transferred or whatever, on the basis of any Nomination Form. The legal entity who cannot file nomination in respect of Flat/Premises in the Society such as

{i} A Proprietary Firm

{2} A partnership Firm

{3} A “Limited Liability Partnership” (LLP)

(4)A “One person Company” (OPC)

(5) A Private Limited Company

(6)A Public Limited Company

(7) A Trust (Which-so-ever-type)

(8) A HUF (which-so-ever type)

(9) A NGO (which-so-ever type)

(10) A Society (Which-so-ever type)

(11) A Minor (person below age 18 years)

(12) A Owner of Flat/Premises in a society but who has chosen/opted not to be a "Member of the Society"

(13) A Nominee cannot "re-nominate"

NOTES:

(a). A Registered Legal Entity never dies /expires cannot nominate, in any manner.

(b). The Flat Premises of a registered Legal Entity, can be legally disposed off on dissolution/de-registration, by following due procedure of law, according to the constitution /objectives /Laws, applicable to such Legal Entity.

©. Succession Laws are not applicable to any registered Legal Entity.

4. Who can be nominated as Nominee?

The Indian Citizen can be nominated, by the flat owner/member in the society can nominate. The individual owner/member of the society can nominate.

(a) A Legal Heir? Beneficiary

(b) A Non-individual person (i.e. a registered legal entity)

© A Non-Legal heir/beneficiary or a Non-Relative

(d) A Minor/Mentally disabled person

(e) But the individual owner/member cannot nominate, a deceased person for his Flat/Premises

5. How Nomination is registered?

(a) The bonafide member/owner of a flat can file prescribed nomination form in Form No. 14 in triplicate by signing himself and signed by two witnesses.

(b) The society will receive the nomination Form No.14 in Triplicate of which third copy to be acknowledged. Thereafter the Nomination Form is to be put up in committee meeting accordingly it will be approved (If it is properly filled in) otherwise ask to complete in all respect, then on the original, and second copy, the society shall record the serial number of nomination Register, Resolution number and date of the meeting etc. under the signature of the office bearers of the society of which the original will be kept the society and second copy will be returned to the member duly received by members recorded in the nomination register.

© The Nomination Register and original Nomination form, is to be preserved life-long in the society's records.

(d) The nomination register and nomination form shall not be mutilated/altered/modified, under any circumstances by the society.

(e) The member of the society can record his first nomination with the society for which no fee shall be charged, The member may revoke or revise his nomination at any time by making an application in writing under his hand acknowledgement of such application shall be deemed to be cancellation of earlier nomination. Every revision of the nomination shall be charged a fee of Rs. 100/-.

(f) The society in all manners is required to preserve and protect the interests of its members, without any exceptions. Pertaining to the deceased member the society shall not make any changes in

(a) The "I" Register

(b) The "J" Register

© The Share Register

(d) Nomination Register in the society records & Registers

(e) The Society bill of the deceased Member.

(f) Not to give any type "NOC" to any nominee.

(g) Not to allow nominee to contest/vote at society elections on board of Managing Committee.

(h) Not to allow nominee to attend Society's general body meetings(AGM/SGM) or MCM during the life time of the member.

6. Nomination by member or Joint member

(a) Each Joint Owner shall file a separate nomination form, for his own share-ratio in the flat/premises holding 50% or any share ratio/ownership of the flat/premises, should file separate Nomination form, for their own share-ratio.

(b) A nomination form can be executed fully and not partly. Hence "IF" a single nomination form is executed by Joint-Holders, then the nomination form can be executed only after death of "both" Joint-Holders. If one of the Joint-Holders expires, then the Nomination form cannot be partly executed.

©Similarly, single nomination form executed by Joint-Holders, cannot be changed or refilled, by a "Single" Title-Owner (if required)

(d)The society shall not accept the nomination form if the nomination form is received AFTER the date of demise of its member/Owner.

(e) Nominee is simply a "Trustee" of the Deceased's Flat/Premises in the society, the nominee "as a Nominee" cannot make further nomination/will of the Deceased's property in the society.

(f) The nominee cannot Sell/Rent/Nominee/Alienate/Take Loan on the Deceased's property.

(g) Nominee cannot claim regular membership of the society, based on any Nomination form. However nominee can claim "Nominal membership" of the society, by following due procedure of law after the demise of member.

(h) The nominee holds the property as a Trustee (caretaker), which is possible only "till" the legal heirs are untraceable. It is the lawful duty of the nominee to hold on to the property"till" beneficiaries (legal heir) are located and "when" located the nominee has to duly relinquish the property to the legal heirs, by following due procedure of law.

(i) If nominee is not aware about the legal heirs of the deceased member, then the nominee can sell the Deceased's property only with the permission of court and subsequently deposit the sale-proceeds with the state government Treasury, by following due procedure of law.

(j) If the nominee is the sole or one of the Legal Heirs, and wishes to become to be owner(saleable rights) of the Deceased's property, then the nominee has to either obtain "Letter of administration" (LA) of "Probate" (as may be applicable from the testamentary Section of the High Court, by following due-procedure-of-law.

(k) It is the duty of the nominee legally arrange to transfer the deceased owners property to the Legal Heirs, by following due procedure of law. If the nominee deliberately & maliciously fails to do so, then the nominee deemed illegally & maliciously usurps the property.

(l) If nominee is also one of the legal Heir/Beneficiary. What is legally important is that the nominee as a nominee is only nominee and therefore the nominee cannot becomes the "owner" of the nominated property of the Deceased Owner, on the basis of nomination.

(m) If the nominee is legal heir (means: wife, son, daughter, any other relative ...) Then the nominee shall put all the "Legal Heirs" of the deceased person, and after following "due procedure of Law" transfer the deceased's property to the "Legal Heirs" of the Deceased person.

(n) In case of the nominee is not a legal heir then the nominee shall stress the "Legal Heirs" of the deceased member and after following "due procedure of law" , transfer the deceased property to the "legal Heirs" of the deceased property to the "Legal Heirs" of the deceased member.

(o) In case if the Deceased owner member has made a "WILL" (testamentary document) in favour of the nominee, then the nominee shall conduct following procedure.

1. The nominee shall not apply to the society, for transfer of the society membership, on the basis of "Nomination Form" that was executed by the Deceased owner member.

2. If the nominee applies for transfer of society membership, on the basis of "Nomination Form" then society legally bound to grant "only" "Nominal Membership" to the nominee. Such Nominee as Nominal Member, has no rights, whatsoever, in the society, as if of a regular member.

3. The nominee as a legal heir, shall duly apply for "Probate" of the "Will" (or for a Letter of Administration" {as applicable}, before the High court (Testamentary Section).

4. Based on the "Probate" of the will (or "Letter of Administration") the nominee shall apply for Membership of Society, by enclosing the Notary certified copy of the will and "Probate" of the will (or "Letter of administration ") plus Model Bye-Law prescribed forms Membership Transfer forms plus

Rs.500/- as membership transfer fee

&

Rs. 100/- as membership entrance fee as per the provision.

5. Based on probate, the society is required & bound to affect Transfer of Membership (which includes any & all membership rights) and make necessary endorsements in the "I" & "J" and "Share Register" and other Records and Registers, after following "Due procedure of law" as per the provision.

6. As per probate, the nominee as legal heir shall declare the transfer of property, in his income Tax returns, for any "all legitimate purposes and further to claim benefits, as prescribed under the various Taxation Laws.

7. As per probate, the Nominee as legal heir, can now legally exercise all rights as a member of the society and further to that as he desire he can Sell/Gift/Transfer/Nominate/Will of the property, in favour of anybody, without any further reference to any person.

(P) The third party cannot buy the property of the deceased from a nominee, then it will be fraught with faulty and non-salable Title-Ownership, it will be liable for legal disputes relating to the property, to the Legal Heir/Beneficiaries of the deceased.

(Q) The nominee may sell deceased property: If the “Nominee” a blood relation or a relation as defined under class-1 of Hindu succession Act, with making a registered “Family settlement Deed” with appropriate strategic clauses, and taking signatures of “All” the legal heirs of the Deceased. This procedure attains “Legal Finality” and becomes legally non-disputable, after payment of the relevant applicable stamp duty.

(R) The nominee may sell the Deceased’s property with mutual consent of the legal heirs of the Deceased. If the “nominee” is NOT a blood relation or a relation as defined under Class-1 of Hindu Succession by registering a “Sale-Deed” with appropriate & strategic clauses, and taking signatures of “All” the legal heirs of the Deceased, before the are Registrar of Sub Assurances. This procedure attains “Legal Finality” and becomes legally non-disputable, after payment of relevant applicable stamp duty.

(S) The nominee may rent or lease the deceased’s property: By taking a proper registered “Power of Attorney”, of the Legal Heirs/Beneficiaries of the Deceased. However the Nominee derives no legal right to use the Rent or Lease amount for himself. The rent or lease amount should be duly handed over or accounted to the Legal Heirs/Beneficiaries of the deceased.

(T) If the Nominee uses the rent or lease amount for himself, then it would amount to usurping the said Rent Or Lease amount, even if the nominee is also one of the legal heir/beneficiary.

(U) A nominee also rent/lease the deceased’s property, after taking signatures of all legal heirs of the Deceased, on the said rent or lease deed, before the local registrar of Sub-Assurances.

(V) If the nominee had any POA of the member in his favor, then the POA would legally lapse and would become in fructuous, immediately after the demise of the POA-maker. Hence a nominee can never exercise any right as a “Constituted attorney” or a POA holder of the deceased after his death.

Supreme court judgment about nomination
For Reference: Supreme Court of India Judgment

In the matter of Indrani Wahi V/s Registrar of Co-operative societies regarding rights of nominations. As per the court’s decision that nominee is the owner of the Deceased’s property. However, in the matter of Civil Appeal no. 4646 of 2006 **(Supreme court) (Indrani Wahi V/S Registrar of Co-operative Societies)**

It was held that nominee can have legally enforceable “right of possession” of the Deceased’s property , the said judgment, is applicable “only” for the issue specifically under the “West Bengal Co-operative Societies Act” which has specific provision built-in the said judgment . Therefore the said judgment does not give absolute title-ownership rights to the nominee but only property possession, with liberty to the legal heirs to activate the Succession laws, to claim title of the property. Hence the judgment is not applicable for/under the Maharashtra co-operative Societies Act 1960.

(It is informative to the office bearers of the society dealing with the nomination issues in the society)