

Some Important Questions and Answers regarding transfer of plot or house or apartment

Q. Whether a member of a cooperative housing society in whose favour a plot of land or a house or apartment as the case may be may transfer such plot of land or a house or apartment?

If yes, under what circumstances it can be done?

A. Yes, it can be done in terms of Rule 138(2) of the WBCS Rules, 2011 provided he has been allotted a plot of land, house apartment by the society. In terms of Rule 138(1) of WBCS Rules, 2011, written consent of the society shall be required in all cases of transfer of land/house/apartment by way of sale or usufructuary mortgage as defined in the Transfer of Property Act, 1882(4 of 1882).

Following are the grounds on which a member may transfer by way of sale or usufructuary mortgage as defined in the Transfer of Property Act,1882 (4 of 1882):---

1. that the member is involved in debts and such transfer is needed to pay of his creditors;
2. that the member is compelled to shift from the locality due to unavoidable circumstances beyond the control of the member;
3. that the member is in urgent need of money to meet the expenses of marriage or of education of his son and daughter or that the member is in urgent need of money to meet the medical expenses of any of the members of his family or any person fully dependent on him;
4. Such other grounds analogous to those mentioned from 1 to 3.

Q What are the formalities to be observed by the (1) transferer member; (2) transferee (intending applicant for membership) ; (3) concerned cooperative society and (4) Registrar of Cooperative Societies ?

A. Dos of a transferer member: - He should submit an application seeking written consent of the society for transfer his plot / house / apartment to a person stating his name, address, occupation etc by way of sale with reasons of such transfer and also to request the society to accord consent in terms of Sub-Rule (1) of Rule 138 of WBCS Rules, 2011.

He should annex with his application the following—

- a. Photo copy of housing allotment letter issued by the society in terms of Rule 149 of the WBCS Rules, 2011 alongwith copy of Registered Deed in favour of the transferor.
- b. Photo copy of share certificate issued by the society.

N.B.:—If the cooperative society refuses or fails to give its consent to such transfer, it shall record the reasons for such refusal in writing and communicate the same to the member within one month from the date of receipt of the application of transferer member and the member shall have right of appeal to the Registrar against such refusal or failure within thirty days from the date of communication of the refusal or within sixty days from the date of receipt of the proposal by the society.

B. Dos of a transferee :- He should submit an application of membership in Form NO- XXVIII to the Secretary of the housing society with intimation that he has executed a bipartite agreement with the transferer member of the society in the matter of purchase of flat no / house /apartment of ----- person, a member of the ----- - cooperative housing society along with the following documents for approval of his membership from the date of such lawful transfer in terms WBCS Act & Rules read with the Transfer of Property Act,1882.

- a. Application in Form No-XXVIII.
- b. Two recent passport size photographs.
- c. Salary Certificate or copy of latest Form-16 showing deductions of professional tax or copy of professional tax registration/ enrolment / clearance certificate.
- d. Copy of agreement of sale jointly attested by the transferer and the transferee.
- e. A declaration to the effect that he will submit a certified copy of the sale deed after transfer of his property by

way of sale in consonance with the Transfer of Property Act, 1882 so as to facilitate the society to transfer share along with interest in favour of the transferee.

f. Self declaration in Format XXVIII A[Enc: A]

C. Dos for society:

A .Secretary or Chairman will convene a meeting of the BODs to consider the prayer of the transferer member and the application for membership preferably within 15 days of receipt of such application

B .Society will examine the transfer proposal in the light of the provision Sub Rule (2) of Rule 138 and will also examine the eligibility of the membership of the transferee in the light of submitted documents in terms of Rule 131(3)(a) of the WBCS Rules,2011 and if both are found to be favourable will adopt a resolution in the following manner-

“After detailed discussion and examination of prayers along with their related submitted documents in the light of relevant provisions of the WBCCS Act & Rules particularly Sub Rule (2) of Rule 138 and Sub Rule (3) (a) of Rule 131 it is resolved that the prayer of Sri /Smt ----- (Transferer member) dated ---- seeking transfer of his / her plot no./house/apartment no. --- for ----- (record reasons of such transfer) by way of sale to Sri / Smt ----- is in conformity with the WBCS Act, Rules and Bye-Laws of the Society.

Further resolved that Sri /Smt -----, transferee is eligible to become a member of the society and he / she will be inducted as a member of the society in place of Sri / Smt -----, transferer member{ as and when a copy of the sale /purchase deed will be submitted by the transferee member to the society} with transfer of share of Sri /Smt -----, erstwhile member in favour of Sri /Smt ----- , newly inducted member.”

N.B If the society refuses the prayer of such transfer it shall communicate the transferer the reasons for such refusal within thirty days from the date of receipt of such prayer in terms of Rule 138(2)(vi) of WBCS Rules, 2011.

C. If the society refuses to give written consent, the member may prefer an appeal within 30 days from the date of communication of such refusal to the Registrar under Rule 138(2)(vii) of WBCS Rules, 2011.

Dos for Registrar of Cooperatives:- Registrar's role is to examine the actions of the society in the matter of transfer by the proposed way of sale in the light of the submitted document of the society after an appeal has been filed by the transferer-member and the reasons offered by the cooperative society for refusal of transfer. He shall, after hearing the applicant and cooperative society, dispose of the appeal within 30 days from the date of preferring the appeal as laid down in Rule 138(2)(viii) of WBCS Rules, 2011.