

## Most Commonly Asked Questions Regarding CHS

### DECLARATION

Below given information is subject to change.

This is general information for the convenience of CHS.

We recommend you to refer Model bye laws before taking any decision.

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### Registration of Society

#### 1. What is the minimum number of promoters required to join the registration proposal?

~ 60% of the flat purchasers/ promoters are required to join the registration proposal if building is constructed by builder/developer.

~ 90% promoters are required to join the registration proposal for society of open plot type category.

#### 2. What is the minimum number of promoters required to sign the registration proposal?

~ 60% of the promoters who have joined the registration proposal are required to sign it.

### **3. Whether Co-operative Housing Society having less than 10 units can be registered?**

~ Cooperative Housing Society having less than 10 units can be registered subject to the following conditions:

The built up area of each unit should not be more than 700 sq. ft. There should not be balance F.S.I.

### **4. What is the remedy available, if the builder does not register a Co-operative Housing Society?**

~ Chief Promoter of the proposed society shall submit a registration proposal of the co-operative housing society to the concerned Registrar under the category of non- co-operation of builder.

~ Registrar may consider such a proposal for Registration on merit.

### **5. What are the conditions for registration of Cooperative Housing Society in private building?**

~ Conditions for registration of CHS in Private building

~ Registering authority can register CHS on merit if 90% of the tenants join the registration proposal.

~ Registering authority can register CHS on merit and with previous approval of State Government if 75% to 90% of the tenants join the registration proposal.

~ Proposal for registration will not be entertained if percentage of tenants is below 75%

~ The Tenant promoter joining the proposed CHS shall have to agree to contribute to the cost of flats of non joining tenants.

~ In case tenants have created sub tenancy in terms of Rent Act, sub tenants and not the tenants be allowed to join the proposed CHS.

**6. Whether the Chief Promoters have got authority to withdraw the money deposited in the bank in the name of proposed CHS?**

~ The Chief Promoter has got no power to withdraw such money.

~ Before registration of the Cooperative Housing Society, money can be withdrawn with the permission of the Registrar.

**7. What is the remedy available if the Registrar does not take any decision on registration proposal within a period of 2 months?**

~ Failure to dispose of the registration proposal of a housing society within a period of two months, the Registrar has to submit the said registration proposal to the next higher authority within a period of 15 days from the date of expiry of two months.

~ On failure of such higher authority to dispose of the said registration proposal within two months from the date of receipt of the proposal to his office, the registration proposal shall be deemed to be registered under the provision of the Maharashtra Cooperative Societies Act 1960.

**8. What is the remedy available if the registration proposal is rejected?**

~ Such rejection order can be challenged by filing appeal under section 152 of the M.C.S. Act 1960 before the Divisional Joint Registrar C.S. of the concerned Division.

**9. What are the circumstances for de-registration of a Cooperative Housing Society and under which section?**

- If the society is registered.
- On the misrepresentation made by the applicants, or
- The work of the society is completed or exhausted, or,
- The purpose for which the society has been registered are not served.
- Such societies can be de-registered under the provision of Section 21-A of the M.C.S. Act 1960.

**10. Under what circumstances registration of the CHS can be cancelled?**

~ Registrar can cancel the registration of CHS under section 21 of the M.C.S. Act 1960.

Under the following circumstances:

- If a CHS transfer the whole of its assets and liabilities to another society, or
- Amalgamates with another society, or
- Divides itself into two or more societies, or
- Liquidation proceedings are terminated under section 109.

**11. What are the types of CHS?**

~ Rules 10 of the Maharashtra Cooperative Societies Rules 1961 provides the following classification of the CHS

- Tenants' ownership Co-operative Housing Society.
- Land is held on lease hold or free hold basis
- Houses are owned or are to be owned by member.
- Tenants Co partnership Cooperative Housing Society.
- Both land and houses owned by society.
- Houses are allotted to members.

- Other Cooperative Housing Society.
- Houses mortgages societies
- Houses construction society.

## **12. What fee is to be paid to the Government for registration of a Cooperative Housing Society?**

~ Proposed society can made the payment towards government fee as applicable from time to time. The present registration fee is:

Tenant Co-partnership /ownership CHS Rs. 2500.00

Other (General) CHS Rs. 2500.00

## **13. When at least 20% of backward class members are required for registration of a Cooperative Housing society?**

~ This condition is applicable for plot purchase type society under the following circumstances.

- When society intends to borrow fund for construction of building from State Government and/ or MHFC Limited.
- If land grant authority insists for such conditions.

## **14. Whether promoters are required to submit their applications for membership to the Chief Promoter before registration of Cooperative Housing Society?**

~ Yes, all the promoters should submit their application for membership to the Chief Promoter before registration so as to enable him to undertake about receipt of application for membership in the prescribed "Y" form to be submitted to the Registering Authority at the time of Registration.

**15. What remedy is available if Chief Promoter does not deposit the share money collected from promoters in the Bank?**

~ Failure of Chief Promoter in depositing share money collected from promoters of proposed CHS amounts to an offense u/s 146 of M.C.S. Act 1960.

~ Chief promoter can be prosecuted in the court of law with previous approval of Divisional Joint Registrar of concerned Division u/s 148.

**16. What remedy is available if any person collects share money or any other sum by misrepresentation to the prospective members in the name of the society to be registered?**

~ It will amount to an offense u/s 146 of MCS Act 1960.

~ Such person can be prosecuted in the court of law with provision approval of DJR of concerned Division u/s 148.

### **GENERAL MEETING**

**17. When the first General Meeting can be convened?**

~ The first General Meeting can be convened within a period of three months from the date of registration of CHS

**18. Who can arrange the first General Meeting?**

~ Chief Promoter of the CHS can organize the first General Meeting of the members.

**19. What is the remedy if the first General Meeting is not called by Chief Promoter in time?**

~ On failure to call the first General Meeting of the CHS in time the said meeting can be called by Registering Authority.

**20. What business is to be transacted in the first General meeting?**

~ Following business shall be transacted in the first General Meeting

- Election of a president
- Admission of new members, if applications are received.
- Receiving a statement of accounts and report stating all transaction entered in by Chief Promoter up to 14 days before the meeting.
- Constitution of provisional committee for a period of one year.

**21. Who is responsible to convene the AGM?**

~ Rules 60 of the M.C.S. Rules 1961 provides that the secretary of the CHS is responsible to convene the AGM

**22. Who is responsible to ensure the AGM is convened within the stipulated time?**

~ Bye law No 139 (16) provides that the committee of the CHS should ensure the holding of AGM within the prescribed period.

**23. What is the business to be transacted in AGM?**

~ Following business is required to be transacted in AGM

- To receive a report of the committee together with statement of accounts for the preceding cooperative year/years.
- To consider audit report received from the Statutory Auditor for the previous Cooperative year/years.
- To declare the result of election if held prior to AGM
- To consider the appointment of Statutory Auditor.

#### **24. If the business on the agenda is partly transacted then what are the provisions?**

~ If the business on the agenda of the general meeting of the CHS is partly transacted then the said meeting shall be postponed to any other suitable date, not later than 30 days from the date of the meeting as may be decided by the members present at the meeting.

#### **25. Whether the AGM can be adjourned due to want of quorum?**

~ AGM can be adjourned for want of quorum

- To the time as may be specified in the notice on the same day or
- To a subsequent date, not earlier than seven days.
- Holding of adjourned meeting will not required quorum.

#### **26. What business cannot be transacted in AGM without due notice?**

~ Following business cannot be transacted in AGM without due notice:

- Expulsion of members of the CHS
- Amendment of bye laws
- Bifurcation, amalgamation, division of the CHS
- Transfer of Property of the CHS



**27. What is the minimum period of notice of AGM?**

~ 14 clear days notice is required to be given for calling the AGM.

**28. Whether AGM is treated as invalid if the notice is not served to any members of the CHS?**

~ Once AGM is called it cannot be treated as invalid unless and until such order are passed by the Cooperative Court.

**29. What is the period for finalizing the accounts of the CHS?**

~ The period for finalizing the accounts of the CHS is 15th May every year.

**30. What remedy is available if the accounts are not finalized before 15th May?**

~ On failure for finalising the accounts of the CHS on or before 15th May committee may appeal to the Registrar in time.

**31. What remedy is available if the committee fails to finalize the account before 15th May or extended period?**

~ Registrar may exercise his powers vested under section 79 (2) of MCS Act 1960 to finalize the account through an authorised officer.

**32. What remedy is available if the AGM is not called before 15 August?**

~ Committee of the CHS may apply to the Registrar for extension of time on or before 31st July with a copy of resolution and required court stamp fee. Registrar may grant extension if request is genuine up to 14th November i.e. for a period of three months.

**33. What action can be initiated on failure to call AGM before 14th August or extended period?**

~ Registrar may disqualify the members of the committee who is responsible for calling such meeting to remain or to get elected to the committee up to a period of three years.

**34. What remedy is available for challenging the resolution passed in AGM?**

~ Resolutions passed in AGM may be challenged in the Cooperative Court under section 91 of MCS Act 1960.

**35. What remedy is available in case resolutions are not recorded modified altered deleted etc.?**

~ Only remedy available is to file a dispute under section 91 of the MCS Act 1960 before the Cooperative Court.

**36. Resolution passed in AGM/SGM neither stayed nor set aside by Court, whether it is obligatory on the members to follow it?**

~ Resolutions passed in AGM/SGM remains in force unless and until stayed or set aside by the Cooperative Court.

**37. Whether resolutions passed for removal of members of the committee can be brought before the AGM/SGM?**

~ No such resolutions can be brought before the AGM/SGM

**38. When SGM can be called?**

~ SGM can be called at any time by the Chairman or by the majority of the committee.

~ SGM shall be called within a period of one month

- On written requisition of 1/5 of the members
- At the order of the Registrar
- At the demand of the committee of the federal society.

**39. Who can call the requisitioned SGM?**

~ Secretary of the society can call the SGM under the intimation to the Registrar.

**40. What is the remedy available if the SGM is not called?**

On failure to call SGM the Registrar may call such meeting at the expenses of the CHS

The Registrar can order to recover such expenses from the persons concerned.

**41. What is the minimum notice period required to call SGM?**

~ The minimum notice period for calling such SGM is five days.

**42. Whether resolutions passed in AGM/SGM can be modified?**

~ Unless 6 clear months have expired after passing of the previous resolution no such resolution can be brought before the AGM /SGM for its cancellation or modification.

**43. Whether AGM/SGM not held in the premises of CHS can be treated invalid?**

~ AGM/SGM once held irrespective of the place of the meeting cannot be treated as invalid unless and until such order are not passed by Cooperative Court.

**44. Whether non member can participate in the business of General Meeting?**

~ No, non member has no right to participate in the business of General Meeting.

**45. Whether associate member can participate in business of General Meeting.**

~ Yes, an associate member can attend and participate in business of General Meeting in absence of original member and with written consent given by original member.

**COMMITTEE**

**46. What is the period of provisional committee?**

~ The period of provisional committee is of one year from the date of which it has been first constituted.

**47. When the subsequent committee is constituted?**

~ Subsequent committee is constituted after election to the committee as per approved Election Rules.

Election committee is required to be constituted as per the provision of Section 73 of M.C.S. Act 1960.

#### **48. Which is the Competent Authority to challenge the election?**

~ Election of Committee or its member can be challenged by filing dispute under Section 91 of M.C.S. Act 1960. Before the Cooperative court.

#### **49. What are the disqualifications to elect or to remain on the committee?**

~ Bye laws No 118 provides one of the following disqualifications to remain on Committee:

- Convicted of the offense
- Defaults the payment of dues to the society within three months form the date of service of notice in writing.
- Held responsible under section 79 or 85 or 88 of the MCS Act 1960.
- Sublets flat without prior permission of the CHS.
- Remains absent for three consecutive meeting of the committee.

#### **50. Whether the member of the ex committee can contest the election?**

~ Ex managing Committee member can contest the election, if they are otherwise qualified.

#### **51. What is the remedy available if the nomination to the election rejected by the Returning officer?**

~ An appeal under section 152 A of M.C.S. Act 1960 may be filed within a period of three days before the concerned Registrar from the date of rejection of nomination.

**52. If the member has paid his dues before the time of scrutiny of nominations, whether he can qualify to contest election?**

~ If the member pays his dues before the time of scrutiny of nominations, he becomes eligible to contest the election of committee.

**53. If the member held responsible under section 79 or 88 or 85 is eligible to contest the election of committee.**

~ Member held responsible under 79 or 88 or 85 is eligible to be re nominated, re co-opted, re-elected as a member of committee, after expiry of five years from the date of which he has ceased to be a member of the committee.

**54. What is the remedy available if the committee members default the payments of dues CHS.**

~ A Committee member who defaults the payment of dues of CHS incur disqualification to remain on committee.

Remedy is to approach registering authority for removal of such committee member u/s 78.

**55. A member of the committee make the default in the payment of dues of CHS and pays the same after some period, whether he is eligible to continue on the committee?**

Default of payment of dues incurs disqualification to remain on committee.

On the date of default such member ceases to continue on the committee and his seat shall be deemed to be vacant.

Subsequent payment of dues wipes out default but not disqualification.

Such member is eligible for re election or co option on vacant seat on payment of dues.

**56. Whether the member of the committee can be removed by passing resolution in it?**

~ Committee has no authority to remove the members from its committee.

**57. What are the provisions for bringing no confidence motion against office bearers of CHS?**

~ No confidence motion against President, Vice President, Chairman, Vice Chairman Secretary or Treasurer can be moved.

For calling such no confidence motion, request application in M-18 form be signed by at least 1/3 members of the committee and shall be submitted to the Registrar.

Such meeting shall be presided over by the Registrar not below the rank of Assistant Registrar

On the date of passing the resolution by 2/3 members present and voting the office of the office bearers stands vacated.

If no confidence motion is rejected then no such resolution shall be brought within a period of 6 months from the date of resolutions.

**58. Whether there can be two managing Committee for two buildings in one CHS?**

~ There shall be one managing Committee for one CHS irrespective of no of building or wings.

**59. Who can accept the resignation of Chairman of the CHS?**

~ The bye laws number 132 (a) provides that the Chairman of the CHS may tender his resignation to the Secretary of the CHS by addressing a letter. The Committee can accept his resignation.

**60. To whom the entire committee can give its resignation, in such a case what is the remedy?**

~ Resignation of the entire committee shall be placed before the General Body meeting

Even after acceptance of resignation of the entire committee by the General Meeting they are required to hold charge of the CHS till alternate arrangement are made.

**61. What actions can be initiated for not holding the election before expiry of its term?**

~ Registrar can appoint an administrator in such a case.

**62. Whether the decision taken by the committee after expiry of its tenure and before constitution of new committee are treated as invalid?**

~ Section 77 of M.C.S. Act 1960 provides that the decision taken by the Committee under such situation cannot be treated invalid.



**63. Whether the decision taken by the ex-committee after constitution of new committee and before handing over the charge of records to the new committee are invalid?**

~ After constitution of new committee decision taken by the ex-committee is invalid and it has no force of law.

**64. What remedy is available, if the ex-committee refuse to hand over the charge to the newly constituted committee?**

~ Officer of the newly constituted committee may apply to the Registrar in detail for initiating action under section 80 of the M.C.S Act 1960 for seizure of documents with the help of police.

**65. What are the circumstances to appoint an administrator under Section 78?**

~ Circumstances to appoint administrator under Section 78 are :

- Committee or its member make default in performing duties or
- The act of the committee or its member is prejudicial to the interests of the society or
- Committee or its members willfully disobeys directions issued by the State Government or by the Registrar or
- Committee or its members are not discharging its or his functions properly or
- Committee or its member incur disqualification to remain on committee.

**65.A What are the circumstances to appoint an administrator under Section 77?**

~ Circumstances to appoint administrator under Section 77 are:

- If the committee is not constituted in first AGM
- Terms of the committee has been expired
- Sufficient members are not elected to form the quorum

- Where two groups are claiming to be elected as the committee members and the election dispute is filed in Cooperative Court.

**66. If meeting of the committee is not called by Chairman/Secretary what is the remedy available?**

~ Bye laws No 133 provides that such meeting may be called by the Federation of the society, if Federation is informed accordingly.

**67. Whether the Chairman is having casting Vote?**

~ Bye laws no 135 provides that Chairman is having Casting Vote.

**68. What is the tenure of Committee?**

~ Tenure of the Committee is as per bye laws of CHS

According to model bye laws tenure of the Committee is of 5 years.

**69. When the CHS can cooperative the member on the Committee?**

~ Vacancies created on the Committee on account of death, resignation, disqualification and removal can be filled by co-opting irrespective of the quorum.

**70. What is the tenure of the Co-opted Committee Members?**

~ The period of the office of the co-opted committee members shall be Coterminous with tenure of the committee.

**71. Whether decision taken by committee consisting of majority of co-opted member is valid?**

~ Yes if it is otherwise not contradictory.

**FUNDS**

**72. How many funds are required to be raised by CHS?**

~ Funds to be raised by CHS are

- The repair and maintenance funds at the rate fixed by G.B subject to the minimum of 0.75 % per annum of construction cost of each flat.
- Major repairs funds as and when required and decided by GB at the rate fixed on area basis.
- The sinking funds at the rate fixed by G. B subject to the minimum of 0.25% per annum of construction cost of each flat.
- Reserve funds as provided u/s 66 of the M.C.S Act 1960.

**73. What is the difference in utilization of repairs and maintenance fund and major repairs fund?**

~ Repairs and maintenance funds is utilized for meeting the expenditure on maintenance and normal repairs of the building of CHS by committee.

Major repairs fund is utilized with prior approval of G.B for major repairs such as plastering, Colour of buildings etc.

**74. When Sinking Funds is to be utilized?**

~ Sinking funds are to be utilized on recommendations of architect and with prior approval of G.B for meeting the expenditure on structural additions or alterations to the building /buildings of CHS.

### AMALGAMATION / AMENDMENT / DIVISION

#### **75. What is the procedure for amendment of bye laws of CHS?**

~ Information of amendment shall be communicated to all members by giving 14 clear days notice of the proposed General Meeting.

Resolution is required to be passed by not less than 2/3 majority of the members present and voting in General Meeting.

The proposal for amendment of the bye laws shall be submitted for registration within two months in the prescribed forms from the date of meeting.

Amendments become effective after approval and registration by the Registering Authority.

#### **76. Whether amendment can be imposed by the Registrar?**

~ In the interest of members of the Society Registrar may impose amendment of bye laws u/s 14 of M.C.S. Act 1960.

#### **77. What are the circumstances of amalgamation or division of the CHS?**

~ CHS can be divided under the following circumstances

- There shall be two or more different buildings.
- Each building shall have separate water tanks and water connections.

- There shall be a separate assessment by the local authority.

#### **78. What is the procedure for divisions of the CHS?**

~ Committee may apply to the Registrar

Committee shall convene SGM by giving 15 days clear notice to the members and creditors.

Resolutions for division shall be passed by 2/3 of the members present and voting in such a meeting.

Such resolution shall contain the details of scheme of division of the society.

After the meeting of the SGM notice in "G" form shall be given to all the members and creditors. Exhibit the notice on the notice board of the society as well as in the office of the Registrar and publish the same in at least one local newspaper inviting objections within a period of one month.

If objections are not received within a period of one month from the date of notice, it will be presumed that the member/creditor have no objection for such divisions.

Thereafter the committee shall submit the report giving details and registration proposal for the registration of new society to the Registrar.

#### **79. Whether the Registrar is empowered to enforce division of the CHS?**

~ In the interest of the member, Registrar may enforce division of the CHS.

### **MEMBERSHIP**

#### **80. Who can become member of the CHS?**

~ Member who fulfills the following conditions can become member of the CHS

- A persons who is competent to contract under the Indian Contract Act 1872 or
- A firm company or any other body corporate constituted under any law for the time being in force, or a society registered under the societies Registration Act 1860 or,
- A society registered or deemed to be registered under MCS Act 1960 or
- A State Government or the Central Government or
- A local Authority or
- A public trust registered or to be registered.

#### **81. What procedure is required to be followed by a person to become a member of a CHS?**

~ Procedure for becoming member.

- An application in the prescribed form giving complete details shall be submitted to CHS
- Shall pay the value of five shares of Rs 50/- each along with payment of Rs 100/- towards entrance fee.
- Undertaking as prescribed in the bye law are to be submitted.
- A copy of stamped and registered purchased agreement.

#### **82. What is a remedy available, if a society refuses a membership of the member?**

~ A person whose membership application is not accepted by CHS may apply to the Registrar u/s 23 (1A) in the prescribed H-1 form.

#### **83. What remedy is available to a member whose application for membership is not decided by CHS within a period of three months?**

~ On failure of CHS to dispose of the membership of a person within a period of three months m he may apply to the Registrar u/s 22 (2)

**84. What remedy is available whose membership application is rejected by CHS?**

~ A person whose application for membership is rejected, may apply to the Registrar u/s 23 (2) of the M.C.S. Act 1960.

**85. What % of membership of firm, company and body corporate are allowed in CHS?**

~ Up to 60% of the total membership is allowed to firm, company and body corporate members.

**86. What is the maximum number of tenements that can be allotted to body corporate in CHS?**

~ Total no of tenements allotted to firm and companies shall not exceed 50% of the total no of tenements in a CHS.

**87. What are the conditions to become associate member?**

~ To become associate member person shall submit

- An application in prescribed form as provided in the model bye laws to the society
- No objection certificate from the original member
- Entrance fee Rs 100/-

**88. What are the remedies available if the application for nominal membership is rejected by CHS?**

~ Person whose membership application for nominal membership is rejected he may apply to the Registrar u/s 23 (2) of the MCS Act 1960.

**89. What are the remedies available if the application for associate membership is rejected by CHS?**

~ Person whose membership application for associate membership is rejected, he may apply to the registrar u/s 23 (2) of the MCS Act 1960.

**90. Flat is purchased by "A" and "B jointly in that case who will exercise the right for membership.**

~ Person whose name stands first in the share certificate shall exercise the right of the membership in the CHS.

**91. "A" is the member of the CHS holding a flat subsequently "B" applies for associate membership claiming that he has contributed for purchasing the flat. Under this circumstance whether CHS can grant associate membership to "B"?**

~ CHS can reject the application for associate membership of "B" if there is no NOC from "A"

**92. What are the rights of associate member?**

~ Associate member may exercise the right of membership, if original member has authorized him in writing.

**93. Whether a member of the CHS has right to see books and records of the CHS and obtain its copies?**



~ Section 32 of the MCS Act 1960 provides the right to the member to see the books and account of the society and obtain copies of the documents on payment of copying charges as prescribed in the bye laws.

**94. If a flat is purchased jointly by 'A' and 'B' in the proportion of 60:40 respectively name of 'A' stands first and that of "B" stand second in Share Certificate "A nominates "C" . After the death of "A" whether the name of "B will stand first in the Share Certificate?**

~ After death of A and on granting the application for membership of C and name of C will stand first in the Share Certificate not the name of B

**95. "A" is the member of CHS who is NRI he gives power of attorney in favour of "B". "B" applies to CHS for acquiring membership in place of "A" Whether CHS can grant membership to "B"?**

~ On the basis of power of attorney membership cannot be granted to "B" in place of A

**96. If a member has submitted two nominations on the different times nominating different persons, which nomination will be treated as valid?**

~ Bye law No 32 provides that the latest name of nominee will be treated as valid.

**97. Deceased member has submitted nomination in favour of 'A' and a will in favour of 'B' whose membership application be decided by CHS?**

~ As per the provisions laid down u/s 30 of MCS Act 1960 CHS shall consider the application of 'A' for membership.

**98. Whether the CHS can reject the membership application on the ground of non payment of stamp payment of stamp duty?**

~ CHS can reject the membership application on the ground of non payment of stamp duty.

**99. Whether CHS can reject the application for membership on the basis that the applicant is belonging to a particular group?**

~ No CHS cannot reject the application for membership on the basis that applicant belongs to particular grouped, if he is otherwise qualified to become member.

**100. Whether minor can become a member of the CHS?**

~ No, CHS cannot reject the application for membership on the basis that applicant belongs to particular grouped if he is otherwise qualified to become member.

**101. Whether NOC of CHS is required to sell the Flat?**

~ Such NOC is not required as per model bye laws.

Member shall inform his intention for sell of his flat as provided under Rule 24 of the MCS Rule 1961.

### **RECOVERY OF DUES**

**102. Whether the managing Committee is empowered to collect transfer premium more than Rs 25000/- if general body passed such resolution?**

~ Bye law number 38 provides that the CHS may collect amount of premium at the rate to be fixed by the General Body meeting but within the limits as prescribed under the circular issued by the Department of Co-operation, Government of Maharashtra from time to time and therefore the general body's resolution contradicting the Government circular shall not be acted upon.

**103. Whether the managing committee can charge the transfer premium in case of mutual exchange of flat by members?**

~ Bye law No 38 bars the CHS for collecting transfer premium for mutual exchange of flat amongst the member in the CHS.

**104. Whether the managing committee of CHS has authority to collect the transfer premium for transfer of flat in family member?**

~ Bye law No 38 bars the CHS for collecting transfer premium for transfer of flat to family members.

**105. Whether member can transfer share or his interest within a period of one year?**

~ Section 29 (2) provides that member cannot transfer any share held by him or his interest in the capital or property unless and until he has held such share or interest for a period of one year.

**106. When non occupancy charges can be collected by CHS?**

~ Non occupancy charges can be collected by CHS only when member has rented out his flat or given on leave and license basis.

**107. How much non occupancy charges can be collected by CHS?**

~ Non occupancy charges can be collected to the extent as decided by the General body meeting but not more than 10% of the service charges as have been stated in the circular dated 1st of August 2001 issued by State Government.

**108. Whether service charges are to be charged according to the area and size of the flat?**

~ Service charges are to be charged equally irrespective of the size of the flat as provided in bye law no 69 of the model bye laws.

**109. Whether water charges are to be levied to the shop /office members?**

~ Bye law no 69 provides that water charges can be charged on the basis of total number and size of inlets provided in each flat. Therefore, water charges shall be levied from those unit holders who have supplied water connections only.

**110. There are two buildings in a society. One is provided with lift and other is without lift, whether the lift charges are to be levied to the members of building having no lift?**

~ The member of building, which does not have lift provision , need not be charged the lift charges.

**111. Whether the managing committee of the CHS can charge compound interest?**

~ Managing committee can charge simple interest as provided in bye law no 72 and not the compound interest.

**112. What is the remedy available to the managing committee of the CHS for recovery of dues of the CHS?**

Managing committee shall issue demand notices to the members concerned.

On failure to pay the dues by members, CHS may file proceedings u/s 101 of the M.C.S. Act 1960 for recovery of dues.

**113. What remedy is available if member have not made the payment to CHS prior to registration of CHS?**

~ For recovery of dues of CHS prior to its registration, the remedy available is to file a suit in the Civil Court against the defaulters.

**114. Whether the member can withheld the dues of CHS if his complaints are not attended to by the managing Committee?**

~ Member cannot hold dues in such case.

Member can approach the Competent Authority as enumerated in the bye laws no 175 of Model Bye laws under the topic "redressal of complaint".

**115. What remedy is available for recovery, if member is not traceable?**

~ If member is not traceable to issue notice for recovery of his dues, the CHS can publish a notice in the newspaper.

**116. Whether society can disconnect the water supply of member for non payment of dues?**

~ CHS cannot disconnect the water supply of members.

**117. A and B are the member of CHS holding two different Flat. They do not belong to one family. Flat of A is locked. Both of them reside in the flat held by B. Whether CHS can charge non occupancy charge to B?**

~ Non occupancy charges are applicable only when flat is rented out. If B is collecting rent from A, then CHS can collect non occupancy charges from B.

**118. What is the remedy available to the member to recover his excess payment from the CHS?**

Member may file dispute u/s 91 of MCS Act 1960 in the Cooperative Court.

Registrar has no authority to decide the question of such excess payment u/s 101 of MCS Act 1960.

**119. What remedy is available to recovery the dues after expulsion of member?**

~ Dues of members can be recovered from sale proceeds of flat of expelled member.

**120. Member sells his flat without paying the dues of CHS. Incoming member denies paying the dues. What is the remedy?**

~ Dues can be recovered from incoming members by filing proceedings u/s 101 of the MCS Act 1960.

## **REPAIRS**

**121. What remedy is available if CHS is not carrying out repairs of the flat?**

~ Member may file dispute u/s 91 of the MCS Act 1960 before Cooperative Court.

**122. Which is the proper authority to decide damage caused to the members flat while carrying out repairs by other member in his flat? Whether member can withhold the dues of the CHS in such situation?**

~ To decide the matter, member may file a dispute u/s 91 of MCS Act 1960 in Cooperative Court. Under this situation member cannot withhold the dues of CHS.

**123. 'A' is a member who resides in upper flat and carries out interior. This results in damaging the plaster of the 'B' who lives in the lower flat. Whether a repair to plastering of the ceiling of flat of B is to be carried out from the society's funds?**

~ Such type of repairs cannot be carried from funds of the CHS. The remedy available is to file dispute u/s 91 of MCS Act 1960 before Cooperative Court.

**124. 'A' is the member who lives in the flat which is above flat B has undertaken repairs. This has resulted in leakages in the flat of "B" which is below flat A. Whether such type of leakages can be repaired from society's funds?**

~ Bye laws No 160 provides that repairs of such type of leakages cannot be done from the funds of CHS.

Remedy available is to file dispute u/s 91 of the MCS Act 1960 before cooperative Court.

125. "A" is the member living in the upper flat, he does not carry out any alteration / modification and leakages started in the lower flat due to structural defects. Whether such leakages can be repaired from the funds of the CHS?

~ Such type of repairs can be carried out from funds of the CHS.

126. A member "A" is having terrace flat. Plaster of ceiling of flat is damaged whether can be repaired by CHS from its funds?

~ Yes, the same can be repaired by CHS from its funds.

127. Whether a member can claim compensation to repairs carried out by him which is supposed to be carried out by CHS from its own fund. Which is the proper authority?

~ For compensations of the repairs carried out by member on behalf of the CHS, he may file a dispute in the Cooperative Court u/s 91 of MCS Act 1960 if CHS refuses to give him the required credit.

#### INCOME TAX/ STAMP DUTY

128. Whether CHS is required to pay income tax?

~ Yes, CHS is required to pay income tax.

129. Whether transfer premium and donation received by CHS are taxable?

~ Yes, transfer premium and donation received by CHS are taxable.



**130. Whether amount received in sale of FSI is taxable?**

~ Yes, Sale proceeds of FSI are taxable.

**131. What are the taxable incomes of CHS?**

~ As per the provisions of I. T Law Taxable income of CHS is:

- Transfer premium.
- Income gained from installation of dish antenna
- Income gained from renting out premises of CHS
- Interest earned from default in payments by members.
- Interest earned on deposits.
- Income earned from sell of FSI

**132. What are the rates of I.T. Leviable to CHS?**

~ Rates of I.T leviable to CHS:

- For income up to Rs 10,000/- 10% of income.
- For income up to Rs 10,000/- to 20,000, 20% of income.
- For income up to Rs 20,000/- & over 35% of income.

**133. Whether CHS is liable to deduct I.T at source in respect of payments made by it to the contractor?**

~ Yes CHS is liable to deduct I.T. At source for its payments to contractor.

**134. In what form CHS is required to file return?**

~ CHS is required to file return in Form No 2.

**135. Whether CHS is required to file IT return in case society incurs loss or has nil income?**

~ Yes, CHS is required to file IT return even though it has incurred loss or its income is nil.

**136. Whether excess collection from the members over actual expenditure is treated as income?**

~ Such excess collection from members over expenditure is not treated as income for the purpose of levying IT.

**137. Whether stamp duty is leviable on leave and license agreement? If so what are the rates?**

~ Yes, Stamp Duty is leviable on Leave and License agreement.

Rates of Stamp Duty for every 11 months are as under:

If annual Rent + deposit is

below Rs. 2,50,000 then Rs. 750 Stamp Duty.

between Rs. 2,50,001 to Rs. 5,00,000/- Rs. 1500/- Stamp Duty.

Above Rs. 5,00,000/- Rs. 3000/- Stamp Duty.

Registration fees is Rs 1000/-

Agreement for a period exceeding three years but not more than ten years with or without any renewal clause. Stamp duty is leviable on thrice the amount of average annual rent.

Agreement for a period exceeding ten years but not more than 20 years with or without any renewal clause.

Stamp duty is leviable on 5 times the amount of average annual rent.

**138. What are the rates of payment of stamp duty for sale of Flat in CHS?**

Sr No. Market Value of Flat Leviable Stamp duty

1. Does not exceeds Rupees 10000/-Nil
2. Exceeds Rs 100000/- but does not exceed Rs 250000/-0.5 % of the Value
3. Exceeds Rs 250000/- but does not exceed Rs 500000/-Rs. 1250/- + 3% of the value above Rs 250000/-
4. Exceeds Rs 500000/- then 8750/- + 5% of value above 500000

**139. Who is responsible transferor or transferee for payment of Stamp Duty?**

~ Section 30 of the Bombay Stamp Act 1958 provides that transferee i.e. Purchasers in liable for the payment of stamp duty.

**140. A is the member of CHS sells his flat to B and no stamp duty is paid B sells the said flat to C whether stamp duty for the agreement between A and B is recovered from C?**

~ No, Stamp duty for the agreement between A and B cannot be recovered from C.

C is responsible for the payment of Stamp duty between B and C

**141. Whether stamp duty is leviable for transferring Share and Interest in the membership of CHS among the family members, where actual transactions has not taken place?**

~ The stamp duty is leviable as provided under clause (a)(b)(c) and (d) as the case may be of article 25 of schedule I of the Bombay stamp Act 1958 , on the market value of the property, which is the subject matter of the gift.

**142. Whether Stamp duty is payable on mutual exchange of Flats by member of CHS?**

It is necessary to execute a deed of exchange for transfer of flats among members of CHS.

Stamp duty is leviable for such exchange under article 32 of Schedule I of the Bombay Stamp Act 1958.

**143. A CHS has purchased plot for construction of premises for its members. Whether stamp duty is leviable on letters of allotment to its members?**

~ Stamp duty is not leviable on such letters of allotment.

**144. Whether stamp duty is leviable on transfer of right, title and interest of a deceased member of CHS in favour of nominee or legal heir?**

~ Stamp Duty is not required to be paid in such case.

**145. What is the rate of payment of Stamp duty on the agreement for transfer of a Shop/Garage/Commercial Premises in CHS?**

~ The Stamp duty is payable at 5% of market value of commercial premises.

**GENERAL**

**146. Whether the CHS can take donation?**

~ CHS can take donation but not from transferor or transferee.

**147. What is the procedure for expulsion of member in a Cooperative housing society?**

CHS may follow the procedure u/s 35 of MCS Act 1960.

~ If the expulsion is approved by the Registrar CHS may take possession of the flat.

**148. What remedy is available if flat is occupied by expelled member?**

~ CHS may file eviction suit in Cooperative Court.

**149. Whether the member can sell the parking space already purchased by him to the other eligible person?**

~ Parking space approved by Competent Authority and purchased by member can be sold out to the other eligible member of the CHS.

**150. Whether the provisions of Section 59 to 61 Indian Contract Act 1872 are applicable in case CHS submits an application to the Financial Institution stating for full and final payments and such application is accepted by the Financial Institution? Whether interest and principal construed as different debts under the provision of section 59 to 61?**

Provision of Section 59 to 61 of Indian Contract Act 1872 are applicable where a debtor owes several distinct debts to one person and voluntarily make payments.

Hon. Supreme Court of India has laid down the ratio in Civil Appeal No 16902 of 1996 decided on Feb.10, 1999 that principal and interest are constructed as a single debt and therefore provisions of section 59 to 61 of the Indian Contract Act 1872 are not applicable in such case.

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