FREQUENTLY ASKED QUESTIONS

1.How a cooperative housing society can be formed?

An application for registration in Form No. 1 should be signed by 60 members who are forming the society. Along with the application the following documents should also be filed.

- Four copies of the proposed byelaws duly signed by each of the signatory to the application.
- A certificate from the Financing bank that the amount of share capital raised by the promoters has been deposited in the name of the proposed society in a suspense account.
- A list of persons who have contributed to the share capital of the society together with the amount contributed by each of them and the entrance fee paid by them.
- The scheme explaining the economically sound functioning and successful working of the society.
- A declaration on oath from each of the promoter members to the effect that he/she is not a member of the family of any promoter joining in the application for registration.
- An affidavit from each promoter members stating that

    He/she does not own a residential house or plot of land for construction of a residential house thereon in his own name or in the names of his spouse or dependent children on leasehold or freehold basis in NCT of Delhi.

    He /she or spouse or any dependent children is not a member of any other housing society.

    He/she or spouse or any of the dependent children is not dealing in the business of purchase or sale of house or land in the NCT of Delhi either as principal or agent.

- A statement showing financial position of each promoter. o A certified copy of the resolution passed by the promoters specifying the name and address of one of the applicants [generally the Chief Promoter] to whom the registrar may address his correspondence before registration and handover or dispatch the certificate of registration.

The application could be either sent by Registered post or delivered by hand to the Registrar. The Registrar shall receive the application and issue an acknowledgement to the applicant and shall enter the particulars of the application in the Register maintained in Form No.2 for the purpose.

2.Who can be members of a housing society?

The DCSA 2003 prescribes several types of persons who are eligible to become members of a cooperative society. Since a housing society prima facie is a cooperative society these types of persons are entitled to seek membership in a cooperative housing society. The following are the persons who may become members of a cooperative society.

- An individual competent to contract under section 11 of the Indian Contract Act. However, no individual can seek admission to a co-operative society exclusively formed for the benefit of students of a school or college unless he is a student. Again, no individual would be eligible for admission as a member of any financing bank or federal co-operative society except as provided in clause (m) of section 2.

- § Any other co-operative society.
- § The Government.
- § A firm, a joint stock company, or any other body corporate constituted under any law.
- § Such class or classes of persons or association of persons as may be notified by the Government in this behalf.

3.Can a company be a member of a housing society?
Yes. Under the 2003 Act a company or a partnership firm can become a member of a cooperative society. Since housing society is also a cooperative society this equally applies to housing society also. It is be noted that under the old 1972 act a company cannot be a member of a cooperative society. Therefore, if any society wishes to restrict its membership only to individuals, a suitable amendment has to be made in the byelaws of the society.

3.How a member can transfer/sell his flat?
Neither the membership in a society nor occupancy right in the flat can be transferred without fulfilling the following conditions.

- The transferor applies to the society for its consent for the transfer.
- The transferor pays the transfer fee to the society.
- Transferor pays all the dues to the society or the transferee agrees to pay the same. In the case of transferee paying the dues the society should consent for the same.
- The transferor vacates the flat and hands over the possession to the transferee.
- The transferee applies for and acquires membership in the society.

4.When a society can expel a member?
The DCSA 2003 has made an elaborate substantive provision for the expulsion of a member. A member can be expelled from the member ship of a housing society on any one or more of the following grounds:

- § If he has been a persistent defaulter in respect of any dues of the co-operative housing society.
- § If he has willfully deceived the co-operative housing society by making any false statement or submitting any false document to obtain the membership of such co-operative society.
- § If he has brought disrepute to the co-operative society or has done any other act detrimental to the interest and proper working of the co-operative society.

5.What is the procedure for expelling a member?
The DCSA 2003 provides an elaborate procedure for the expulsion of a member. Since expulsion is like a death penalty the procedural formalities as prescribed should be followed scrupulously else the expulsion would be rendered void.

Issuing Show cause notice
When a member attracts any one of the above conditions the society should send him three show cause notices through registered post. The Act does not prescribe any length for the notice. However, a 30 days notice would suffice. The notices could be sent in succession upon the expiry of the earlier notice period. For example, if the first notice is sent on 1-1-2005 the second notice should be sent on 1.2.2005 and the third notice on 3.3.2005.

Special resolution of the committee

If the member is not making good the default in payment or showing valid reasons for non-payment or other impugned actions, the management committee can expel the member by passing a resolution to this effect. The resolution should be approved by at least three-fourth majority of the committee who are entitled to attend and vote thereat.

Filing resolution with the Registrar

Within 30 days after passing the resolution as above said, the resolution has to be filed with the Registrar for his approval.

Registrar's approval

The Registrar shall take cognizance of the resolution within 30 days and shall either approve or reject the expulsion within 180 days. If the matter is not decided by the Registrar within this 180 days the expulsion is deemed to have been approved.

Proceedings before the Registrar

The Registrar shall hear both the parties i.e. the member who is sought to be expelled and the society. The Registrar is empowered to take evidence on record, compel production of documents as a civil court.

6.When a member ceases to be a member?

Cessation of membership is quite different from expulsion of membership. The expulsion of membership has to undergo the prescribed procedure whereas the cessation is automatic upon the happening of the eventuality.

The following are the eventualities upon which a member ceases to be a member of a housing society.

- § Member sells his flat/house on power of attorney and agreement to sell.
- § The member, before becoming a member of the housing society, already owns either in his/her name or in the name of spouse or dependent children.
- § After becoming member in a cooperative housing society, during the currency of the membership or till allotment of any plot or flat as the case may be, acquires either in his/her name or in the name of spouse or dependent children a residential property exceeding 66.72 Sq.M. in Delhi. However, the acquisition of house or plot through inheritance is exempted. Further, a member would not be disqualified if he owns a house or land in an 'abadi area' in Delhi

7.What are the rights of a member?

The following are the rights and privileges of a member:

Right to get certificate of allotment

Every member of a co-operative housing society, whether registered before or after the commencement of this Act, to whom plots of land or dwelling units have been allotted, shall be issued certificate of allotment by the co-operative housing society under its seal and signature in such form as may be prescribed.

Right to hold according to terms of allotment

Irrespective of the provisions of the Transfer of Property Act, or the Registration Act, any allotment or re-allotment of a plot of land or dwelling unit in a building of a co-operative housing society to its member as per terms of allotment shall entitle such member to hold such plot of land or dwelling unit with such title or interest.

Right to transfer / inherit the property

The right, title and interest in a plot of land or dwelling unit in a building of the co-operative housing society (including the undivided interest in common areas and facilities) shall constitute a heritable and transferable immovable property. However, such land or building shall not be partitioned for any purpose whatsoever.

Right to undivided interest in common area

Every member of a co-operative housing society shall be entitled to an undivided interest in the common areas and facilities pertaining to the plot of land or dwelling unit allotted to him.

Right to use the common area

Every member of a co-operative housing society to whom a plot of land or a dwelling unit has been allotted shall have the right to use the common areas and facilities as prescribed by the co-operative housing society. In case of any violation or misuse by a member, the management committee is empowered to recover damages.

Right to attend meeting and vote

A member has right to attend all the meetings of the society and vote thereat.

Right to contest election

A member has right to stand for the election of the management committee.

Right to seek information from the society

A member can seek information relating to any transaction of the cooperative housing society and the society is required to furnish such information within 30 days from the receipt of request. The society may fix the application fee for this purpose.

8.What are the duties of society towards its members?

The rights of members underline the duties of the housing society. The society should not discriminate between members and should not place unlawful restrictions on them. Besides this, the society should be prompt in attending to the complaints and grievances of the members as to provision of services.

9.How a dispute with society is resolved?

The Act provides for statutory arbitration for resolving the disputes that arise between members (past and present) and the society. The Act excludes the dispute arising between the paid employees and the society. As the statute itself prescribes a particular mode and forum for settlement of disputes resorting to any other mode may become futile. To put it in other words the disputes covered under section 70 of the Act have to be settled through the process of arbitration only. However, if the dispute is in the nature of dispute pertaining to deficiency in services, defects etc the same can be resolved in a consumer forum.

10.Can a member approach consumer forum for redressing his grievance?
Yes. Housing is covered under the term "service" in the Consumer Protection Act, 1986 (the CPA 1986). Therefore the services rendered to the members by the housing society falls within the purview of the CPA 1986. Further, the provisions of the CPA 1986 are in addition to and not in derogation of any provisions contained in any other Act This means that the provisions of the CPA are additional remedial avenues provided to the consumers by the Parliament if India.

In view of the above, any dispute with a housing society by any member with respect to rendering any services such as allotment of house, possession of house, rendering maintenance services in relation to housing complex etc are covered by the CPA 1986 and a member can approach the Consumer Forums for claiming compensation and damages against the housing society for rendering deficient services. The Supreme Court has held in the case of *Secretary, Thirumurugan cooperative Agricultural Credit Society v. M.Lalitha, (2004) 10 CLA-BL Supp* that a member can approach consumer forum as a consumer to redress his grievance against a cooperative society. Housing society primarily being a cooperative society this judgment is applicable to cooperative housing society also.

11.What are to be checked before becoming a member of a society?
It is always advisable for any person who wants to become a member of a cooperative housing society to conduct a due diligence test. This due diligence becomes imperative in the light of recent cooperative housing scam. The following all or any of due diligence checks can be made by a prospective member.

- § Whether the housing society is registered under the Delhi cooperative Societies Act? If so obtain the registration number.
- § Verify the registration number provided by the society with the Registrar of cooperative societies.
- § Whether land has been allotted by DDA? If so ask for the allotment particulars.
- § Verify the land allotment particulars with the DDA.
- § Whether the society has any legal disputes with builder, or other persons?
- § If so obtain details of the same so that any additional liability on this count could be worked out.
- § Obtain the byelaws of the society.
- § Verify with the Registrar's office whether the supplied byelaws confirms with the registered byelaws.
- § Whether the society is regular in conducting its meetings?
- § Whether the builder is accredited builder?

12.What are to be checked before purchasing a flat from a member of a society?
The purchaser has to verify and satisfy as to various aspects relating to a flat before he ventures into purchase a flat in a cooperative society from any member of the society. The following have to be checked:

- § Whether the seller is the member or POA?
- § Whether the seller is sole owner or joint owner?
- § Verify the title documents of the flat i.e. allotment letter, possession letter issued by the society in case of member. In case of POA besides the title documents of the original member verify the agreement to sell and the GPA.
- § Whether the flat is mortgaged with any bank or financial institution?
- § Is there any charge against the flat?
- § Are there any outstanding dues from the seller to the society?
- § NOC from the Society

13.Can a housing society charge transfer fee from its member when he transfers/sells his flat?

Yes. This is the fee that has to be paid to the society by the transferor or the transferee or both as the case may be. The 1972 Act was silent on the issue of transfer fee while the 2003 Act is very clear about it. As per the scheme of the Act the transferor is required to pay transfer fee to the society at the time of applying for consent letter. The transferee, in the case of freehold sale, is not required to pay the transfer fee. However, in the case of POA sale the transferee being a POA is required to pay transfer fee to the society for becoming a member after converting the leasehold to free hold. It is pertinent to note that the transferor in any case is required to pay the transfer fee. The demarcating aspect of transfer fee payable by the transferor and POA is that in the former case it the fee for transferring the occupancy right in the flat under transfer while in the latter it is for the transfer of membership in the society. The transfer fee that can be charged from a POA holder is fixed at Rs.10, 000 while no such limit is fixed for the fee to be charged from the transferor. The society may decide as to the quantum of transfer fee to be charged from the transferor.

14.Whether Delhi Rent Control Act applies to a housing society flat?

No. Section 83 (1) specifically excludes the applicability of rent laws for the recovery of leased out flats in a cooperative housing society. As per section 83(2) of the DCSA 2003 no licensee, caretaker, or sub-allottee who is occupying the dwelling unit or flat, or plot of land in a cooperative housing society shall be a tenant of such dwelling unit or flat or plot of land within the meaning of that law notwithstanding anything contained in the law relating to rents or any other corresponding law for the time being in force. Therefore, a tenant cannot take refuge under the Delhi Rent control Act, 1956 against any eviction proceedings. Recovery of society flat would be a dispute within the4 meaning of section 70 that has to be settled through arbitration.

15.Who are responsible for the conduct of the business of a housing society?

The management of every cooperative housing society shall vest in its management committee. The general body meeting of a co-operative society shall constitute a committee as prescribed and in accordance with the byelaws and entrust the management of affairs of the co-operative society to such committee.

16. What is the frequency of the meetings of the management committee?

The management committee can meet as many times as possible and there is no restriction on the number of meetings it can hold but there is a minimum requirement. In the case of a cooperative housing society, which is essentially a primary society, at least one meeting should be held in each month and there should be 12 such mandatory minimum meetings in a year. Suppose a housing society holds three meetings, say in the month of January, it does not mean that it need not have to hold a meeting in the month of February and there should be a meeting in February also. If a housing society does not hold any meetings for a consecutive period of 3 months, the Registrar may appoint an election officer to conduct the election to appoint a new management committee.

17.What is the time limit for a POA to acquire membership of a housing society?

The Act does not specify any time limit but requires the POA to acquire the membership of the housing society. It is for the society to fix the time frame for a POA to become a member.

18.What is freehold and how is it done for a society flat?

When the DDA allots land to a cooperative housing society it gives it under perpetual lease and annual ground rent is collected from the society as lease charges. Ownership of the land remains with DDA and possession remains with the society. Under freehold, ownership of land is transferred to the members of the society with respect to the land on which the building is standing. The common area would be still under leasehold. The members who want to convert to freehold t have to pay the necessary conversion fee to the DDA and the DDA transfers the land in their name. The process takes approximately 6 months.

19.Whether free holding of flat changes the status of a housing society as the owner of the land and building?

No. Even though the member is the owner of the land beneath his flat, yet for all practical purposes the housing society is the owner of the land and buildings.

20.How a housing society's byelaws amended?

The power to amend the byelaws vests with the members of the cooperative housing society. Any proposal to amend the byelaws should be first approved in the general meeting of the society held for this purpose. The resolution should be passed by not less than two-third majority of the members having voting rights present at the meeting. Within 30 days from the date of the passing of the resolution, a copy of the same should be filed with the registrar along with the following documents:

- § A copy of the existing byelaws
- § Reasons justifying amendments
- § Four copies of the byelaws as they would stand after the amendment, duly signed by the authorized officers of the management committee of the society.
- § A copy of the notice calling the meeting in which the resolution proposing the amendments was passed.

The Registrar shall register the amendment provided such amendment does not contrary to the provisions of the DSCA or rules framed there under, conflicting with the cooperative principles and would promote economic, social and cultural interests of the members

21.What is the time limit for holding the Annual General meeting of a housing society?

All that the DCSA say is that every year a cooperative society is required to have a annual general meetings of its members within 180 days from the date of closing of accounts. There is no power to the Registrar to extend the time limit. Therefore, the AGM of a housing society should be held within this 180 days time limit.