

## SUCCESSION RULES APPLYING TO THE CO-OPERATIVE

### **Rights and obligations on the death of a Member**

Section 84 of the *Co-Operatives Act 1996* ("**Act**") requires the Board of the Co-Operative, on the death of a Member, to transfer the deceased Member's share or interest in the Co-Operative to the personal representative of the deceased Member or:

*"(b) to the person that the deceased's personal representative specifies in an application made to the Co-Operative within 3 months after the death of the Member."*

The term "personal representative" is not defined but the *Administration and Probate Act 1958* defines personal representative as the Executor or Administrator for the time being of a deceased person.

It is also important to note that section 83 of the Act provides that a deceased Member's interest in the Co-Operative includes the Member's membership (not just the shares).

Under subsection 173(1) of the Act, on the death of a Member, the Member's share in the Co-Operative cannot be transferred to a person other than the Executor or Administrator except with the consent of the Board of the Co-Operative.

It is important to note that under subsection 173(2) of the Act the Board may only give its consent to the transfer to the beneficiary of the deceased's estate "if there are reasonable grounds for believing that the person will be an active Member of the Co-Operative".

Section 41 of the *Administration and Probate Act 1958* specifies the mechanics of the process. Under that section the personal representative may assent to the vesting in any person any estate or interest in real estate (including chattels real) to which the deceased was entitled. The assent to the vesting has to be in writing signed by the personal representative and must name the person in whose favour it is given. Consequently it appears a personal representative (ie: the Executor or Administrator) can by a written document given to the Co-Operative, apply to transfer the membership and shareholding to the beneficiary of the deceased.

Rule 24(1)(b) requires the consent of the Board of the Co-Operative to consent to the transfer subject to the person to whom the transfer is being made being "qualified to be a Member in accordance with the Act and the Rules" of the Co-Operative.

Rule 7.1 states that a person is not qualified to be admitted to membership unless there are reasonable grounds for believing that the person will be an active Member of the Co-Operative (this mirrors subsection 173(2) of the Act).

Consequently on the death of a Member and subject to the appropriate requirements being followed by their personal representative to transfer the deceased person's membership and share, the Board must resolve to give effect to the transfer provided the Board is satisfied that there are reasonable grounds for believing that the person to whom the share is being transferred will be an active Member of the Co-Operative.

## Leasing of land

Rule 47 sets out the rules about leasing of land. The full text of Rule 47 is attached.

It may be noted that Rule 47(1) refers to the "active membership requirements" in Appendix 1. The active membership requirements are that a Member shall participate in a minimum of 1 meeting and 1 work day or an equivalent contribution per year and the Member shall pay the annual levy.

In summary Rule 47 provides:

- every building must be approved by a general meeting of the Co-Operative. No more than 1 dwelling per 12,000 shares (which is in reality 1 of the 8 shares), whether held individually or jointly, may be approved;
- ownership of the building is vested in the Member or group of Members who built it;
- the lease is indefinite and payment ("consideration") for the lease is met by continuing compliance with the active membership requirements;
- where the members who built the building and who benefit from the lease die, the Member or the group of Members (in practice the Executor of the estate) may arrange for the private sale of the building to a new or existing Member or to the Co-Operative;
- the building cannot be sold to a non-Member without approval of a general meeting of the Co-Operative;
- on the death of a Member who has the benefit of leased land, the lease automatically terminates and cannot be transferred without approval of a general meeting of the Co-Operative.

Consequently, if a Member dies and their share and membership is transferred in accordance with the provisions of the Act and the Rules set out above, the ownership of the building would transfer but the lease over the land on which the building is built ceases and the lease can only be transferred following approval of a general meeting of the Co-Operative.

A number of other relevant observations can be made:

- a group of Members can own a house and have a lease (there is no limit in relation to the number of Members per house);
- each block of 12,000 shares (ie: 1 "share") can be owned by any number of Members (eg: 3 siblings via succession);
- the grounds upon which a general meeting could refuse to transfer a lease (under Rule 47(6)) would be very limited. The only two examples I can think of are where either the applicant(s) for a lease is/are not a Member(s), or there are outstanding issues in relation to the building (eg: if the prior lessee had built something without the approval of the Co-Operative under Rule 47(2)). If the relevant general meeting did not have valid grounds to refuse to transfer the lease a Court would be very likely, on equity grounds, to order transfer of the lease.

47. ***Leasing of land***

- (1) *There shall be no private ownership of buildings or fixtures on land owned by the co-operative, except where approval is given by a general meeting of the co-operative to lease the land to a member or group of members. Approval of such lease shall be deemed to have occurred upon approval to erect a building under clause 47(2). Consideration for such lease shall be constituted by the relevant member(s) compliance with the active membership requirements in Appendix 1.*
- (2) *Every building to be erected and all outside works to be done must be approved by a general meeting of the co-operative and a record of such approvals kept. No more than one dwelling per 12,000 shares, whether held individually or jointly, may be approved.*
- (3) *Ownership of approved buildings and fixtures erected on any land leased from the co-operative by a member or group of members, shall be vested in that member or group of members.*
- (4) *Where a member or group of members have constructed or caused to be constructed or occupy buildings or fixtures on land owned by the co-operative and leased to the member or group of members and the membership is relinquished through voluntary decision, forfeiture of shares, bankruptcy or death or other means then the member or group of members may arrange for private sale of the buildings and/or fixtures to:*
  - (a) *a new or existing member or group of members of the co-operative; or*
  - (b) *to the co-operative itself.*
- (5) *Buildings or fixtures owned by a member or group of members on land leased by the co-operative cannot be sold or transferred to a person who is not a member of the co-operative without approval of general meeting of the co-operative.*
- (6) *Where a member or group of members have leased land from the co-operative and the membership is relinquished through voluntary decision, forfeiture of shares, bankruptcy or death or other means, the lease of the co-operative's land shall terminate and cannot be transferred without approval of a general meeting of the co-operative.*