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PART I—Orders and Notifications by the Governor of West Bengal, the High Court, Government Treasury, etc.

GOVERNMENT OF WEST BENGAL

Housing Department
Law & Statutory Cell
New Secretariat Buildings,
1, Kiran Shankar Roy Road, Kolkata-700001

NOTIFICATION

No.HO-23099(14)/4/2021-APARTT CELL-Dept. of HO dated 11/01/2022 :-In exercise of the power conferred by section 17 of the West Bengal Apartment Ownership Act, 1972 (West Ben. Act XVI of 1972), the Governor is pleased hereby to make the following amendments in the West Bengal Apartment Ownership Rules, 1974 (hereinafter referred as the said rules):-

Amendments

In the said rules, (1) after rule 6, *insert* the following rules:-

- “7.Declaration under section 5A –(1) (a) the office-bearers of constituent association or associations and the promoter representing future associations of the housing complex jointly shall execute the declaration under section 5A in Form F.**
- (b) The Declaration shall be signed and verified by the President and Treasurer of the association or associations and a representative nominated by the promoter, for each constituent association to be formed in future as declared by the promoter, in the presence of Magistrate or any person competent to administer oath.
- (2) After such Declaration is signed and verified, the same shall be submitted to the Competent Authority.
- (3) On receipt of such Declaration, the Competent Authority shall issue notice to the declarants concerned and after holding such inquiry, if any, examine the declaration and accept the Declaration if it is in order. The Competent Authority shall make an endorsement on the body of the Declaration testifying to the fact of acceptance of the Declaration, put its dated signature and set its seal. Thereafter Competent Authority shall return the Declaration along with its enclosures to one of the declarants duly authorized by other declarants to receive the same. Such declarants shall, within one hundred twenty days from the date of such return, present the Declaration for registration under the Registration Act, 1908, at the Office of the Registrar having Jurisdiction.
- (4) After the Declaration is registered the declarants shall forthwith report in writing to the Competent Authority the fact of registration of the Declaration, furnish such authority with a copy of the registered Declaration. The Competent Authority shall issue a certificate of registration in favour of the Federation in such Form as may be provided in the West Bengal Apartment Ownership Bye-laws, 1974.

- (5) When the Competent Authority rejects the Declaration, it shall make an order in writing, giving reasons thereof and the person aggrieved by such order of rejection may prefer an appeal to the State Government from such order.
- (6) When an appeal is preferred as aforesaid the State Government shall call for the relevant records from the Competent Authority and shall, after hearing the parties, by an order in writing giving reasons thereof, allow or dismiss the appeal, and shall, after such disposal of the appeal, forthwith return the records along with copy of that order to the Competent Authority.
- (7) When by the Appellate Authority, the Declaration is accepted, the Competent Authority, on getting back the records from the Appellate Authority and after making an endorsement on the body of the Declaration shall forthwith return the Declaration together with its enclosures to the declarants who shall thereupon, get the Declarations registered in accordance with the provisions of sub-rule (3) of this rule and further comply with the provisions of sub-rule (4) of this rule.
8. **Manner of maintenance, repair and replacement of common areas etc by Federation.** – The work relating to the maintenance, repair and replacement of the common areas, facilities and amenities for Federation shall be carried out by the Federation in the same manner as an association of apartment owners maintain, repair and replace of the common areas, facilities and amenities under the Bye-Laws framed under the Act.”

(2) for Form C, substitute the following: –

“Form-C

Instrument executed by the apartment owner(s) under sub-clause (ii) of clause (b) of sub-section (3) of section 4 of the West Bengal Apartment Ownership Act, 1972

[See sub-rule (1) of rule 6]

1. I/We _____ hereby declare that I/We am /are the present owner(s) of apartment No. _____ on the _____ floor of the Building No. _____ situated at _____ in the City /town /village of _____ within the Police Station _____ in the District of _____ having postal address _____ which forms part of a property already submitted to the provisions of the West Bengal Apartment Ownership Act, 1972, (the Act) under a Declaration executed in conformity with the provisions of the Act and an Association of Apartment Owners was formed and registered under the Act being _____ having registration number _____
2. I/We further declare that I/We acquired ownership in the said apartment under a deed of transfer registered in the office of the Registrar/Sub-Registrar _____ in Book No. _____ Volume No. _____ Pages from _____ to _____ being No. _____ of the year _____. A copy of such Deed of transfer is appended hereto and marked as Annexure-“A”.
- I/We further declare that I/We acquired ownership in the said apartment under a will registered in the Office of the Registrar/Sub-Registrar _____ in Book No. _____ Volume No. _____ Pages from _____ to _____ being No. _____ of the year _____ and duly probated by a competent court of law having jurisdiction.
- A copy of that Will and a copy of the final order of the Probate proceeding are appended hereto and marked collectively as Annexure-“A”.
- I/We further declare that I/We acquired ownership in the said apartment by way of inheritance after the death of previous owner(s) as I/We am/are legal heir(s) of the deceased.
- A copy of the legal heirship certificate is appended hereto and marked as Annexure-‘A’ and a copy of the death certificate of the deceased (s) owner is appended hereto and marked as Annexure-“B”.
3. I/We hereby further solemnly declare and undertake that I/We my/our heirs, executors, administrators and assigns shall in respect of the said apartment be guided by the provisions of the said Act and I /We shall comply strictly with the bye-laws made under Section 13 of the said Act and with the covenants conditions and restrictions set forth in the said Declaration.

In witness whereof I/We have set my/our hands this _____ day of _____ 20 _____ and solemnly declare that what is stated in paragraph _____ is true in my/our knowledge, what is stated in paragraph _____ is information received from records and what is stated in Paragraph 3 above is an undertaking given by me/us.

1. Shri/Smt. _____ (Name, address and PAN/Voter's Card No.)
2. Shri/Smt. _____ (Name, address and PAN/Voter's Card No.)
3. Shri/Smt. _____ (Name, address and PAN/Voter's Card No.)

And so on

In the presence of (Witnesses)

1. _____ (Name, address and PAN/Voter's Card No.)

And

2. _____ (Name, address and PAN/Voter's Card No.)

Solemnly affirmed before me this _____ day of _____ 20 _____

(Signature of the Magistrate or any person competent to administer oath)

Note: [Delete the statements in paragraph 2 which are not applicable]"

(3) after Form E, *insert* the following Form:—

“Form F

Declaration under section 5A, of the West Bengal Apartment Ownership Act, 1972

[See sub-rule (1) of rule 7]

1. In pursuance of section 5A of the West Bengal Apartment Ownership Act, 1972, we the office-bearers of the first association of apartment owners/ associations of apartment owners of the complex and persons nominated by the promoter as the representatives of the following constituent association of apartment owners to be formed in future hereby declare that we are the office-bearers of the first association of apartment owners/associations of apartment owners of the complex and together with the persons nominated by the promoter as the representatives of the following constituent association of apartment owners to be formed in future situated at city /town /village in the district having postal address and do hereby further declare that we intend to form a Federation comprising the following constituent associations to maintain common areas and facilities stated herein below, under the provisions of the West Bengal Apartment Ownership Act, 1972 (West Bengal Act No. 16 of 1972).

Authenticated copies of the registration certificate of the constituent first association and copies of current duly submitted Form 3 are appended herewith and marked respectively as Annexure “A” and “B”.

2. We do hereby furnish further the following particulars –

A. Description of the property :

- (i) Area and description of the land upon which the project/projects is /are constructed:
- (ii) Name of the constituent first association of apartment owners with Registration No and date:/ constituent all associations of apartment owners with Registration No and date:—
- (iii) Area and description of common areas and facilities to be administered by the proposed Federation:
 - 1.
 - 2.
 - 3.

(Please mention all after inserting consecutive serial numbers)

(B) Percentage of interest in the common areas and facilities appertaining to each Constituent Association

(C) Other particulars, if any:

3. We do hereby further declare, covenant and undertake as follows:

- (i) that the common areas and facilities to be administered by the Federation shall remain undivided and that no constituent association shall bring any action for partition or division thereof

- (ii) that the percentage of the undivided interest in the common areas and facilities, as expressed in the Declaration, shall not be altered except with the consent of all the Constituent associations;
- (iii) that no constituent association shall do anything which would be prejudicial to the soundness and safety of common areas and facilities or reduce the value thereof or impair any easement or hereditament or shall add any material structure or excavate any structure;
- (iv) that for the proper and effective administration of the common areas and facilities and for the due maintenance, repair and replacement of the common areas and facilities the constituent association shall strictly comply with the provisions of the said Act and the bye-laws made thereunder and shall pay their share or common expenses as assessed by the Federation, and that the failure to comply with any such requirement shall be a ground for action for damages or for other relief or reliefs at the instance of the Federation.

In witness whereof we have set our hands this day of20 and solemnly declare that what is stated in paragraph is true to our knowledge and what is stated in paragraph is information received from record and what is stated in Paragraph 3 above is an undertaking given by us.

1. (Name), (President of first association of apartment owners)
2. (Name), (Treasurer of first association of apartment owners)
3. (Name), (President of second association of apartment owners)
4. (Name), (Treasurer of second association of apartment owners)
5. (Name), (President of third association of apartment owners)
6. (Name), (Treasurer of third association of apartment owners)

[So on write the names of President and Treasurer respectively of all the constituent Associations after inserting consecutive serial numbers]

7. (Name), (Nominated representative of association of apartment owners to be formed)
8. (Name), (Nominated representative of association of apartment owners to be formed)
9. (Name), (Nominated representative of association of apartment owners to be formed)

[Write the names of nominated representatives respectively of all the constituent Associations to be formed after inserting consecutive serial numbers]

in the presence of—

(1)

and

(2)

solemnly affirmed before me this day of 20.....

(Signature of the Magistrate or person competent to administer oath.)”

By order of the Governor,

KHALIL AHMED

Principal Secretary to the Governemnt of West Bengal.