



REPAIRS & LEAKAGE PROBLEMS IN HOUSING SOCIETY

One of the most common problems that residents face is leakage issue from the flat above. This is usually caused due to leaking pipes or absence of proper insulating material in places like toilets and bathrooms. Substandard quality of construction can also lead to water leakage issues from flats above. Water can percolate through the tiniest of cracks and crevices, so leakage issues are bound to occur sooner or later with regular wear and tear.

As per Model Bye laws, following clauses are applicable in Housing Society in Maharashtra Responsibility of Members

Bye – Law No. 45

Every member shall keep his flat / unit in good maintenance.

Bye – Law No. 46

(a) Additions and Alterations in a flat is permissible only with the committee's permission:

No member shall, without the previous permission of the committee in writing, make any additions or alterations in his flat.

(b) Application for permission for making additions and alterations in a flats:

The member, desirous of making any additions to or alterations in his flat, shall make an application to the Secretary of the Society, giving all the required particulars. Further action on such application shall be taken by the Secretary and the Committee of the Society as provided under the Bye -Law No. 63.

(c) No Structural changes are permissible, without the prior permission of the concerned competent authority.

Bye – Law No. 47

(A) EXAMINATION OF FLATS AND REPORT ABOUT REPAIRS TO FLATS:

For facilitating discharge of functions mentioned under the Bye - Law No. 156 by the Committee, every member shall allow the Secretary of the Society, accompanied by any other member of the Committee, to enter upon his flat with prior intimation to the Member, to examine its condition for ascertaining the repairs, if any, necessary. The Secretary of the Society shall make a report to the Committee, indicating therein the particulars of the repairs to be carried out by the society at its cost and those by the members at their cost.

(B) NOTICE TO THE MEMBERS ABOUT CARRYING OUT REPAIRS IN HIS FLAT BY THE SOCIETY AT ITS COST:

On receipt of such report, the Committee shall ascertain the cost involved in the repairs, which are required to be carried out by the society at its cost as provided under the Bye - Law No.159(a) and cause the notice to be served on the member for such period as the Committee thinks adequate, of its intention to carry out the repairs and there-upon the member concerned shall allow the workmen engaged by the society directly or through its architect, access to his flat for carrying out the repairs. If the member concerned fails to give access to his flat, without reasonable and convincing reasons, the Secretary of the society shall have authority to enter upon the flat and carry out the work under the supervision of the member of the committee duly authorized by it in that behalf or the architect appointed by the society.

(C) NOTICE TO THE MEMBER FOR CARRYING OUT REPAIRS TO HIS FLAT AT HIS COST:

In respect of the repairs to be carried out by the member at his cost, the committee shall cause the notice to be served on the member, indicating therein, the particulars of repairs necessary at his flat and calling upon him to carry out the repairs to his flat to the satisfaction of the architect approved by the Society, if any, at his cost, within such period as the Committee may allow. On his failure to comply with the notice, the Secretary of the society or the architect appointed by the Society shall have authority to enter upon the flat and cause the repairs to be carried out after giving due notice to the member concerned. The amount spent by the society on such repairs shall be recoverable from the member concerned.





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BYE – LAW NO. 156 – INSPECTION OF SOCIETY'S PROPERTY FOR REPAIRS

(a) The Secretary of the society, on receipt of complaints about the maintenance of the property of the society from any members of the society or on his own motion, shall inspect the property of the society (if necessary along with technical expert appointed for the purpose) from time to time and make the report to the committee, stating the need of the repairs, if any, considered necessary. The committee shall consider the report made by the Secretary of the society and decide as to which of the repairs should be carried out.

(b) The members of the Society shall allow access and co-operative in the inspection of the premises for repairs and maintenance

BYE – LAW NO. 159 – REPAIRS AT SOCIETY COST

The following repairs and maintenance of the property of the society shall be carried out by the society at its costs:

(A) REPAIRS AT SOCIETY'S COST:

(i) All internal roads, (ii) Compound walls, (iii) External water pipe lines, (iv) Water pumps, (v) Water storage tanks, (vi) Drainage lines, (vii) Septic tanks, (viii) Stair cases, (ix) Terrace and parapet walls, (x) Structural repairs of roofs of all flats, (xi) Stair-case lights, (xii) Street lights, (xiii) Outside walls of the building/buildings, (xiv) All leakages of water including leakages due to rain water and leakages due to external common pipe line and drainage line, (xv) Lifts, (xvi) The damaged ceiling and plaster thereon in the top floor flats on account of the leakage of the rain water through the terrace.

(B) REPAIRS AT MEMBER'S COST:

All the repairs, not covered by the bye-law No. 159(a) shall be carried out by the members at their cost. The expenditure for the internal leakage due to toilet, sink etc. should be borne by concerned flat holders, with intimation to the Society

SCENARIO - I

1. On finding any leakage the affected party should make a complaint to the society with a copy to the other member from whose flat the leakage begins.
2. Within 3 days of such application the Secretary or any of the authorized person should visit the flat and affected portion, submit the report, and take necessary corrective measures and the expenses within 7 days, the expenses incurred for the same should be shared between the society and the members affected i.e. upper and lower floor member equally. The repairing should be carried out by the Contractor appointed by the society.
3. In case, the leakages is due to the repairs and renovation carried out by the upper flat owner prior to 3 months of leakages, 100 % cost to be bear by the upper floor member.
4. If the member does not co-operate with the society for repairs the society by taking the help of police protection should complete the repairs and carry out the necessary repairs and in such case the expenses cost of police protection shall be charged upon such non-cooperative member.
5. Further, all the above share of repairing cost and police protection shall be treated as regular dues of the society.
6. If such amount is not paid within specified period, the interest as applicable to other dues will be changed on such defaulted amount and also can be recovered by filling recovery proceedings under section 154 B (29) or 91 of MCS Act as the case may be.





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SCENARIO - II

In case there is leakage from above flat, the responsibility to carry out repairs lies with the owner of the above flat. This is because the source of leakage is located inside their property.

The first thing you need to do is talk to the owner of the flat above and ask them to fix the issue in a polite manner. In case the owner of above flat refuses to fix the leakage, you can approach the housing society or the builder to find a solution to the problem. Water leakage will eventually cause structural damage, so such problems cannot be ignored by the building's management committee. For not fixing leakage issue from above flat, under Bye-Law No. 172, make a written complaint against the flat-owner to the managing committee of the Society.

In this complaint, mention that within 15 days of your complaint to the Society, if they do not take any action against that flat-owner to get fix his leakage issue, then under Bye-law No. 174(B)(iii) you will make a civil suit in the cooperative court and you will make the Society party to that civil suit.

After 15 days of your complaint to the Society, if you do not get any reply or the amount that you spent on repairs from the erring flat-owner, then find some honest and intelligent advocate working for cooperative court in such type of matters and make a civil suit in the cooperative court against that flat-owner, by making your Society a party to that suit.

There have been cases in the past where courts have ruled in favor of homeowners facing water leakage issues. In such cases, the owners of flat above were asked to carry out the repairs at their own expense and reimbursement of the expenses incurred by affected member.

REPAIRS & RENOVATIONS IN THE FLAT WITHOUT BMC PERMISSION - AS PER BMC ACT

As per section 342 of BMC Act, 1988 (amended till date), the following "tenantable repairs", can be carried out without obtaining permission from the 'Building and Factory' department of local BMC:

- Ø Plastering, painting, pointing of your flat
- Ø Providing guniting to the structural members or walls
- Ø Changing floor tiles
- Ø Repairing WC, bath or washing places
- Ø Repairing or replacing drainage pipes, taps, manholes and other fittings
- Ø Repairing or replacing sanitary, water plumbing or electrical fittings
- Ø Replacing the roof with the same material
- Ø Replacement of existing water-proofing material of the terrace.

The only pre-conditions to the renovation work to be done at residences are:

- Ø The original tenantable structure (whether rental or ownership) must be legal, i.e. it is based on the original BMC-approved Building plan.
- Ø Though no BMC permission for the above is required, it is advisable to do so under strict supervision of a registered Architect and/ or Structural Engineer.





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It is recommended that Society should pass the resolution at AGM that the expense on leakage of flat specifically internal leakage will be shared equally by all the two parties namely, one share by the member from whose flat leakage is originating, one share by the member residing below that is the sufferer.

As regards external leakage or leakage from the terrace the same is the exclusive responsibility of the society.

Accordingly, if there is leakage on the external walls of your flat leading to leakage within, the onus of repairs falls squarely on the Society at its cost. Member can send the managing committee a legal notice for the same through a lawyer and follow up with the secretary of the society. There is also a prominent judgment referring the above matter given by Bombay high court in the case of Humble Home Co-Op Housing Society Limited V/S Sham Balani And Another Decided On Wednesday, June 28, 2006 and its being ordered in the above matter that Terrace repairs is the responsibility of the society

As per Bye Laws No 155 it shall be the responsibility of the Committee to maintain the property of the Society in good condition at all times and to redevelop the Society buildings/property, if necessary, as per Government directives from time to time and as per prevailing laws.

As per Bye Laws No 156 (a) The Secretary of the Society, on receipt of any complaints about the maintenance of the property of the Society from any Members of the Society or on his own motion, shall inspect the property of the Society (if necessary along with technical expert appointed for the purpose), from time to time and make the report to the Committee, stating the need of the repairs, if any, considered necessary. The Committee shall consider the report made by the Secretary of the Society and decide as to which of the repairs should be carried out.

(b) The Members of the Society shall allow access and cooperate in the inspection of the premises for repairs and maintenance.

As per Bye Laws No 157 (a) The Committee shall be competent to incur expenditure on the repairs and maintenance of the Society's property once in a financial year, the onetime expenditure does not exceed:

- Up to 25 Members Rs. 25,000/-
- 26 to 50 Members Rs. 50,000/-
- 51 and above Upto Rs. 1,00,000/-

(b) If one time expenditure on repairs and maintenance of the Society's property exceeds the limit as mentioned under bye-law No. 157(a) prior sanction of the meeting of the General Body of the Society shall be necessary.

(c) The meeting of the General Body of the Society shall decide the limit up to which the expenditure on repairs and maintenance of the property of the Society could be incurred by the Committee without calling for tenders for the work. In respect of the work, the cost of which exceeds the limit, so fixed, the Committee shall follow the procedure of inviting tenders, placing them before the General Body Meeting for approval and entering into contract with the Architect (if appointed) and the Contractor.

(d) The appointment of An Architect: In respect of redevelopment of Society buildings the procedure to be followed as per Government Resolutions (as amended from time to time) and provisions in Architect Act 1972.





VED HOUSING SOCIETY MANAGEMENT

M.COM, MBA, GDCA, CERTIFIED PANEL AUDITOR, TAX & LEGAL CONSULTANT

REPAIRS & LEAKAGE PROBLEMS IN HOUSING SOCIETY

(e) If no appointment of an Architect is made by the Promoter, the meeting of the General Body of the Society shall appoint an Architect on such terms and conditions as it deems fit and as per the provisions of Architect Act 1972.

(f) The Committee shall enter into the contract with the Architect, on the basis of the terms and conditions approved at the meeting of the General Body of the Society in that behalf as per the provisions of Architect Act 1972.

COLLECTION OF FUNDS FOR REPAIRS BY SOCIETY

13. The Society shall create and establish the following funds by collecting contributions from its Members at the rates mentioned hereunder: -

(a) The Repairs and Maintenance Fund, at the rate fixed at the general body subject to the minimum of 0.75 per cent per annum of the construction cost of each flat, incurred during the construction of the building of the Society and certified by the Architect, for meeting expenses of normal recurring repairs of the Society's buildings/property.

(b) Major Repairs Funds as and when required and decided by the General Body at the rate fixed on area basis.

(c) The Sinking Fund at the rate decided at the meeting of the general body, subject to the minimum of 0.25 per cent per annum of the construction cost of each flat incurred during the construction of the building of the Society and certified by the Architect, excluding the proportionate cost of the land.

UTILIZATION OF THE FUNDS BY THE SOCIETY

14. The Society may utilize its Funds in the manner indicated below:

a. Reserve Fund: The Reserve Fund of the Society may be utilized for the expenditure on repairs, maintenance and renewals of the Society's property.

b. Repairs and Maintenance Fund: The Repairs and Maintenance Fund- may be utilized for meeting the expenditure on maintenance of the Society's property and repairs and renewals thereof.

c. Sinking Fund: On the resolution passed at the meeting of the general. Body of the Society, the Sinking Fund may be used by the Society for reconstruction of its building/ buildings or for carrying out such structural additions or alteration to the building / buildings, as in the opinion of the Society's Architect, would be necessary to strengthen it / them or for carrying out such heavy repairs as may be certified by the Architect and on approval of General Body.

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