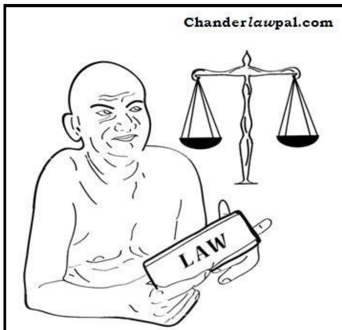

Spreading Legal and Economic Awareness

A Social Initiative by
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New Model Bye Laws Of Co-op Hsng Societies On Transfer of Shares and Membership

According to the New Model Bye Law No. 37, notice has to be given to the Secretary of the Co-operative Housing Society to transfer the shares on sale of flat within 15 days.

This is prescribed in the form available either at the Co-operative Court or book shops dealing with Co-operative Society Stationery.

The forms have to be duly filled and signed by the transferor as well as the transferee. Within 8 days, the Secretary after consultation with the managing committee, has to inform the transferor- transferee about any problem in transfer.

No Objection Certificate or an NOC is not necessary now, unless there is a specific requirement by the Transferor or the Transferee.

The society can refuse a transfer only in the case of any legal dispute pending in respect of the flat, the legal heirs or dues unpaid. In case the reason is not communicated within 3 months, the shares are deemed transferred, as per Section 22 (2) of the Maharashtra Co-operative Societies Act 1960. Apart from the aforesaid prescribed forms, a resignation from membership form may also have to be filled up, and submitted along with a copy of the registered stamp duty paid agreement, along with a payment of transfer fee of Rs. 500 and an entrance fee of Rs. 100. The transfer premium is restricted to Rs. 25000 per flat/share certificate. Taking fees of over and above the mentioned amount illegal/unlawful. People pay because after submission of the Share Certificate with the transfer forms, the society officer bearers refuse to return the share certificate. They sometimes even defy the orders of the Registrar of Co-operative Societies. The result is procrastinated litigation which flat buyers who have bought a new property often try to avoid. Choice, of course, is of the buyer as to how he wishes to tackle the situation.

Approach the SC Against the National Consumer Commission

Any person who is aggrieved by the order of the National Commission can appeal to the Supreme Court by way of Special Leave Petition. The said appeal has to be filed within a period of 30 days. This is stated in Section 23 of the Consumer Protection Act 1986. Doing this is possible as in a case where opportunity was denied to the complainant to prove his case despite Expert Medical Opinion on ground of delay Ramesh Chandra Agrawal vs. Regency Hospital Limited - 2009 (9) SCC 709. However one must not presume that merely by filing a special leave petition at the Supreme Court the Supreme Court will entertain it, as in a case where a company claimed for mental harassment, it was not permissible as the Company is an artificial person.

How Many Kinds Of Persons Can Be Assessed Under The Income Tax Act

Section 2 (31) of the Income Tax Act states that an:
1. individual,
2.Hindu Undivided Family,
3.A company,
4.a firm,
5.an association of persons or
6.body of individuals whether incorporated or not,
7.a local authority,

8.and any artificial juridical persons not falling under any of the stated categories in this paragraph can be assessed under the Income Tax Act.

Therefore if one closely sees the classifications, almost all kinds of persons, whether living as individual or in group or not living can be assessed by the income tax authorities.

A Gift Obtained Under Fraud Can Be Revoked

Many a times people give gifts to relatives or others and later they feel that they are defrauded. A gift is more than a mere contract, it is a conveyance- it is like giving away a property with all rights titles and interests. If the person feels that he was defrauded due to old age or sickness, he can very well revoke the gift.

SECTION 126 of the Transfer of Property Act provides that inter alia 'a gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded'. A gift may, therefore, be revoked for coercion, fraud, misrepresentation or undue influence much as a contract may be rescinded.

You have the right to revoke a gift deed if you feel you have been defrauded

The right to revoke a gift on those grounds is a right conferred by statute. It does not flow from any personal contract between the parties to the case. It is not a right which is confined in point of time to the individual self of the donor. It is not a right which dies with him. On the death of the donor, the cause of action survives to his legal representatives.

In Ghumna v. Ram Chandra Rao, AIR 1925 All 437, a Division Bench of the Allahabad High Court repelled the contention that avoidable gift could not be avoided by the donor's heir. It was observed: (at p. 438) 'It is not quite correct to say that the right of exercising such an option is like a personal contract which does not survive to the heirs of the 'promisor'. The right is given to the promisor under statute.'

Effect Of Fraud Or Mistake On Limitation Period

The Limitation Act 1963, deals with time limits placed on the permissible time that is allowed to effect any cause of action. For instance for a suit for defamation it is with one year, for a suit for possession it is 12 years, for a suit for recovery it is three years, etc. These time limits are stated in the schedules of the Limitation Act 1963. These limitation periods are prescribed from Article 1 to 137 of the Limitation Act. A very important feature of the Limitation Act is the exception to the time rules prescribed in the Articles. These time limits will not be applicable in the cases of fraud, where the fraud itself is revealed at a later stage. This is governed by Section 17 of the Limitation Act 1963, which means if the cases are covered by fraud, the limitation will run from the date of discovery of the fraud or mistake. The same is reproduced as hereunder:

Effect of fraud or mistake:

(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,-

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b) the knowledge of the right or title on which a suitor application is sounded is concealed by the fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him; the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:
Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which -

(i) in the case of fraud, has been purchased for valuable consideration, by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or

(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or

(iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order:
Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be.

One important point though under the Code of Criminal Procedure is that if there is an offence for which the penalty is more than three years then it can always be opened in the life time of the accused, if not tried earlier- refer Section 468 of the Code of Criminal Procedure 1973.

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A law and economics knowledge sharing initiative

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Chanderlawpal.com is an online legal advisory portal, for people from all over the world, seeking legal advice on Indian or/and international laws.

This newsletter is an initiative by Advocate Charanjeet Chanderpal for making public aware about the laws that exist in India for protection of common man. Legal jargons and financial language are seldom understood by laymen and this causes public to lose faith in legal and economic (financial) systems.

-An attempt to restore this faith and to help people use the existing machinery to become self reliant.

How to Protect Yourself from Getting Cheated While Investing

Atleast once in life, we all have been cheated with or been mis-sold a financial product such as insurance, mutual funds, corporate or bank fixed deposits, bonds etc. This is not only due to agents or companies making colorful promises which turn out to be dud later, but also due to our own casual and overtrusting approach.

Never buy a financial product based on what an advertisement or an agent says. Insist on looking at the brochure while deciding. They are usually available online and can be availed from the agents too. Make sure they contain updated information. Write a mail to the agent confirming what he has said and what the brochure says is updated and correct. Keep his boss and the next higher level officer in loop so that the seniors know what the sales executive has promised. Save the acknowledgement and reply that you get for future use, in case of trouble.

Look at the amount and the number of time you would have to invest, for example in insurance policies, the amount and the frequency of premium. When ULIPS came into the market, agents said we would have to be premium only for three years and then we can get our money back, while in reality, premiums were to be paid for ATLEAST three years and we could get only a loan after three years, while the policies would mature only after 10 years.

Please always check the maturity age and date on the product.

When buying a bundle be careful about what it does not give you, as compared to when you buy them individually. For example, a fixed deposit bundled with an insurance policy. Last month I got a call from a company salesperson who said you would get a free insurance policy if you invest in a fixed deposit. When I asked him the term, he said it coincides with the term of the fixed deposit and not any longer!!!

Check if the sales agent is choosing the same product that you asked for, in the form. One of my friend's mother was sold an equity linked insurance policy despite her age being over 60 years. My friend did not bother to look at the details during the free-look period, when she could have returned the policy as it did not match with what her mother needed and what the insurance agent had said. He sold this policy to my friend's mother due to higher commission that he got for this particular variant.

Do not invest if you do not need to. Even when you need to buy for tax saving, check whether the product is beneficial for you. There are hundreds of tax saving products in the markets and you must shop around for the best deal.

Do not hesitate from going online and searching for websites that show you comparison illustrations of products from different companies. However be careful since these websites also earn commissions.

-***Harjot Kaur***