

## TERMINATION OF MEMBERSHIP AND OCCUPANCY AGREEMENT

Geoffrey Dabbs  
GEHLEN DABBS  
Barristers & Solicitors  
1500 - 1030 West Georgia Street  
Vancouver, BC V6E 2Y3  
www.gdlaw.ca  
Tel.: 604.642.0117  
Fax: 604.642.6433  
gd@gdlaw.ca

### Overview:

- The starting point is the *Co-operative Association Act*, being provincial legislation. The *Co-operative Association Act* allows a Co-operative to adopt Rules, which deal with virtually all “internal” functions of the Co-operative.
- The Rules are a contract at law between each and all of the members of the Co-operative and the Co-operative itself. That contract is entered into at the point the member is formally granted Membership.
- The Rules are a combination of various matters that are *required* of the Co-operative by the *Co-operative Association Act* and various matters that are *permitted* by the *Co-operative Association Act*.
- Included as part of the Rules is the Occupancy Agreement, which deals specifically with matters concerning the occupancy of the premises by each member.
- Traditionally, each member upon move-in signed the Occupancy Agreement. This is no longer necessary as it is part of the Rules and is binding upon all of the members.
- The Co-operative must at law terminate *both* the Membership and Occupancy Agreement in order to force the member to move and to apply the share deposit to any outstanding amounts owed to the Co-operative.

### Rules:

- Rule 5 of the Rules deals with the termination of the Membership for the “normal” case, being where it is appropriate to follow the “normal” procedure.
- Rule 6.1 provides that because of the termination of Membership, the Occupancy Agreement is also terminated. Section 16.01 of the Occupancy Agreement provides for this as well.
- As a result, when taking steps under rule 5 of the Rules to terminate the Membership of the member, the Co-operative will be terminating *both* the Membership and the Occupancy Agreement, which is necessary at law.
- Rule 5 works as follows:
  - 5.1 – Grounds for Termination – The Membership may be terminated by a resolution of  $\frac{3}{4}$  of *all* directors where the member:

- (a) has engaged in “conduct detrimental” to the Co-operative;
  - (b) has not paid the occupancy charges or other amounts due within a reasonable time *after having received written notice to do so*; or
  - (c) has breached a “material condition” of the Occupancy Agreement and has not rectified that breach within a reasonable time *after having after receiving written notice to do so*.
- 5.2 – “Conduct Detrimental” – Examples are given. They include a broad range of conduct detrimental to the Co-operative.
  - 5.3 – “Material Condition” – Essentially means any condition of the Occupancy Agreement.
  - 5.4 – Notice of Meeting – The member must receive 7 days’ notice of the meeting of the board of directors at which a resolution to terminate the Membership and Occupancy Agreement will be considered.
  - 5.5 – Notice of outcome of the meeting – The member is to receive written notice.
  - 5.6 – Notice of appeal of termination – The member may appeal to the general membership within 7 days of receiving the notice from the board of directors.
  - 5.7 – Appeal of termination – The resolution of the board of directors must be supported by a special resolution where termination was for conduct detrimental and by an ordinary resolution (or other resolution where applicable) where termination was for non-payment or breach of a material condition.
  - 5.8 – Confirmation of termination – The member is to receive written notice, along with various forms required by the *Co-operative Association Act*, which generally explain and encourage the member to commence an appeal in court.
  - 5.9 – Appeal to the Supreme Court of BC – The member may appeal to the Supreme Court of BC.
  - 5.10 – Court filing fees – Where the member has no arrears, the Co-operative must, upon request, pay the court-filing fee. It is presently \$208.00. The cheque is to be made payable to the court.

### **Occupancy Agreement:**

- Section 16 of Occupancy Agreement deals with termination of the Occupancy Agreement where the board of directors may wish to avoid the “normal” procedure under rule 5 of the Rules. Strictly speaking, the termination procedure under section 16 of the Occupancy Agreement may be used for any breach, however it is generally recommended that this procedure only be used for cases of arrears of housing charges.
- Rule 4.3 of the Rules provides that because of termination of the Occupancy Agreement, the Membership is also terminated.

- As a result, when taking steps under section 16 of the Occupancy Agreement to terminate the Membership of the member, the Co-operative will be terminating *both* the Occupancy Agreement and the Membership, which is necessary at law.
- Section 16 works as follows:
  - 16.03 – Termination of Occupancy Agreement – The board of directors may terminate the Occupancy Agreement, without asking the member to attend a board meeting, where the member breaches the Occupancy Agreement or where the member is in arrears and fails to pay the arrears within ten days of receiving written notice to do so from the board of directors.
  - 16.04 – Effective date of termination – If the board of directors terminates the Occupancy Agreement, the member is to receive 30 days’ notice of termination.
- The member has no formal right of appeal to the general membership or to the court under section 16 of the Occupancy Agreement.

**Legal proceedings in the Supreme Court of BC for an order for vacant possession:**

- If the member does not leave when required to do so, the Co-operative must commence legal proceedings and then apply for an “order for vacant possession” of the member’s unit.
- In order to get this court order for vacant possession, the Co-operative must prove to the court that the Membership and Occupancy Agreement were terminated “in accordance with the principles of natural justice” (section 172(2) of the *Co-operative Association Act*). This essentially means that the rules were followed and the member was treated fairly in the process leading up to termination.
- If in addition to not leaving when required to do so, the member also appeals to the court under rule 5, then in order to get the court order for vacant possession, the Co-operative must *also* prove to the court that the decision of the Co-operative was “reasonably” supported by the facts (section 37(3)(b) of the *Co-operative Association Act*).

**“Relief from forfeiture”:**

- In the case of arrears, the judge has the power to overrule the decision of the Co-operative if the member is willing to repay all of the arrears. In doing so, the judge “relieves” the member of “forfeiting” the Membership and Occupancy Agreement.
- The judge has this power even if the Co-operative has in fact followed all of its rules and has acted in accordance with natural justice.
- The circumstances in which the judge will exercise this power are varied. Generally however, if the member has a good payment history and has offered payment of the arrears in full before the court hearing, the judge will often exercise this power.

*(These materials were prepared by Geoffrey Dabbs of Gehlen Dabbs, Barristers & Solicitors. These materials are an overview of key legal principles regarding termination of Membership and Occupancy Agreement and are intended for discussion purposes only and are not intended as legal advice.)*



## Sample notices and forms for use in termination procedures

---

These are samples of forms you can use in termination procedures. The samples may not be appropriate for every situation you encounter. When in doubt, consult your manager or your lawyer. CHF BC assumes no liability for damages arising from the use of these sample forms.

### Termination of Occupancy Agreement

1. Notice of arrears and demand for payment
2. Notice of termination of occupancy agreement

### Termination of Membership

3. Demand for payment
4. Demand for cure of occupancy agreement breach

Note: there is no sample notice based on conduct detrimental to the co-op. Speak to your lawyer when you think this might apply in your case. If you decide to proceed, consider asking your lawyer to write the letter.

5. Notice of directors' meeting
6. Agenda of directors' meeting
7. Minutes of directors' meeting
8. Notice of directors' decision
9. Notice of general meeting
10. Letter to member re: general meeting (optional)
11. Agenda of general meeting
12. Notice to member of general meeting decision

### Forms for use with Sample No. 12

- Form 9: Notice of right to appeal
- Form 73: Notice of appeal if directions required
- Form 75: Notice of hearing of appeal
- Form 76: Notice of abandonment of appeal

**<LETTERHEAD OF THE CO-OPERATIVE>**

<Date>

<Name of member>

<Address of member>

Dear Ms. / Mr. <Name of member>

**Re: Arrears and notice of potential termination**

---

**Notice of your arrears and demand for payment**

This letter is notice to you of your arrears owing to the Co-operative in the amount of \$ \_\_\_\_\_, as of \_\_\_\_\_, 200 \_\_, the particulars of which are as follows:

<Particulars of arrears>

The Co-operative hereby demands that you pay the full amount of your arrears to the Co-operative, by certified cheque or money order, within 10 days of your receipt of this letter.

**Notice of the potential termination of your Occupancy Agreement and deemed withdrawal of your Membership:**

If you have not paid the above amount demanded within ten days of your receipt of this letter, then the Board of Directors of the Co-operative will terminate your Occupancy Agreement, effective 30 days later. That termination of your Occupancy Agreement will then automatically deem you to have given notice of the withdrawal of your Membership, effectively immediately thereafter.

This will be your only warning of the potential termination of your Occupancy Agreement and the deemed withdrawal of your Membership.

**Authority for the position of the Board of Directors:**

If you fail to pay your arrears, and if as a result the Board of Directors terminates your Occupancy Agreement, thereby causing the deemed withdrawal of your Membership, that termination and withdrawal, respectively, will be based upon the following:

1. Pursuant to section 16.03 of the Occupancy Agreement, the Board of Directors may terminate your Occupancy Agreement if you fail to pay your arrears despite having received ten days' written notice to do so.
2. Pursuant to section 16.04 of the Occupancy Agreement, the Board of Directors in those circumstances may give you notice of termination on 30 days' notice.

3. Pursuant to rule 4.3 of the Rules, the termination of the Occupancy Agreement deems you to have given notice of the withdrawal of your Membership, effective immediately.
4. Pursuant to the Rules, you will have no right of appeal to the general membership of a decision of the Board of Directors pursuant to section 16.03 of the Occupancy Agreement.
5. The decision of the Board of Directors will therefore be final.

Please therefore govern your actions accordingly.

Yours truly,

*<Name of the Co-operative>*

Per:

---

**<LETTERHEAD OF THE CO-OPERATIVE>**

<Date>

<Name of member>

<Address of member>

Dear Ms. / Mr. <Name of member>

**Re: Notice of Termination**

---

**Notice of termination of Occupancy Agreement and deemed withdrawal of Membership:**

*This letter is notice that your Membership and Occupancy Agreement are hereby terminated, effective \_\_\_\_\_, 200\_\_.*

This is the result of your failure to pay your arrears owing to the Co-operative, despite written demand from the Co-operative that you do so, including as set out in the Co-operative's letter to you dated \_\_\_\_\_, 200\_\_.

*Accordingly, this letter is your notice that you must vacate your unit by 12:00 noon on \_\_\_\_\_, 200\_\_, by which time you must also:*

1. Remove all personal property from your unit;
2. Leave your unit in a clean and habitable condition and otherwise comply with all move-out procedures of the Co-operative; and
3. Surrender all keys to the Co-operative.

If you have not done so by that time, the Co-operative will *immediately thereafter take legal proceedings against you for a court order that you give vacant possession of your unit to the Co-operative and that you pay the legal fees and costs of the Co-operative.*

**Authority for the position of the Board of Directors:**

The authority for the position of the Board of Directors of the Co-operative as set out in this letter is as follows:

1. Pursuant to section 16.03 of the Occupancy Agreement, the Board of Directors may terminate your Occupancy Agreement if you fail to pay your arrears despite having received ten days' written notice to do so.
2. Pursuant to section 16.04 of the Occupancy Agreement, the Board of Directors in those circumstances may give you notice of termination on 30 days' notice.

3. Pursuant to rule 4.3 of the Rules, the termination of the Occupancy Agreement deems you to have given notice of the withdrawal of your Membership, effective immediately.
4. Pursuant to the Rules, you have no right of appeal to the general membership of a decision of the Board of Directors pursuant to section 16.03 of the Occupancy Agreement.
5. The decision of the Board of Directors is therefore final.

***Please therefore govern your actions accordingly and ensure that you vacate your unit, in accordance with the terms of this letter, by \_\_\_\_\_, 200\_\_, failing which the Co-operative will take legal proceedings against you for a court order that you give vacant possession of your unit to the Co-operative and that you pay the legal fees and costs of the Co-operative.***

Yours truly,

<Name of the Co-operative>

Per:

\_\_\_\_\_





## Demand for payment

---

A demand for payment, however it is worded, must:

- demand payment of the amount owed by the member
- specify the amount outstanding
- give the member a deadline for payment.

[on co-op letterhead with name and address of co-op]

Date: \_\_\_\_\_

Name: (member's full name) \_\_\_\_\_

Unit #: (member's full address) \_\_\_\_\_

Dear \_\_\_\_\_,

Please be advised that the Co-op has not received your housing charge for the month of \_\_\_\_\_ in the amount of \_\_\_\_\_. The Co-op must receive payment in full by \_\_\_\_\_ (date) or the Co-op may take further action as provided in the Co-op's Rules and Occupancy Agreement, including termination of membership and the right to occupy your unit in the Co-op.

Yours truly,

\_\_\_\_\_  
Position (e.g. co-ordinator or treasurer)  
[name of co-op]



## Demand for cure of occupancy agreement breach

---

A demand to cure a breach of the occupancy agreement, however it is worded, must:

- indicate what the breach is and what section of the Occupancy agreement it contravenes.
- demand that the breach be corrected and specify what must be done.
- give the member a deadline to comply.

Consult with your manager or lawyer if you are in doubt about what to say.

[on co-op letterhead with name and address of co-op]

Date: \_\_\_\_\_

Name: (member's full name) \_\_\_\_\_

Unit #: (member's full address) \_\_\_\_\_

Dear \_\_\_\_\_,

Please be advised that [your installation of a satellite television dish to the exterior of your unit] is a contravention of section \_\_\_\_\_ of the Occupancy Agreement of \_\_\_\_\_ Housing Co-operative. You must [remove the satellite dish and restore the exterior of the unit to its original condition] by \_\_\_\_\_ (date) or the Co-op may take further action as provided in the Co-op's Rules and Occupancy Agreement, including termination of membership and the right to occupy your unit in the Co-op.

Yours truly,

\_\_\_\_\_  
Position  
[name of co-op]



## Notice of directors' meeting

---

The notice should be given in this form to the member at least 7 days clear of the meeting, i.e. do not count the day notice is given but do count the day of the meeting. (ref. Model Rule 26.4)

[on co-op letterhead with name and address of co-op]

Date: \_\_\_\_\_

Name: (member's full name) \_\_\_\_\_

Unit #: (member's full address) \_\_\_\_\_

Dear \_\_\_\_\_,

TAKE NOTICE that a meeting of the directors of [full legal name of co-op] will be held as follows

Date:

Time:

Place:

for the purpose of considering a resolution to terminate your membership in the co-op for **[non-payment of occupancy charges in the amount of \_\_\_\_\_ for the month of \_\_\_\_\_]\*.**

You are entitled to attend this meeting, either personally or by or with agent or counsel, to make submissions at the meeting.

\_\_\_\_\_  
Secretary [or other officer]  
[name of co-op]

\* Insert the grounds for termination. For example:

“breach of a material condition of the Occupancy Agreement, namely section \_\_\_\_\_ regarding \_\_\_\_\_.”

For conduct detrimental to the co-operative, consult your lawyer.



## Agenda of directors' meeting

---

### Board meeting

#### Agenda

1. Call to order, establish quorum
2. Adopt agenda
3. Presentation of issue by board representative
4. Response from member (or representative)
5. Questions  
  
[member is excused after this]
6. Discussion and resolution  
(a resolution to terminate membership requires approval of  $\frac{3}{4}$  of directors currently holding office)
7. Close of meeting

[Follow-up notice]

Don't forget that the meeting must be conducted according to the principles of natural justice.



## Minutes of director's meeting

---

### Board meeting

### Minutes

Minutes of a meeting of the board of directors

ABC Housing Co-op

Date:

Place:

Present: names of directors present

Absent or regrets: names of absent directors

Guests: name of any non-directors present

Meeting called to order at 7:30 PM

The Board considered the matter of termination of membership of member \_\_\_\_\_ on the grounds of \_\_\_\_\_. A presentation was made by director \_\_\_\_\_. A presentation was made by member \_\_\_\_\_. There was discussion. Member \_\_\_\_\_ left the meeting. It was resolved that the membership of member \_\_\_\_\_ be terminated on the grounds of \_\_\_\_\_. Carried by the required 3/4 of all the directors.

There being no further business, the meeting was adjourned at 9:00 PM.



## Notice of directors' decision

---

### Notice of board decision about termination of membership

Within 7 days of the directors' meeting, the directors must notify the member in writing of their decision. The letter must indicate if the resolution for termination was:

- withdrawn and that the termination will therefore not proceed
- defeated because it did not receive the support of 3/4 of all directors and that the termination will therefore not proceed
- passed by a majority of at least 3/4 of all directors. The notice should state the date that the member must leave the unit. The co-op must give the member a reasonable amount of time to leave – usually until the end of the following month.

The notice *must* tell the member about the appeal process.

[on co-op letterhead with name and address of co-op]

[Date]

[Member's full name and address]

TAKE NOTICE that, at the meeting of the Board of Directors of [full legal name of co-op] held on [date that meeting took place], the directors considered a resolution to terminate your membership in the co-op.

The resolution to terminate your membership in [full legal name of co-op] was **passed by the majority of directors required under the *Cooperative Association Act***.

**The *Cooperative Association Act* provides that you may appeal this decision of the directors to the next meeting of members, provided that you deliver a written notice of appeal to the co-op within seven days of your receipt of this letter.**

**If you do not provide a written notice of appeal within the stipulated period, this letter is notice to you that you must give up your occupancy of [unit number and address of unit occupied by member] by no later than noon on [date]. You remain responsible for all occupancy charges accruing until you actually vacate your unit.\***

Dated this xx day of yyy, 200z

---

**Secretary [or other officer]**  
[name of co-op]

\* If the directors did not adopt the resolution, replace the last three paragraphs with one of the following, whichever applies:

“The resolution to terminate your membership in [full legal name of co-op] was withdrawn. The termination will not proceed.”

**Or**

“The resolution to terminate your membership in [full legal name of co-op] was defeated because it did not receive the support of 3/4 of all directors. The termination will not proceed.”



## Notice of general meeting

---

### Notice of general meeting

[Today's date]

Take notice that there will be a general meeting of the members of  
\_\_\_\_\_ [name of housing co-operative] on  
\_\_\_\_\_, 20\_\_ at [time] at [address/place], BC.

The purpose of the meeting will be:

- to consider and to vote on a resolution to confirm the decision of the Board of Directors to terminate the membership of \_\_\_\_\_ [name of member] for [non-payment of occupancy charges].\*

\_\_\_\_\_  
Board of Directors

\* or for breach of a material condition of the occupancy agreement being section \_\_\_\_ of the agreement.

\* or for conduct detrimental to the co-operative being \_\_\_\_\_. [The co-op may wish to consult its legal advisor on the wording for conduct detrimental. When the ground for termination is conduct detrimental, the notice must state that the decision requires a special resolution. The notice period for a special resolution is at least 14 days.]

Don't forget to give enough notice time – see your co-op's Rules. The co-op must give the notice to all members in one of the following ways:

- ordinary mail
- giving the notice to each member personally
- other ways, as long as they are set out in the co-op's Rules

**Don't forget that the meeting must be conducted according to the principles of natural justice.**





## Letter to member re: general meeting (optional)

---

The Co-op Act does not require the co-op to send this kind of letter. You could send this letter to the member who is appealing the termination. It would go with the notice of meeting, which the co-op must send.

[on co-op letterhead with name and address of co-op]

[Date]

To: [member's full name and address]

We are attaching a notice of general meeting for \_\_\_\_\_ [date].

You are entitled to attend this general meeting, either personally or by or with an agent or counsel, to make submissions at the meeting.

[According to Section 141 (2) (c) of the *Cooperative Association Act* the confidentiality provisions in relation to your financial information do not apply “at a general meeting at which a member is appealing a decision of the directors of an association to terminate the member’s membership and a ground of termination is the failure to pay money due to the association or a breach of a material condition relating to financial information to be provided by the association.”]\*

\_\_\_\_\_  
Secretary [or other officer]  
[name of co-op]

\* Take out this paragraph if it does not apply.

Attach the notice of the general meeting.



## Agenda of general meeting

---

### Members meeting (Appeal)

#### Date and Location

#### AGENDA

1. Call to order, establish quorum
2. Appoint chairperson [only if required by Rules]
3. Adopt agenda
4. Explanation of meeting procedure and rules of order
5. Meeting resolution:  
  
    THAT the members confirm the decision of the board of directors to terminate the membership of [name(s)].
6. Presentation from board of directors, followed by questions
7. Presentation from [member name(s)] or representative, followed by questions
8. Voting:
  - a) explanation of voting procedures
  - b) appointment of scrutineers
  - c) distribution of ballots
  - d) casting of ballots
  - e) counting of ballots
  - f) scrutineers' record
9. Announcement of results
10. Disposition of ballots
11. If necessary, resolution to set date for members to vacate unit
12. Close of meeting



## Notice to member of general meeting decision

---

If the members confirm the board's decision to terminate someone's membership, notice of that decision must be served on the member promptly. There are two types of notices (A and B), depending on the grounds for termination.

**Notice A** is for use when the grounds for termination are:

- non-payment of housing charges or other money owed to the co-op, or
- breach of a material condition of the occupancy agreement.

In this case the general meeting would have passed a resolution requiring a simple majority, unless the co-op's Rules require a greater majority for this kind of decision.

**Notice B** is for use when the grounds for termination are:

- conduct detrimental to the co-op.

In this case the general meeting would have passed a special resolution.

Whichever notice is used, you should type it on co-op letterhead and fill in the appropriate information.



**Notice A** is for use when the grounds for termination are:

- non-payment of housing charges or other money owed to the co-op, or
- breach of a material condition of the occupancy agreement.

**[FULL NAME OF THE CO-OPERATIVE]**  
**[FULL ADDRESS OF CO-OP REGISTERED OFFICE]**  
**[CO-OP TELEPHONE:]**

[Date]

[Member's full name and address]

TAKE NOTICE that, at the general meeting of [full legal name of co-op] held on [date that meeting took place], the members considered a resolution to confirm the decision of the Board of Directors to terminate your membership in the Co-op.

The resolution to confirm the board's decision to terminate your membership in [full legal name of co-op] was passed by [**ordinary resolution as required under**]\* the *Cooperative Association Act*.

The *Cooperative Association Act* provides that you may appeal this decision. Form 9: Notice of Right of Appeal is attached along with Forms 73, 75 and 76 of Appendix A of the Supreme Civil Court Rules, B.C. Reg. 241/2010.

If you do not appeal the decision within the stipulated period, this letter is notice to you that you must give up your occupancy of [unit number and address of unit occupied by member] by no later than noon on [date]. You remain responsible for all occupancy charges accruing until you actually vacate your unit.

Dated this xx day of yyy, 201z

---

Secretary [or other officer]  
[name of co-op]



**Notice B** is for use when the grounds for termination are:

- conduct detrimental to the co-op.

**[FULL NAME OF THE CO-OPERATIVE]**  
**[FULL ADDRESS OF CO-OP REGISTERED OFFICE]**  
**[CO-OP TELEPHONE:]**

[Date]

[Member's full name and address]

TAKE NOTICE that, at the general meeting of [full legal name of co-op] held on [date that meeting took place], the members considered a resolution to confirm the decision of the Board of Directors to terminate your membership in the Co-op.

The resolution to confirm the board's decision to terminate your membership in [full legal name of co-op] was passed by special resolution as required under the *Cooperative Association Act*.

The *Cooperative Association Act* provides that you may appeal this decision. Form 9: Notice of Right of Appeal is attached along with Forms 73, 75 and 76 of Appendix A of the Supreme Civil Court Rules, B.C. Reg. 241/2010.

If you do not appeal the decision within the stipulated period, this letter is notice to you that you must give up your occupancy of [unit number and address of unit occupied by member] by no later than noon on [date]. You remain responsible for all occupancy charges accruing until you actually vacate your unit.

Dated this xx day of yyy, 201z

---

Secretary [or other officer]  
[name of co-op]



## Forms for use with notice to member of general meeting decision

---

Sample No. 12 (option A or B) is to be used to notify a member that a general meeting of the co-op has confirmed the board's decision to terminate his or her membership.

You must also attach four additional forms to that notice. The forms are described below. Copies are attached.

### **Form 9** – Notice of Right of Appeal.

This form is from Schedule C of the *Cooperative Association Regulation*. As of the date of this guide, the Registrar does not have this form in PDF (portable document format) on its website.

Complete this form, adding the full name and address of the person you are sending this to at the top of the page after "To:"

In the first paragraph of the form:

- enter the day, month and year of the general meeting where the decision was made
- enter the legal name of your housing co-operative
- strike out either "ordinary" or "special" before "resolution", depending on which type of resolution was passed. If your Rules call for a majority greater than a simple majority, strike out "ordinary/special" and add after "resolution" "requiring at least a majority of \_\_\_\_%."

The following three forms are available from the Ministry of Attorney General website at [www.ag.gov.bc.ca/courts](http://www.ag.gov.bc.ca/courts). Go to Forms under Resources, then to Supreme Court and Civil. You can also obtain the forms at your local courthouse. Look up "Court Services" in the BC Government blue pages of your telephone directory. The forms are from Appendix A of the Supreme Court Civil Rules. Do not fill out these forms. The terminated member will fill them out if s/he decides to use them with the court.

### **Form 73** – Notice of Appeal if Directions Required

### **Form 75** – Notice of Hearing of Appeal

### **Form 76** – Notice of Abandonment of Appeal

Form 9

To: [full name and address of person].....

**NOTICE OF RIGHT TO APPEAL**

*Cooperative Association Act (Section 37 (2.1) )*

On the ..... day of ....., 20....., [date of general meeting at which the resolution confirming the termination of membership by the directors was passed] the..... [name of housing cooperative] confirmed by ordinary/special resolution [indicate type of resolution] the decision of the directors to terminate your membership in the housing cooperative.

You may appeal the termination of your membership to the Supreme Court of British Columbia pursuant to section 37 (3) of the *Cooperative Association Act* on any of the following grounds:

- the housing cooperative failed to observe the principles of natural justice in terminating the membership,
- the decision of the housing cooperative is not reasonably supported by the facts, or
- the decision of the housing cooperative is not authorized by section 35 of the *Cooperative Association Act*.

**Information about Appealing a Termination of Membership\***

- 1 The appeal of a termination of membership in a housing cooperative is governed by the *Cooperative Association Act and Rule 49 of the Supreme Court Rules*. If you wish to appeal the decision to terminate your membership in the housing cooperative, you must first file a Notice of Appeal (Form 73, attached) in a Supreme Court registry within 30 days after the day you receive this Notice. (If you do not know where nearest the court registry is, consult the provincial government listings in the telephone directory.)
- 2 The Notice of Appeal is a notice to the housing cooperative that you are appealing its decision to terminate your membership and that a hearing has been scheduled with a judge to determine how the appeal should proceed. This hearing is **not** the appeal itself; it is an initial application to a judge for directions as to how the appeal should proceed. (The judge may give any direction he or she considers necessary for the proper hearing and determination of the appeal. The judge may, for example, order that certain documents be produced at the appeal or set time limits within which you and/or the housing cooperative must take certain steps.)
- 3 After completing the Notice of Appeal, except for the section that sets out the place and time of the hearing, the Notice of Appeal is ready to be filed at the court registry. On payment of a filing fee<sup>†</sup>, a date for the hearing will be set by the court registry when you present the Notice of Appeal for filing.
- 4 Within 14 days after the date on which you file your Notice of Appeal, you must inform the housing cooperative of your appeal and the date scheduled for a hearing by serving a copy of the Notice of Appeal on the housing cooperative. (The Notice of Appeal may be served on the housing cooperative by leaving it at its registered office; sending it by registered mail to the registered office of the housing cooperative; personally serving it on the directors or officers; or serving it in any manner listed in Rule

11 of the Supreme Court Rules.)

- 5 You are advised to serve the Notice of Appeal on the housing cooperative immediately after it has been filed. (The Supreme Court Rules require that there must be at least 7 days between the time the cooperative is served with a Notice of Appeal and the day of the hearing.)
- 6 After the initial hearing at which the judge issues directions as to how the appeal is to proceed, you must obtain a date from the court registrar for the hearing of the appeal. This is best accomplished in consultation with the housing cooperative to ensure that one of its representatives will be available to attend the hearing.
- 7 After the registrar gives you a date for the hearing of the appeal, you must file with the registrar a Notice of Hearing of Appeal (Form 75, attached) and serve a copy of it on the housing cooperative. (The Notice of Hearing of Appeal may be served in the same manner as the Notice of Appeal.) The appeal of your termination of membership will be heard by a judge at the time and place set out in the Notice of Hearing of Appeal, and you will have an opportunity to present your appeal in accordance with any directions that were issued by the judge at the initial hearing for directions.
- 8 If after you've filed or served the Notice of Hearing of Appeal you decide not to proceed with the appeal, you must file a Notice of Abandonment of Appeal (Form 76, attached) at the court registry and serve a copy of the Notice on the housing cooperative. Failure to properly notify the court registry and the housing cooperative may result in your having to pay the costs of an application to the court by the housing cooperative to dismiss the appeal and any other costs the court awards against you.
- 9 If you do not appeal the decision to terminate your membership, the housing cooperative is entitled to apply for an order of possession of the residential premises under section 172 of the *Cooperative Association Act*

*\* You may represent yourself in the appeal or obtain legal representation, or you may have some other person represent you, provided that the person does not receive any compensation from you for acting on your behalf.*

*Legal assistance is available at no cost to certain persons. To determine whether you are eligible for such assistance, you must contact the Legal Services Society. Since appeals must be commenced within 30 days after the date on which you received this Notice, you are advised to contact the Legal Services Society as soon as possible.*

*† The housing cooperative is required to pay the fee for filing the Notice of Appeal if you are not in arrears for any monthly housing charge. If there is a dispute about the amount of the monthly housing charge the housing cooperative is still required to pay the filing fee provided that you are not in arrears for the amount of the monthly housing charge that is not in dispute.*

*You must make your request to the housing cooperative in writing within 10 days of receiving the Notice of Right to Appeal. If the housing cooperative pays the filing fee and you are not successful in your appeal, the housing cooperative is entitled to recover the amount of the filing fee from you.*

*If you are not eligible to require the housing cooperative to pay the filing fee, you may wish to contact the Legal Services Society for information about applying for legal aid or a court registry for details as to how to apply for indigent status. Since appeals must be commenced within 30 days after the date you received this Notice, you are advised to investigate the various options for payment of the filing fee as soon as possible.*



Form 73 (Rule 18-3(2))

No. *[number]*  
*[specify]* Registry

In the Supreme Court of British Columbia

Between

Appellant

and

*[person or body appealed from]*

Respondent

NOTICE OF APPEAL IF DIRECTIONS REQUIRED

*[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]*

To: *[name of person or body appealed from]*

And to: *[name(s) of all other persons who may be affected by the order sought]*

WHEREAS on *[month, day, year]*, *[name of person or body from whose decision/direction/order appeal is brought]* made the following  decision  direction  order *[add, if applicable, in [Action Number/File Number]]*: *[state concisely the decision, direction or order]*;

AND WHEREAS an appeal lies to  this court  a judge of this court under *[name and section of enactment allowing appeal]*;

TAKE NOTICE that *[name(s) of appellant(s)]* appeal(s) from the  decision  direction  order on the following grounds: *[concisely set out grounds of appeal]*;

AND TAKE NOTICE that on *[month, day, year]*, at the courthouse at *[address]*, an application will be made to the presiding judge at *[time of day]* for directions as to the conduct of the appeal *[or as the case may be]*.

If you intend to oppose the appeal, you or your lawyer must

- (a) file a Notice of Interest in Form 70 in the above-named registry of this court within the time for Notice of Interest described below, and
- (b) serve a copy of the Notice of Interest on the appellant's(s') address for service set out in this Notice of Appeal.

TIME FOR NOTICE OF INTEREST

A Notice of Interest must be filed and served on the appellant(s),

- (a) if you reside in British Columbia, within 7 days after the date on which a copy of the filed notice of appeal was served on you,
- (b) if you reside anywhere else within Canada, within 21 days after the date on which a copy of the filed notice of appeal was served on you,
- (c) if you reside in the United States of America, within 28 days after the date on which a copy of the filed notice of appeal was served on you,
- (d) if you reside elsewhere, within 42 days after the date on which a copy of the filed notice of appeal was served on you, or
- (e) if the time for Notice of Interest has been set by order of the court, within that time.

The appellant's(s') address for service is: *[Set out the street address of the address for service. One or both of a fax number and an e-mail address may be given as additional addresses for service.]*

Fax number for service (if any): *[fax number]*

E-mail address for service (if any): *[e-mail address]*

Dated: *[month, day, year]*.

\_\_\_\_\_  
Signature of

appellant       lawyer for appellant(s)

*[type or print name]*

Form 75 (Rule 18-3(9))

*[style of proceeding]*

NOTICE OF HEARING OF APPEAL

*[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]*

TAKE NOTICE that this appeal will be heard at *[time of day]* on *[month, day, year]*, at *[address]*.

\_\_\_\_\_  
Registrar

Time estimate: *[specify]*

Dated: *[month, day, year]*.

\_\_\_\_\_  
Signature of

appellant     lawyer for appellant(s)

*[type or print name]*

Form 76 (Rule 18-3(10))

*[style of proceeding]*

NOTICE OF ABANDONMENT OF APPEAL

*[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]*

TAKE NOTICE that the appellant, *[name]*, abandons this appeal.

*[Check the correct box and complete any required information.]*

- This appeal has not yet been set for hearing.
- The date scheduled for the hearing of this appeal is *[month, day, year]*.

Dated: *[month, day, year]*.

\_\_\_\_\_  
Signature of

appellant     lawyer for appellant(s)

*[type or print name]*