

Chapter II-E - Authority, Co-ownership and Priority

Verify authority, ostensible ownership, co-owner rights, priority and notice before accepting title.

Authors: CA Nikhil Gupta and Kajri Singh | Legal review cut-off: 2026-07-18 | Professional Corpus Batch 07

Dedicated Finin2min Summary - Chapter in 2 Minutes

- Section 38: Transfer by person authorised only in certain circumstances - convert every statutory limb into evidence-backed transaction controls.
- Section 39: Transfer where third person has maintenance right - convert every statutory limb into evidence-backed transaction controls.
- Section 40: Restrictive obligation annexed to ownership - convert every statutory limb into evidence-backed transaction controls.
- Section 41: Transfer by ostensible owner - convert every statutory limb into evidence-backed transaction controls.
- Verify authority, ostensible ownership, co-owner rights, priority and notice before accepting title.
- Apply the current official Act and transaction-date State stamp, registration, land, tenancy, RERA and procedural law.

Current statutory text / controlled source map

Section 38 - Transfer by person authorised only in certain circumstances.
Section 39 - Transfer where third person has maintenance right.
Section 40 - Restrictive obligation annexed to ownership.
Section 41 - Transfer by ostensible owner.
Section 42 - Transfer by person authorised to revoke former transfer.
Section 43 - Feeding the grant by estoppel.
Section 44 - Transfer by one co-owner.
Section 45 - Joint transfer for consideration.
Section 46 - Transfer by persons with distinct interests.
Section 47 - Transfer by co-owners of share in common property.
Section 48 - Priority of rights created by transfer.
Section 49 - Transferee right under insurance policy.
Section 50 - Rent paid to holder under defective title.
Section 51 - Improvements by bona fide holder under defective title.

Section-by-section provision map

Provision	Subject / status	Finin2min clause-by-clause decode and implementation
Section 38	Transfer by person authorised only in certain circumstances <i>Operative subject to current official/State law</i>	Section 38 governs transfer by person authorised only in certain circumstances. Identify actor, property/right, transfer event, statutory conditions, exceptions, notice and legal consequence within the title, authority, co-ownership and priority framework. Implementation: Record title and authority, transaction dates, consideration, possession, instrument form, stamp/registration status, notice, approvals and third-party claims. Obtain State-specific review before execution or enforcement. Evidence: Official source snapshot; title chain; encumbrance/litigation search; authority; executed instrument; valuation; payment and tax proof; possession/delivery record; notices; registration receipt.
Section 39	Transfer where third person has maintenance right <i>Operative subject to current official/State law</i>	Section 39 governs transfer where third person has maintenance right. Identify actor, property/right, transfer event, statutory conditions, exceptions, notice and legal consequence within the title, authority, co-ownership and priority framework. Implementation: Record title and authority, transaction dates, consideration, possession, instrument form, stamp/registration status, notice, approvals and third-party claims. Obtain State-specific review before execution or enforcement. Evidence: Official source snapshot; title chain; encumbrance/litigation search; authority; executed instrument; valuation; payment and tax proof; possession/delivery record; notices; registration receipt.
Section 40	Restrictive obligation annexed to ownership <i>Operative subject to current official/State law</i>	Section 40 governs restrictive obligation annexed to ownership. Identify actor, property/right, transfer event, statutory conditions, exceptions, notice and legal consequence within the title, authority, co-ownership and priority framework. Implementation: Record title and authority, transaction dates, consideration, possession, instrument form, stamp/registration status, notice, approvals and third-party claims. Obtain State-specific review before execution or enforcement. Evidence: Official source snapshot; title chain; encumbrance/litigation search; authority; executed instrument; valuation; payment and tax proof; possession/delivery record; notices; registration receipt.

Provision	Subject / status	Finin2min clause-by-clause decode and implementation
Section 41	Transfer by ostensible owner <i>Operative subject to current official/State law</i>	Section 41 governs transfer by ostensible owner. Identify actor, property/right, transfer event, statutory conditions, exceptions, notice and legal consequence within the title, authority, co-ownership and priority framework. Implementation: Record title and authority, transaction dates, consideration, possession, instrument form, stamp/registration status, notice, approvals and third-party claims. Obtain State-specific review before execution or enforcement. Evidence: Official source snapshot; title chain; encumbrance/litigation search; authority; executed instrument; valuation; payment and tax proof; possession/delivery record; notices; registration receipt.
Section 42	Transfer by person authorised to revoke former transfer <i>Operative subject to current official/State law</i>	Section 42 governs transfer by person authorised to revoke former transfer. Identify actor, property/right, transfer event, statutory conditions, exceptions, notice and legal consequence within the title, authority, co-ownership and priority framework. Implementation: Record title and authority, transaction dates, consideration, possession, instrument form, stamp/registration status, notice, approvals and third-party claims. Obtain State-specific review before execution or enforcement. Evidence: Official source snapshot; title chain; encumbrance/litigation search; authority; executed instrument; valuation; payment and tax proof; possession/delivery record; notices; registration receipt.
Section 43	Feeding the grant by estoppel <i>Operative subject to current official/State law</i>	Section 43 governs feeding the grant by estoppel. Identify actor, property/right, transfer event, statutory conditions, exceptions, notice and legal consequence within the title, authority, co-ownership and priority framework. Implementation: Record title and authority, transaction dates, consideration, possession, instrument form, stamp/registration status, notice, approvals and third-party claims. Obtain State-specific review before execution or enforcement. Evidence: Official source snapshot; title chain; encumbrance/litigation search; authority; executed instrument; valuation; payment and tax proof; possession/delivery record; notices; registration receipt.
Section 44	Transfer by one co-owner <i>Operative subject to current official/State law</i>	Section 44 governs transfer by one co-owner. Identify actor, property/right, transfer event, statutory conditions, exceptions, notice and legal consequence within the title, authority, co-ownership and priority framework. Implementation: Record title and authority, transaction dates, consideration, possession, instrument form, stamp/registration status, notice, approvals and third-party claims. Obtain State-specific review before execution or enforcement. Evidence: Official source snapshot; title chain; encumbrance/litigation search; authority; executed instrument; valuation; payment and tax proof; possession/delivery record; notices; registration receipt.
Section 45	Joint transfer for consideration <i>Operative subject to current official/State law</i>	Section 45 governs joint transfer for consideration. Identify actor, property/right, transfer event, statutory conditions, exceptions, notice and legal consequence within the title, authority, co-ownership and priority framework. Implementation: Record title and authority, transaction dates, consideration, possession, instrument form, stamp/registration status, notice, approvals and third-party claims. Obtain State-specific review before execution or enforcement. Evidence: Official source snapshot; title chain; encumbrance/litigation search; authority; executed instrument; valuation; payment and tax proof; possession/delivery record; notices; registration receipt.
Section 46	Transfer by persons with distinct interests <i>Operative subject to current official/State law</i>	Section 46 governs transfer by persons with distinct interests. Identify actor, property/right, transfer event, statutory conditions, exceptions, notice and legal consequence within the title, authority, co-ownership and priority framework. Implementation: Record title and authority, transaction dates, consideration, possession, instrument form, stamp/registration status, notice, approvals and third-party claims. Obtain State-specific review before execution or enforcement. Evidence: Official source snapshot; title chain; encumbrance/litigation search; authority; executed instrument; valuation; payment and tax proof; possession/delivery record; notices; registration receipt.
Section 47	Transfer by co-owners of share in common property <i>Operative subject to current official/State law</i>	Section 47 governs transfer by co-owners of share in common property. Identify actor, property/right, transfer event, statutory conditions, exceptions, notice and legal consequence within the title, authority, co-ownership and priority framework. Implementation: Record title and authority, transaction dates, consideration, possession, instrument form, stamp/registration status, notice, approvals and third-party claims. Obtain State-specific review before execution or enforcement. Evidence: Official source snapshot; title chain; encumbrance/litigation search; authority; executed instrument; valuation; payment and tax proof; possession/delivery record; notices; registration receipt.

Provision	Subject / status	Finin2min clause-by-clause decode and implementation
Section 48	Priority of rights created by transfer <i>Operative subject to current official/State law</i>	Section 48 governs priority of rights created by transfer. Identify actor, property/right, transfer event, statutory conditions, exceptions, notice and legal consequence within the title, authority, co-ownership and priority framework. Implementation: Record title and authority, transaction dates, consideration, possession, instrument form, stamp/registration status, notice, approvals and third-party claims. Obtain State-specific review before execution or enforcement. Evidence: Official source snapshot; title chain; encumbrance/litigation search; authority; executed instrument; valuation; payment and tax proof; possession/delivery record; notices; registration receipt.
Section 49	Transferee right under insurance policy <i>Operative subject to current official/State law</i>	Section 49 governs transferee right under insurance policy. Identify actor, property/right, transfer event, statutory conditions, exceptions, notice and legal consequence within the title, authority, co-ownership and priority framework. Implementation: Record title and authority, transaction dates, consideration, possession, instrument form, stamp/registration status, notice, approvals and third-party claims. Obtain State-specific review before execution or enforcement. Evidence: Official source snapshot; title chain; encumbrance/litigation search; authority; executed instrument; valuation; payment and tax proof; possession/delivery record; notices; registration receipt.
Section 50	Rent paid to holder under defective title <i>Operative subject to current official/State law</i>	Section 50 governs rent paid to holder under defective title. Identify actor, property/right, transfer event, statutory conditions, exceptions, notice and legal consequence within the title, authority, co-ownership and priority framework. Implementation: Record title and authority, transaction dates, consideration, possession, instrument form, stamp/registration status, notice, approvals and third-party claims. Obtain State-specific review before execution or enforcement. Evidence: Official source snapshot; title chain; encumbrance/litigation search; authority; executed instrument; valuation; payment and tax proof; possession/delivery record; notices; registration receipt.
Section 51	Improvements by bona fide holder under defective title <i>Operative subject to current official/State law</i>	Section 51 governs improvements by bona fide holder under defective title. Identify actor, property/right, transfer event, statutory conditions, exceptions, notice and legal consequence within the title, authority, co-ownership and priority framework. Implementation: Record title and authority, transaction dates, consideration, possession, instrument form, stamp/registration status, notice, approvals and third-party claims. Obtain State-specific review before execution or enforcement. Evidence: Official source snapshot; title chain; encumbrance/litigation search; authority; executed instrument; valuation; payment and tax proof; possession/delivery record; notices; registration receipt.

Finin2min implementation explanation

Classify the property interest, parties, authority, consideration, possession and intended legal result. Complete title, encumbrance, litigation and State-law diligence. Select the correct instrument, stamp, registration and perfection route. Block payment or possession until closing conditions and evidence are complete.

Practical examples and calculations

Scenario: A purchaser pays an advance under an agreement while title searches reveal an earlier charge and pending litigation. Closing must be blocked until authority, encumbrance release, litigation risk, stamp value and registration are resolved.

Calculation/control	Method	Evidence
Purchase price	Reconcile consideration, advance, retention, tax deductions, adjustments and closing balance.	Agreement, ledger, bank and tax proof
Stamp/registration	Apply State market value, rate, surcharge, registration fee and adjudication.	State schedule and valuation
Loss exposure	Separate refund, interest, direct loss, contractual damages, specific relief and mitigation.	Contract, notices and market evidence

Practical transaction application

1. Classify the transaction and every interest. 2. Complete title, authority, encumbrance, litigation, land-use and possession diligence. 3. Map the Act and State overlays to the instrument. 4. Reconcile consideration, taxes, possession and completion. 5. Preserve closing and enforcement evidence.

Authority, consent and execution controls

Confirm legal identity, capacity, title, board/partner/trustee/co-owner/lender consents, power-of-attorney scope, execution, attestation, witnessing and document custody.

Stamp duty and registration alerts

Apply current State instrument classification, market value, duty, surcharge, registration fee, adjudication and impounding rules. Registration does not cure defective title or prohibited transfer.

Evidence and document-retention checklist

Retain title chain, searches, authority, valuation, tax and KYC records, executed instrument, witness evidence, registration receipt, consideration, possession, originals handover and notices.

Performance, delivery and payment controls

Define conditions precedent, long-stop date, escrow/retention, possession condition, risk transfer, taxes, apportionments, originals handover and post-closing filings.

Breach, loss, mitigation and remedy framework

Separate invalidity, rescission, specific performance, injunction, possession, redemption, foreclosure/sale, damages, restitution and indemnity. Prove causation, market value and mitigation.

Limitation and forum controls

Select relief-specific limitation and forum: civil/Commercial Court, RERA, DRT/DRAT, NCLT, consumer, revenue or arbitration. Compute notice, cure, termination, appeal and enforcement clocks.

Arbitration and mediation interface

Assess arbitrability, rights in rem, statutory forums, third-party interests, interim protection, lis pendens, possession and limitation. Preserve source and evidence during settlement.

Company, partnership, GST and tax overlays

Apply entity authority, charges, RERA, GST, TDS, capital gains, valuation, FEMA, benami, PMLA/KYC, insolvency moratorium and secured-creditor priority.

Finin2min Q&A;

First classify the transaction and title. The common failure is execution or payment before State stamp/registration and third-party rights are verified. A contract does not always transfer title. Maintain a reproducible source, title, authority, closing and remedy file.

Chapter-specific decision flowchart

Classify transaction -> verify title/capacity -> select section and State overlay -> check form/stamp/registration -> close and preserve evidence -> manage breach, remedy and limitation.

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Finin2min decision flow - verify current official and State law before reliance

Official source: <https://www.indiacode.nic.in/bitstream/123456789/2338/1/A1882-04.pdf>

Legal-use note: verify current official and State law and obtain matter-specific advice before execution, registration, enforcement or litigation.