

HomeBaile > ActsAchtanna > 1976 > Family Home Protection Act, 1976

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Number 27 of 1976

FAMILY HOME PROTECTION ACT, 1976

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Family home.
3. Alienation of interest in family home.
4. Consent of spouse.
5. Conduct leading to loss of family home.
6. Payment of outgoings on family home.
7. Adjournment of proceedings by mortgagee or lessor for possession or sale of family home.
8. Modification of terms of mortgage or lease as to payment of capital sum.
9. Restriction on disposal of household chattels.
10. Jurisdiction.
11. Joinder of parties.
12. Registration of notice of existence of marriage.
13. Restriction of section 59 (2) of Registration of Title Act, 1964.
14. Creation of joint tenancy in family home: exemption from stamp duty and fees.
15. Offences.
16. Short title.

Acts Referred to

<u>Statute of Limitations, 1957</u>	1957, No. 6.
<u>Conveyancing Act, 1882</u>	1882, c. 39.
<u>Married Women's Status Act, 1957</u>	1957, No. 5.
<u>Guardianship of Infants Act, 1964</u>	1964, No. 7.
<u>Family Law (Maintenance of Spouses and Children) Act, 1976</u>	1976, No. 11.
Registration of Deeds Act, 1707	1707, c. 2.
<u>Registration of Title Act, 1964</u>	1964, No. 16.



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FAMILY HOME PROTECTION ACT, 1976

AN ACT TO PROVIDE FOR THE PROTECTION OF THE FAMILY HOME AND FOR RELATED MATTERS. [12th July, 1976]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1.—(1) In this Act, except where the context otherwise requires—

“conduct” includes an act and a default or other omission;

“conveyance” includes a mortgage, lease, assent, transfer, disclaimer, release and any other disposition of property otherwise than by a will or a *donatio mortis causa* and also includes an enforceable agreement (whether conditional or unconditional) to make any such conveyance, and “convey” shall be construed accordingly;

“the court” means the court having jurisdiction under section 10;

“dependent child of the family”, in relation to a spouse or spouses, means any child—

(a) of both spouses, or adopted by both spouses under the Adoption Acts, 1952 to 1974, or in relation to whom both spouses are *in loco parentis*, or

(b) of either spouse, or adopted by either spouse under the Adoption Acts, 1952 to 1974, or in relation to whom either spouse is *in loco parentis*, where the other spouse, being aware that he is not the parent of the child, has treated the child as a member of the family,

who is under the age of sixteen years, or, if he has attained that age—

(i) is receiving full-time education or instruction at any university, college, school or other educational establishment and is under the age of twenty-one years, or

(ii) is suffering from mental or physical disability to such extent that it is not reasonably possible for him to maintain himself fully;

“family home” has the meaning assigned by section 2;

“household chattels” has the meaning assigned by section 9 (7);

“interest” means any estate, right, title or other interest, legal or equitable;

“mortgage” includes an equitable mortgage, a charge on registered land and a chattel mortgage, and cognate words shall be construed accordingly;

“rent” includes a conventional rent, a rentcharge within the meaning of section 2 (1) of the Statute of Limitations, 1957 , and a terminable annuity payable in respect of a loan for the purchase of a family home.

(2) References in this Act to any enactment shall be construed as references to that enactment as amended or extended by any subsequent enactment, including this Act.

(3) (a) A reference in this Act to a section is a reference to a section of this Act, unless it is indicated that reference to some other enactment is intended.

(b) A reference in this Act to a subsection is a reference to the subsection of the section in which the reference occurs unless it is indicated that reference to some other section is intended.

Family home.

2.—(1) In this Act “family home” means, primarily, a dwelling in which a married couple ordinarily reside. The expression comprises, in addition, a dwelling in which a spouse whose protection is in issue ordinarily resides or, if that spouse has left the other spouse, ordinarily resided before so leaving.

(2) In subsection (1) “dwelling” means—

(a) any building, or

(b) any structure, vehicle or vessel (whether mobile or not),

or part thereof, occupied as a separate dwelling and includes any garden or portion of ground attached to and usually occupied with the dwelling or otherwise required for the amenity or convenience of the dwelling.

Alienation of interest
in family home.

3.—(1) Where a spouse, without the prior consent in writing of the other spouse, purports to convey any interest in the family home to any person except the other spouse, then, subject to subsections (2) and (3) and section 4, the purported conveyance shall be void.

(2) Subsection (1) does not apply to a conveyance if it is made by a spouse in pursuance of an enforceable agreement made before the marriage of the spouses.

(3) No conveyance shall be void by reason only of subsection (1)—

(a) if it is made to a purchaser for full value,

(b) if it is made, by a person other than the spouse making the purported conveyance referred to in subsection (1), to a purchaser for value, or

(c) if its validity depends on the validity of a conveyance in respect of which any of the conditions mentioned in subsection (2) or paragraph (a) or (b) is satisfied.

(4) If any question arises in any proceedings as to whether a conveyance is valid by reason of subsection (2) or (3), the burden of proving that validity shall be on the person alleging it.

(5) In subsection (3), “full value” means such value as amounts or approximates to the value of that for which it is given.

(6) In this section, “purchaser” means a grantee, lessee, assignee, mortgagee, chargeant or other person who in good faith acquires an estate or interest in property.

(7) For the purposes of this section, section 3 of the Conveyancing Act, 1882, shall be read as if the words “as such” wherever they appear in paragraph (ii) of subsection (1) of that section were omitted.

Consent of spouse.

4.—(1) Where the spouse whose consent is required under section 3 (1) omits or refuses to consent, the court may, subject to the provisions of this section, dispense with the consent.

(2) The court shall not dispense with the consent of a spouse unless the court considers that it is unreasonable for the spouse to withhold consent, taking into account all the circumstances, including—

(a) the respective needs and resources of the spouses and of the dependent children (if any) of the family, and

(b) in a case where the spouse whose consent is required is offered alternative accommodation, the suitability of that accommodation having regard to the respective degrees of security of tenure in the family home and in the alternative accommodation.

(3) Where the spouse whose consent is required under section 3 (1) has deserted and continues to desert the other spouse, the court shall dispense with the consent. For this purpose, desertion includes conduct on the part of the former spouse that results in the other spouse, with just cause, leaving and living separately and apart from him.

(4) Where the spouse whose consent is required under section 3 (1) is incapable of consenting by reason of unsoundness of mind or other mental disability or has not after reasonable inquiries been found, the court may give the consent on behalf of that spouse, if it appears to the court to be reasonable to do so.

Conduct leading to
loss of family home.

5.—(1) Where it appears to the court, on the application of a spouse, that the other spouse is engaging in such conduct as may lead to the loss of any interest in the family home or may render it unsuitable for habitation as a family home with the intention of depriving the applicant spouse or a dependent child of the family of his residence in the family home, the court may make such order as it considers proper, directed to the other spouse or to any other person, for the protection of the family home in the interest of the applicant spouse or such child.

(2) Where it appears to the court, on the application of a spouse, that the other spouse has deprived the applicant spouse or a dependent child of the family of his residence in the family home by conduct that resulted in the loss of any interest therein or rendered it unsuitable for habitation as a family home, the court may order the other spouse or any other person to pay to the applicant spouse such amount as the court considers proper to compensate the applicant spouse and any such child for their loss or make such other order directed to the other spouse or to any other person as may appear to the court to be just and equitable.

Payment of outgoings
on family home.

6.—(1) Any payment or tender made or any other thing done by one spouse in or towards satisfaction of any liability of the other spouse in respect of rent, rates, mortgage payments or other outgoings affecting the family home shall be as good as if made or done by the other spouse, and shall be treated by the person to whom such payment is made or such thing is done as though it were made or done by the other spouse.

(2) Nothing in subsection (1) shall affect any claim by the first-mentioned spouse against the other to an interest in the family home by virtue of such payment or thing made or done by the first-mentioned spouse.

Adjournment of proceedings by mortgagee or lessor of family home.

7.—(1) Where a mortgagee or lessor of the family home brings an action against a spouse in which he claims possession or sale of the home by virtue of the mortgage or lease in relation to the non-payment by that spouse of sums due thereunder, and it for possession or sale appears to the court—

(a) that the other spouse is capable of paying to the mortgagee or lessor the arrears (other than arrears of principal or interest or rent that do not constitute part of the periodical payments due under the mortgage or lease) of money due under the mortgage or lease within a reasonable time, and future periodical payments falling due under the mortgage or lease, and that the other spouse desires to pay such arrears and periodical payments; and

(b) that it would in all the circumstances, having regard to the terms of the mortgage or lease, the interests of the mortgagee or lessor and the respective interests of the spouses, be just and equitable to do so,

the court may adjourn the proceedings for such period and on such terms as appear to the court to be just and equitable.

(2) In considering whether to adjourn the proceedings under this section and, if so, for what period and on what terms they should be adjourned, the court shall have regard in particular to whether the spouse of the mortgagor or lessee has been informed (by or on behalf of the mortgagee or lessor or otherwise) of the non-payment of the sums in question or of any of them.

Modification of terms of mortgage or lease as to payment of capital sum.

8.—(1) Where, on an application by a spouse, after proceedings have been adjourned under section 7, it appears to the court that—

(a) all arrears (other than arrears of principal or interest or rent that do not constitute part of the periodical payments due under the mortgage or lease) of money due under the mortgage or lease, and

(b) all the periodical payments due to date under the mortgage or lease, have been paid off and that the periodical payments subsequently falling due will continue to be paid, the court may by order declare accordingly.

(2) If the court makes an order under subsection (1), any term in a mortgage or lease whereby the default in payment that gave rise to the proceedings under section 7 has, at any time before or after the initial hearing of such proceedings, resulted or would have resulted in the capital sum advanced thereunder (or part of such sum or interest thereon) or any sum other than the periodical payments, as the case may be, becoming due, shall be of no effect for the purpose of such proceedings or any subsequent proceedings in respect of the sum so becoming due.

Restriction on
disposal of
household chattels.

9.—(1) Where it appears to the court, on the application of a spouse, that there are reasonable grounds for believing that the other spouse intends to sell, lease, pledge, charge or otherwise dispose of or to remove such a number or proportion of the household chattels in a family home as would be likely to make it difficult for the applicant spouse or a dependent child of the family to reside in the family home without undue hardship, the court may by order prohibit, on such terms as it may see fit, the other spouse from making such intended disposition or removal.

(2) Where matrimonial proceedings have been instituted by either spouse, neither spouse shall sell, lease, pledge, charge or otherwise dispose of or remove any of the household chattels in the family home until the proceedings have been finally determined, unless—

(a) the other spouse has consented to such sale, lease, pledge, charge or other disposition or removal, or

(b) the court before which the proceedings have been instituted, on application to it by the spouse who desires to make such disposition or removal, permits that spouse to do so, which permission may be granted on such terms as the court may see fit.

(3) In subsection (2) “matrimonial proceedings” includes proceedings under section 12 of the Married Women's Status Act, 1957 , under the Guardianship of Infants Act, 1964 , or under section 21 or 22 of the Family Law (Maintenance of Spouses and Children) Act, 1976 .

(4) A spouse who contravenes the provisions of subsection (2) shall, without prejudice to any other liability, civil or criminal, be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £100 or to imprisonment for a term not exceeding six months or to both.

(5) Where it appears to the court, on application to it by either spouse, that the other spouse—

(a) has contravened an order under subsection (1) or the provisions of subsection (2), or

(b) has sold, leased, pledged, charged or otherwise disposed of or removed such a number or proportion of the household chattels in the family home as has made or is likely to make it difficult for the applicant spouse or a dependent child of the family to reside in the family home without undue hardship,

the court may order that other spouse to provide household chattels for the applicant spouse, or a sum of money in lieu thereof, so as to place the applicant spouse or the dependent child of the family as nearly as possible in the position that prevailed before such contravention, disposition or removal.

(6) Where a third person, before a sale, lease, pledge, charge or other disposition of any household chattel to him by a spouse, is informed in writing by the other spouse that he intends to take proceedings in respect of such disposition or intended disposition, the court in proceedings under this section may make such order, directed to the former spouse or the third person, in respect of such chattel as appears to it to be proper in the circumstances.

(7) For the purposes of this section “household chattels” means furniture, bedding, linen, china, earthenware, glass, books and other chattels of ordinary household use or ornament and also consumable stores, garden effects and domestic animals, but does not include any chattels used by either spouse for business or professional purposes or money or security for money.

Jurisdiction.

10.—(1) The jurisdiction conferred on a court by this Act may be exercised by the High Court.

(2) Subject to subsections (3) and (4), the Circuit Court shall concurrently with the High Court have all the jurisdiction of the High Court to hear and determine proceedings under this Act.

(3) Where either spouse is a person of unsound mind and there is a committee of the spouse's estate, the jurisdiction conferred by this Act may, subject to subsection (4), be exercised by the court that has appointed the committee.

(4) Where the rateable value of the land to which the proceedings relate exceeds £100 or the value of the personal property to which the proceedings relate exceeds £5,000 and the proceedings are brought in the Circuit Court, that Court shall, if a defendant so requires, transfer the proceedings to the High Court, but any order made or act done in the course of such proceedings before such transfer shall be valid unless discharged or varied by order of the High Court.

(5) The District Court shall, subject to subsection (3), have jurisdiction to deal with a question arising under section 9 where the value of the household chattels intended to be disposed of or removed or actually disposed of or removed, as the case may be, does not exceed £1,000.

(6) Proceedings under or referred to in this Act in which each spouse is a party (whether by joinder or otherwise) shall be conducted in a summary manner and shall be heard otherwise than in public.

(7) Proceedings in the High Court and in the Circuit Court under or referred to in this Act in which each spouse is a party (whether by joinder or otherwise) shall be heard in chambers.

Joinder of parties. **11.**—In any proceedings under or referred to in this Act each of the spouses as well as any third person who has or may have an interest in the proceedings may be joined—

(a) by service upon him of a third-party notice by an existing party to the proceedings, or

(b) by direction of the court.

Registration of notice of existence of marriage. **12.**—(1) A spouse may register in the Registry of Deeds pursuant to the Registration of Deeds Act, 1707 (in the case of unregistered property) or under the Registration of Title Act, 1964 (in the case of registered land) a notice stating that he is married to any person, being a person having an interest in such property or land.

(2) The fact that notice of a marriage has not been registered under subsection (1) shall not give rise to any inference as to the non-existence of a marriage.

(3) No stamp duty, Registry of Deeds fee or land registration fee shall be payable in respect of any such notice.

Restriction of section 59(2) of Registration of Title Act, 1964. **13.**— Section 59 (2) of the Registration of Title Act, 1964 (which refers to noting upon the register provisions of any enactment restricting dealings in land) shall not apply to the provisions of this Act.

Creation of joint tenancy in family home: exemption from stamp duty and fees. **14.**—No stamp duty, land registration fee, Registry of Deeds fee or court fee shall be payable on any transaction creating a joint tenancy between spouses in respect of a family home where the home was immediately prior to such transaction owned by either spouse or by both spouses otherwise than as joint tenants.

Offences.

15.—Where any person having an interest in any premises, on being required in writing by or on behalf of any other person proposing to acquire that interest to give any information necessary to establish if the conveyance of that interest requires a consent under section 3 (1), knowingly gives information which is false or misleading in any material particular, he shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding £200 or to imprisonment for a term not exceeding twelve months or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding five years,

without prejudice to any other liability, civil or criminal.

Short title.

16.—This Act may be cited as the Family Home Protection Act, 1976.