



## AN UNMARRIED COMPANY?

**R**ecent correspondence to the Conveyancing Committee has shown that there is reluctance to answer any question on the Family Home Protection Act where the Vendor is a company. This is presumably based on the view that, since a company cannot have a spouse, no requisition under the Family Home Protection Act is therefore appropriate.

However, the recent case of *Walpoles (Ireland) Limited - v - Jay* and obiter dicta in other cases have highlighted the fact that in certain cases it is necessary to make enquiries where it is believed a person, other than the Vendor or his predecessors in title, has been in occupation of any part of the property as a “family home”. In *Walpoles (Ireland) Limited - v - Jay*, the Vendor was a company but the Purchaser was on notice that the residence situated on the property had been occupied by a Director of the Vendor company for a number of years. It was held that while there was nothing which could make void the conveyance of the property by the Vendor Company nevertheless the Purchaser was entitled to make enquiries as to the nature of the interest (if any) held by the Director in the property and as to the termination of that interest.

The problem arises from the wide definition of both “interest” and “conveyance” in the Act. “Interest” means “any estate, right, title or other interest legal or equitable”. “Conveyance” includes “a mortgage, lease, assent, transfer, disclaimer, release and any other disposition of property ...”.

It is therefore the view of the Conveyancing Committee that where a Purchaser is aware that any person, other than the Vendor or his predecessors in title has been or is in occupation of the property as a “family home”, then additional requisitions should be raised. This could arise in circumstances similar to that in *Walpoles (Ireland) Limited -v- Jay* where a Director or other employee of a Vendor company is in occupation, where another married member of the vendor’s family is in occupation or where the property has been occupied by tenants.

In the light of the foregoing the standard form of requisitions under the Family Home Protection Act have been revised and are circulated with this issue of the Gazette.

When considering the reply to be given to the standard requisition 51 (a) the attention of practitioners is drawn to the definition of “family home” in Section 2 of the Act. It “means, primarily, a dwelling in which a married couple ordinarily reside”. The requisition is not confined to whether the property is the Vendor’s “family home”.

NOTE: These Requisitions require a civil marriage certificate (i.e. a Certified copy of Entry in the Marriage Register Book) to be exhibited in the statutory declaration.



Such a certificate is clearly the best supporting evidence of the marriage which can be produced and should be furnished. This does not mean that a Purchaser or Lender should not be prepared to accept the next best supporting evidence such as a Church Marriage Certificate in circumstances where there are valid reasons why a Civil Marriage Certificate is not available on closing.

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(Contd.)

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**T**he attention of Practitioners is drawn to the provisions of Section 2 (2) of the Family Home Protection Act which prescribes inter alia that a “dwelling” includes “any garden or portion of ground attached to and usually occupied with the dwelling”.

It should be borne in mind that a site for a dwellinghouse which has been carved out of a holding may, although no house or building may ever have been on the site, still have formed part of a “garden or ground attached to and usually occupied with a dwelling”, etc.<sup>1</sup>

Solicitors should take this into account when framing certificates for the Land Registry.

## **FHPA, 1976**

### **TRANSFER OF SITES FOR DWELLING HOUSES – CERTIFICATES FOR LAND REGISTRY**

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*1. See also paragraph 8 on page 1.15 hereof*