



PROOF OF FHPA CONSENT IN SEPARATION

In recent years the practice has emerged of the parties to the Deed of Separation simultaneously executing a Deed of Waiver incorporating the relevant provisions from the Deed of Separation. Where such a Deed of Waiver exists, it is of course unnecessary to exhibit an extract from the Deed of Separation. The practice of entering into Deeds of Waiver is to be encouraged. However, if no Deed of Waiver exists, it is of course quite acceptable to exhibit the appropriate extract from the Deed of Separation.

This marginal note was added on publication of the updated handbook in 2006, 3rd Edition

The Joint Law Society/Building Societies Committee has been asked for its opinion on the practice of a Purchaser's/Mortgagee's Solicitor insisting on a Vendor/Mortgagor's Separation Agreement being exhibited in their Family Home Protection Act 1976 Declaration.

The Committee feels that it is not proper practice for an entire Separation Agreement to be exhibited as such agreements usually contain very personal and private information which would not be appropriate in a document that will remain part of the title for many years.

The Committee recommends that a Purchaser/Mortgagee's Solicitor should seek a Statutory Declaration from the disinterested spouse confirming that the property being sold/mortgaged is not a Family Home; in the event that this declaration is not available the Committee strongly recommends that as prima facie evidence that a property is not a "Family Home" by virtue of the fact that one spouse has not resided therein that a purchaser/mortgagee's Solicitor should accept either:

1. A corroborative declaration from the Vendor/Mortgagor's Solicitor that he/she has read the Separation Agreement and quoting any relevant paragraph therein or appropriate extracts therefrom; or
2. A declaration from a party to the Separation Agreement exhibiting a solicitor's certified copy of the relevant extracts or extract therefrom.

Where there is any doubt as to whether the property being sold/mortgaged is or is not a "Family Home" within the meaning of the Act the purchaser's/mortgagee's solicitor should seek the consent of the Vendor's/Mortgagor's spouse or a Court order dispensing with such consent pursuant to Section 4 of the Family Home Protection Act 1976.

NOTE: It is suggested that where a Deed of Separation is to contain a clause confirming the prior consent in writing of the spouses to the future sale of property that might be a "Family Home" within the meaning of the Family Home Protection Act 1976, that such a clause should be the last clause in the Deed, immediately prior to the signatures of the parties. This would more readily enable a Vendor/Mortgagor's solicitor to exhibit a certified photocopy of such a clause combined with the appropriate signatures.¹

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*1. Please see precedent Family
Law Declaration at page A1.17
hereof*