



1. Section 3 (1) of the 1976 Act provides that where a spouse, without the prior written consent in writing of the other spouse, purports to convey any interest in the Family Home to any person other than the spouse then, subject to Sub-Sections (2) (3) and (8) and Section 4 the purported conveyance shall be void.
 - 1.1 Sub-Sections (2) and (3) of Section 3 and Section 4 have now been amended by the 1995 Act. Sub-Section (8) is a new Sub-Section.
2. Sub-Section (8) (b) provides that a Conveyance shall be deemed not to be and never to have been void by reason of sub-section (1) unless:
 - (a) It has been declared void by a Court by reason of Sub-Section (1) in proceedings instituted before the passing of the 1995 Act, or on or after such passing, and within six years from the date of the Conveyance (Section 3 (8) (a) (i)), or after such six year period by a spouse who has been in actual occupation of the land concerned from immediately before the expiration of the six years until the institution of the proceedings (Section 3 (8) (a) (ii)) (This would apply principally to mortgages), or
 - (b) Subject to the rights of any other person concerned, it is void by reason of sub-section (1) and the parties to the Conveyance or their successors in title so state in writing before the expiration of 6 years from the date of the Conveyance (Section 3 (8) (b) (ii)).
- 2.1 A Conveyance will not be void because of non compliance with Section 3 (1) unless it has been declared void by a Court in proceedings brought before the passing of the 1995 Act (1st August 1996), or in proceedings brought after the 1st August 1996 which comply with paragraph 8.
- 2.2. Section 3 (8) (a) (i) provides that proceedings shall not be instituted to have a conveyance declared void by reason only of Section 3 (1) after the expiration of six years from the date of the Conveyance.

However this does not apply to any such proceedings instituted by a spouse who has been in actual occupation of the land concerned from immediately before the expiration of six years from the date of the conveyance concerned until the institution of the proceedings. This would apply, for example, to a mortgage executed by one spouse, without the prior consent of the other spouse, who remained in occupation of the property.
- 2.3 In addition a Conveyance which does not comply with Section 3 (1) will be void, if subject to the rights of any other person concerned, the parties to the Conveyance or their successors in title so state in writing before the expiration of six years from the date of the Conveyance.
- 2.4 The parties to the Conveyance would be the vendor spouse and the purchaser.

**FHPA, 1976 AS
AMENDED BY THE
FLA, 1995**



**FHPA, 1976 AS
AMENDED BY THE
FLA, 1995**

(Contd.)

3. Under Section 3 of the Conveyancing Act, 1882 a purchaser of property will have to make enquiries to see if the factors in Sub-Section (8) apply. These enquiries should be directed at the Purchase's immediate Vendor. The enquiries will be as to whether proceedings have been instituted to declare the Conveyance in question void, or, whether the parties to the Conveyance in question or their successors have before the expiration of six years from the date of the Conveyance stated so in writing.
 - 3.1 The purchaser will also have to make searches in the Land Registry or the Registry of Deeds to see if such a statement has been registered pursuant to Sub-Section (8) (c) (i) and in the Lis Pendens Register to see if the proceedings have been instituted.
 - 3.2 If enquiries and searches do not reveal the existence of proceedings to have the Conveyance in question declared void by reason of Section 3 (1) then the Conveyance in question is deemed not to be and never to have been void by reason of Section 3 (1).
 - 3.3. If the enquiries or searches disclose the existence of proceedings, then these proceedings must be examined to see if they comply with Section 3 (8) (b) (i), that is to say, either those proceedings were instituted before the passing of the Family Law Act 1995, in which case the Conveyance in question can be successfully challenged, or the proceedings have been instituted on or after the passing of the Family Law Act, 1995 but comply with Section 3 (8) (a).

4. Where the Conveyance is over six years old reference need only be made to sub-paragraph (ii) of Section 3 (8) (a) which provides that the bar on the institution of proceedings after the expiration of six years from the date of the Conveyance in question (in relation to proceedings instituted on or after the passing of the 1995 Act) does not apply to any such proceedings instituted by a spouse who has been in actual occupation of the land concerned from immediately before the expiration of six years from the date of the Conveyance concerned until the institution of the proceedings. This situation is only likely to arise in relation to mortgages.
 - 4.1 One is only concerned with Section 3 (8) (a) (ii) if proceedings have actually been instituted. Those proceedings must then be scrutinised to see if they comply with sub-paragraph (ii).
 - 4.2 If the existence of proceedings to impugn a Deed is discovered then the only way to be sure those proceedings will not declare the Conveyance in question void is to await the outcome of the proceedings.
 - 4.3 Section 3 (8) (c) provides that a copy of the statement made for the purpose of sub-paragraph (ii) of paragraph (b) and certified by, or by the successor or successors in title of, the party or parties concerned ("the person or persons") to be a true copy shall, before the expiration of the period referred to in that sub-paragraph, as appropriate, be lodged by the person or persons in the Land Registry for registration pursuant to Section 69 (1) of the Registration of Title Act, 1964, as if statements so



made had been prescribed under paragraph (s) of the said Section 69 (1), or be registered by them in the Registry of Deeds.

- 4.4. Section 69 (2) of the Registration of Title Act, 1964 provides that a burden may be registered under Section 69 (1) on the application of the registered owner of the land or of any person entitled to or interested in the burden but, if the application is made without the concurrence of the registered owner of the land or such other person as may be prescribed, the burden shall not be registered except in pursuance of an order of the Court.
5. In the definition Section to the Registration of Title Act 1964, “prescribed” means prescribed by general rules, which are the Land Registry rules made under Section 126 of the 1964 Act.
6. Section 3 (8) (d) provides that rules of Court shall provide that a person who institutes proceedings to have a Conveyance declared void by reason of sub-section (1) shall, as soon as may be, cause relevant particulars of the proceedings to be entered as a Lis Pendens under and in accordance with the Judgements (Ireland) Act, 1844.
7. What evidence should a Purchaser seek that no proceedings have been instituted before the expiration of the six year period?
- 7.1 The Purchaser must make a Search on the Lis Pendens register.
- 7.2 The Purchaser should obtain a Declaration from his or her immediate Vendor that he or she has no actual notice of the institution of such proceedings.
- 7.3 The Declaration should also confirm (if such be the case) that the spouse of the conveying party in the deed in question was not in occupation of the property immediately before the expiration of six years from the date of the Conveyance in question.
8. The revised definition of “dwelling”.
- 8.1 In the 1976 Act Section 2 (2) states that:
 “In sub-section (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”.
- Section 54 (1) (a) of the 1995 Act substitutes the following sub-section for sub-section (2):
 “(2) In sub-section (1) “dwelling” means any building or part of a building occupied as a separate dwelling and includes any garden or other land usually occupied with

**FHPA, 1976 AS
 AMENDED BY THE
 FLA, 1995**

(Contd.)



**FHPA, 1976 AS
AMENDED BY THE
FLA, 1995**

(Contd.)

- the dwelling, being land that is subsidiary and ancillary to it, is required for amenity or convenience, and is not being used or developed primarily for commercial purposes, and includes a structure that is not permanently attached to the ground and a vehicle, or vessel, whether mobile or not, occupied as a separate dwelling”.
- 8.2 The important differences between the two definitions are the following:
 - 8.3 The substitution of “includes any garden or portion of ground” by “includes any garden or other land”.
 - 8.4 The deletion of the words “attached to” and the addition of the words “being land that is subsidiary and ancillary to it”.
 - 8.5 The addition of the words “is not being used or developed primarily for commercial purposes”.
9. A new Section 3 (9) provides that if, whether before or after the passing of the 1995 Act, a spouse gives a general consent in writing to any future conveyance of any interest in a dwelling that is or was the family home of that spouse, and the deed for any such conveyance is executed after the date of that consent, the consent shall be deemed for the purposes of Section 3 (1) to be a prior consent in writing of the spouse to that conveyance.
10. Finally, under Section 54 (3) of the 1995 Act, where a Court, when granting a Decree of Judicial Separation, orders that the ownership of the family home shall be vested in one of the spouses, it shall, unless it sees reason to the contrary, order that Section 3 (1) of the 1976 Act shall not apply to any conveyance by that spouse of an interest in the home.

*Memorandum circulated
to the profession on
9th September 1996*