



**VOLUNTARY  
DISPOSITIONS/  
BANKRUPTCY**

**R**equisition 15 of the 1996 edition of Requisitions on title bears the above heading.

The Conveyancing Committee has decided in the light of opinions received that requisition 15 be amended by the deletion of 15c for the reasons set out in this practice note. Accordingly, it should no longer be necessary to furnish a bond if the requirements below are fulfilled.

Requisition 15c at present states ‘... if the disposition was made within the past two years, an insurance bond equal to value of the property’ should be furnished. The present wording was arrived at because it was felt in the opinion of the Committee to be desirable in the light of section 59(1)(a) of the Bankruptcy Act, 1988 which states as follows:

‘Any settlement of property, not being a settlement made before and in consideration of marriage or made in favour of a purchaser or encumbrancer in good faith and for valuable consideration shall:

- a) If the settlor is adjudicated bankrupt within two years after the date of the settlement be void as against the Official Assignee and ...’.

The section says ‘void’ and further does not contain an express provision giving protection to purchaser for value without notice whereas there is such protection given under section 59(1)(b) ‘... if the settlor is adjudicated bankrupt at any subsequent time within five years after the date of the settlement ...’.

As stated, it was thought that the Bankruptcy Act, 1988 had changed the earlier Bankruptcy (Ireland) Amend-ment Act 1872 as amended. It has, however, long been accepted that the use of the word ‘void’ in fact means ‘voidable’ and why the opportunity was not taken in the 1988 Act to clarify this is not entirely clear. The courts have always accepted that in this context ‘void’ means ‘voidable’ and that anyone who claims under a settlement who is a purchaser for valuable consideration without notice has a good title which indeed can be forced on a purchaser (re: Carter and Kenderdines Contract [1897] 1 CH776).

The net issue would appear to be that if the settlor was made a bankrupt within two years of the date of the settlement and the Official Assignee in bankruptcy availed of section 59(1)(a) in order to set aside the voluntary conveyance by the settlor, would this have the effect of depriving a purchaser of a good title to the property? Secondly, if the setting aside of the settlement would not prevent a purchaser getting a good title because he is a bona fide purchaser for value without notice, what criteria must the purchaser satisfy in order to come within the terms of the definition?



The essential elements therefore are valuable consideration, good faith and the absence of notice whether actual or constructive. Accordingly, therefore, section 59(1)(a) did not change the law which has existed since 1883 which is that a voluntary settlement would not be void against the settlor's trustee in bankruptcy from its date but could only be void against the trustee from the date on which the trustee's title accrues. Up to that point, the donee of the voluntary settlement would have a voidable (not a void) title and if the property comprised in the settlement were sold to a bona fide purchaser for value without notice the title of the purchaser would be good as against the trustee.

The donee will be acting in good faith if he has no notice of any fraud or fraudulent preference being intended even if such was the intention of the settlor at the time.

The onus of proof of a lack of good faith and a lack of valuable consideration is on the Official Assignee. The person taking under or relying on a gift must at all times have acted bona fide, which means in the absence of any dishonesty or any attempt to defraud another person.

In effect such person must have no notice of any fraud or fraudulent preference being intended by the settlor. What is therefore necessary when dealing with a voluntary conveyance is to obtain the information necessary to show that at the time of the disposition the settlor was in a position to discharge any debts that he or she might have had. It is the long-established practice of taking a declaration of solvency. It is necessary that the assets of the settlor be sufficient to discharge all his debts without recourse to the property comprised in the settlement.

For a definition of what constitutes a purchaser for value without notice, one should look at section 3(1), Conveyancing Act 1882 which states that a purchaser will not be affected by notice of any instrument, fact or thing unless inter alia it would have come to the knowledge of his solicitor had such enquiries and inspections been made as ought reasonably had been made by the solicitor. What the appropriate enquiries and inspections are will of course depend on the circumstances of each case.

The other Act which is relevant in this regard is the Conveyancing Act (Ireland) 1634 and sections 10 and 14 thereof which deal with dispositions intended to delay, hinder or defraud creditors. Such dispositions are void save where made bona fide for good consideration and in this regard see requisition 15a. Accordingly, it is suggested to amend requisition 15 to read as follows:

**15. Voluntary disposition/bankruptcy**

If there is a voluntary disposition on title furnish now in respect of each such disposition:

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(Contd.)

- a) A statutory declaration from the disponent that the disposition was made bona fide for the purpose of benefiting the disponent and without intent to delay, hinder or defraud creditors or others or, if this is not within the reasonable procurement of the vendor, confirmation that the vendor was not aware of any such fraudulent intent
- b) If the disposition was made within the past five years, evidence by way of statutory declaration of the disponent that at the date of the disposition the disponent was solvent and able to meet his/her debts and liabilities without recourse to the property disposed of
- c) A bankruptcy search against the disponent.

Please note in paragraph (b) above that, in accordance with the Bankruptcy Act, 1988, ten years has been changed to five years.