



**T**he decision of the High Court (McWilliam J.) in the case of *Kyne v Tiernan* (1978 No. 6857 P. Judgement 15th July, 1980) reported in the November issue of the Law Society's Gazette, confirming that once a spouse had consented in writing to a contract for the sale of a Family Home no further consent for the purpose of the Family Home Protection Act to the assurance was required, was of considerable assistance in clarifying this doubtful point.

It is now being argued that a corollary to the decision is that a written consent to the assurance need not be sought once the appropriate prior consent to the contract had been obtained. While this is a logical extension of the decision in *Kyne v Tiernan*, it is the view of the Conveyancing Committee that the practice of seeking the spouse's consent in writing to the assurance, which has operated since 1976, should not be abandoned. To do so would be to breach a much older conveyancing practice that contracts for sale are not normally regarded as "title documents" and that their production on any subsequent sale should not be required. It might also be regarded as an inroad on the legal doctrine that on the completion of a purchase the "contract merges in the conveyance".

Accordingly, while recognising that, if any difficulty arises about getting later consent to the assurance, the solicitors for a vendor and purchaser may safely rely on a spouse's prior written consent to a contract for the sale of a Family Home, the Committee strongly urges the retention of the practice of arranging for the endorsement of a prior written consent by the spouse on the assurance itself.

In making this recommendation, the Committee is taking cognisance of the very likely risk of relevant contracts not being retained with Title Deeds and thus giving rise to serious problems in proving the granting of the relevant spouse's consent, in the event of future sales of the property.

## **FHPA, 1976**

### **EVIDENCING**

### **SPOUSE'S CONSENT**