



FHPA

**CONSENT OF
A MINOR**

The Conveyancing Committee has also been concerned with the problem of whether a minor spouse could consent to a sale or mortgage under the Act, without the approval of the Court. Mortgagees' Solicitors have been insisting upon Court approval being obtained to consents, lest their mortgages be void.

Most of the families involved in these situations have been young married couples and the extra cost of an application to the High Court for approval for the sale, is a considerable burden on a class of people who can least afford it.

Representations were made to the Department of Justice, which indicated that it had the matter under consideration and would provide for a statutory amendment, if it were found necessary.

Doubts as to the law on this matter have now been resolved by the decision of McWilliam, J. in the High Court case of *Lloyd v Sullivan*, the learned Judge holding that a minor spouse could not give a valid consent without the approval of the Court.

The Department of Justice has introduced a section in the Family Law Bill, 1981, which, when passed, will entitle a minor spouse to give a consent without needing the authority of the Court. The relevant section is Section 10¹ and its provisions are intended to be retrospective.

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*1. The Family Law Act 1981
came into force on the 23rd
June of that year and Section
10 was in the same terms as
Section 10 of the Bill.*

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**ABSENCE OF
SUPPORTING
EVIDENCE
TO SPOUSE'S
CONSENT**

The Conveyancing Committee has been asked for guidance by a number of practitioners as to the proper approach to be made by the purchaser's solicitor where, on investigation of the title of an unregistered property, an assurance of a family home made after the 12th July, 1976 appears on the title and, although the assurance bears a consent completed by the vendor's spouse, there is no supporting evidence identifying the consenting party as the spouse of the vendor.

The Committee is satisfied that the present practice of seeking a statutory declaration from the vendor and the consenting spouse exhibiting a copy of their marriage certificate to evidence the identity of the consenting party was not adopted immediately after the introduction of the Act and takes the view that, in the ordinary way, a purchaser's solicitor should not, where there is a spouse's consent endorsed on an assurance of the family home executed prior to the 1st January, 1978, and no supporting evidence of the identity of the consenting spouse is available, requisition any further evidence.¹

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*1. See also paragraph 7 on
page 1.15 hereof and precedent
S.54 declaration
on page A1.27 hereof*