



**CONSENT OF
SPOUSES:
PERSONAL
REPRESENTATIVES**

The Committee has received a series of requests for advice as to whether, or in what circumstances, the consent of the personal representative's spouse may be necessary in the sale of residential property which formed part of the deceased's estate, by the personal representative in the course of administration of the estate.

In December 1981 the Conveyancing Committee recommended that it was not necessary for a solicitor purchasing a property from a personal representative who is selling qua personal representative to enquire into the position in relation to the Family Home Protection Act in respect of the occupation of the premises by non conveying beneficiaries. This recommendation did not receive widespread acceptance and the Committee has recently become concerned that it was too simplistic particularly where a personal representative is selling quite a number of years after a death.

The matter is not without difficulty and the Committee, having taken Senior Counsel's advice, is satisfied that only guidelines can be given. The facts in each case must ultimately determine the position.

Where there is no evidence that the personal representative and his or her spouse have resided in the property no consent should be sought, though a Declaration confirming the non-residency should be obtained from the personal representative.¹

Where there is some evidence that the personal representative or/and his or her spouse may have resided in the property for a short period (e.g. while looking after the deceased during illness or caretaking the property after death) but there is evidence to show that the personal representative's family home is elsewhere, then again no consent should be sought, though a Declaration confirming the location of the personal representative's family home should be obtained from the personal representative. The fact that the personal representative or the spouse may be beneficially entitled to the property under the Will or intestacy is of no significance in this situation.

Where the personal representative and his or her spouse have lived in the property and when there is no evidence to suggest that their family home is elsewhere, then it would be reasonable to seek the consent of the spouse. This would particularly apply where the personal representative or his or her spouse are beneficially entitled under the Will or intestacy to the property.

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*1. Note the text of
family law declaration
by personal representative
at page A1.13 hereof.*