



**PROPERTY NOT A
FAMILY HOME -
SPOUSE SHOULD
PROVIDE FAMILY
LAW DECLARATION**

A family law declaration, whether or not it relates to a family home, should, if owned by an individual, be sworn both by the owner and his or her spouse. This, in the view of the Conveyancing Committee, is a consequence of “Tesco v. McGrath” insofar as it relates to reviewable dispositions.

The statutory concept of the “reviewable disposition” was introduced by Section 29 of the Judicial Separation and Family Law Reform Act 1989 (“the 1989 Act”) which was repealed and replaced by Section 35 of the Family Law Act 1995 (“the 1995 Act”). It was continued and applied in Section 37 of the Family Law (Divorce) Act, 1996 (“the 1996 Act”).

“Reviewable disposition” is defined in both Sections 35 and 37 as meaning, “in relation to proceedings for the grant of relief brought by a spouse, ... disposition made by the other spouse, or by any other person, but does not include such a disposition made for valuable consideration (other than marriage) to a person who, at the time of the disposition acted in good faith and without notice of an intention on the part of the respondent to defeat the claim for relief.”

A reviewable disposition can be restrained prior to taking effect. Thereafter, it can, without limit as to time, be set aside, with proof of intention to defeat the claim for relief. That intention will be presumed if the application to set aside is brought within three years of the making of the reviewable disposition.

In *Tesco Ireland Limited –v- Patrick J. (otherwise P.J.) McGrath and Thomas McGrath* (1998 No. 526 Sp) (“*Tesco v. McGrath*”), the President of the High Court was asked to determine a number of issues, one of which is relevant for this practice note.

This issue was whether a statutory declaration (of the defendant/vendor in question alone) containing the paragraph

“No proceedings of any kind have been instituted or threatened and no application or order of any kind has been made in relation to the property under any of the provisions of ... the 1989 Act or ... the 1995 Act or ... The 1996 Act... and the assurance of the property to the parties mentioned in paragraph 7 hereof is not a disposal for the purpose of defeating a claim for relief...”

was adequate to protect the plaintiff /purchaser.

The judgement stated that if a purchaser is to be protected from the possibility of a transaction being set aside as being a “reviewable disposition”, the purchaser must establish



that the disposition was made for valuable consideration and that at the time he or she acted in good faith and without notice of any intention on the part of the vendor to defeat the claim for relief.

In the Tesco case, it became apparent, after the plaintiff/purchaser had made enquiries, that proceedings under the 1989 Act were in existence between the first-named vendor and his wife. The court could therefore presume, unless the contrary was shown, that the disposition was for the purpose of defeating a claim for financial relief.

The court decided that the plaintiff/purchaser would not be protected if he relied on the statutory declaration offered.

It is therefore best practice to make proper enquiries in relation to possible family law claims, and where the existence of proceedings is disclosed, a family law declaration of the vendor's spouse must be furnished confirming that the disposition is not reviewable. In the alternative, the vendor must furnish the appropriate court order.

The Conveyancing Committee has also given consideration as to whether family law declarations from non-owing spouses should as a matter of prudence be required by a purchaser's solicitor even where no proceedings are in being. Reluctantly the Committee has concluded that they should be. This conclusion is based on best practice. The Conveyancing Committee is conscious of the fact that best practice is not possible or practical in all cases. There will be occasions where a vendor may be able to explain why best practice cannot be implemented and in those circumstances a solicitor must use his or her professional skill and judgement in order to protect the interests of the client; but, where best practice has not been implemented, a solicitor must bear in mind the power of the court under the 1995 and 1996 Acts.

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(Contd.)