



Section 84 (2) of the Building Societies Act provides that a receipt endorsed on a mortgage under the Act shall operate to vacate the mortgage and shall, without any reconveyance, vest the legal estate in the person entitled. The legal profession has been crying out for years to have this simple procedure adopted for all releases and reconveyances of mortgages, but to no avail. A full Deed of Release or Reconveyance must be entered into in the case of all mortgages with any person or institution other than a Building Society. This includes Local Authorities, Insurance Companies, Banks etc. The Joint Committee has been asked to consider the problem which arises most frequently in connection with such releases, which arises where the Deed of Release of Mortgage is dated subsequent to the Deed of Assignment of the property to the purchaser. Some Solicitors felt that a Deed of Rectification was essential in such circumstances, in order to get in an outstanding legal estate, and insisted upon this being done.

This view is clearly held by a substantial majority of conveyancing practitioners and leading conveyancing Counsel that the doctrine of Feeding the Estoppel applies to such circumstances and that no Deed of Rectification is necessary. The Joint Committee considered the point and is unanimously of the opinion that no Deed of Rectification is required and that the doctrine of Feeding the Estoppel operates effectively to vest the entire legal interest in the purchaser as soon as the Deed of Release is completed (subject, of course, to whatever necessity there may be for Land Act consent).

UPDATE: The attention of practitioners is drawn to Section 18, Housing Act, 1988 (extracted *infra*), which provides, in effect, that a receipt under the seal of the Mortgagee is to operate to vacate the Mortgage and to “vest the estate of and in the property comprised in the Mortgage in the person for the time being entitled to the equity of redemption” without any reconveyance or re-surrender. The outcome of this is to extend the vacate system, which was previously confined to Building Societies, to all Mortgagees, and it is understood that the majority of lending Institutions are prepared to operate on the basis thereof. Such system, which has proved to be workable and economical, applies to both registered and unregistered land, and obviates the dating problem (referred to above). It should, however be noted that it does not extend to partial releases, which must be dealt with by Deed, with care being taken as to the dating thereof.

There is also published overleaf copy of a letter issued by the Land Registry following the introduction of Section 18.

FEEDING THE ESTOPPEL

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**FEEDING THE
ESTOPPEL**

(Contd.)

Mr. J. Ivers,
Director General,
Law Society,
Blackhall Place,
Dublin 7.

30th August 1988

Dear Sir,

I am to refer to your enquiry relating to discharges of mortgages or charges under Section 18(2) of the Housing Act, 1988.

I am to confirm that, instead of a formal release the Land Registry will accept, as evidence of the release of a charge, a receipt as in the case of a Building Society receipt if it is endorsed on the original counterpart, or certified copy, of the charge.

If it is not so endorsed but clearly refers to the charge and identifies the registered lands charged it will also be accepted.

In all other cases evidence on affidavit will be required. Provision is also made in Section 18 of the Housing Act, 1988, for the vacate of a mortgage of unregistered land registered in the Registry of Deeds. The requisite fee applicable at present to vacates of Building Society mortgages will apply to vacates of other mortgages pursuant to Section 18 of the Housing Act, 1988.

Yours faithfully,

B. McCormac,
Manager,
Land Registry,
Central Office,
Chancery St.,
Dublin 7.

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