

FAMILY LAW (SCOTLAND) ACT 2006

EXPLANATORY NOTES

THE ACT

Matrimonial homes

Section 6: Occupancy rights: dealings with third parties

13. The Matrimonial Homes (Family Protection) (Scotland) Act 1981 contains provisions designed to protect the non-entitled spouse from the entitled spouse's "dealing" e.g. selling the house to a third party. However, it may be the case that a third party purchases a house from someone who is not the entitled spouse, unaware that there is a non-entitled spouse who may, subsequent to the sale, seek to exercise his or her occupancy rights.
14. The 1981 Act, therefore, is amended by subsection (2) to provide circumstances where the occupancy rights of a non-entitled spouse shall not be exercisable where a third party has bought the house in good faith from a person who is not the entitled spouse. Section 6 further modifies section 6 of the 1981 Act. The 1981 Act currently stipulates that if five years have passed since the entitled spouse has ceased to be entitled to occupy the matrimonial home and the non-entitled spouse has not occupied the home during that period then the non-entitled spouse loses his or her occupancy rights. Subsection (3) of section 6 reduces that qualifying period from five years to two years.