



Family Law Act 1996

1996 CHAPTER 27

PART IV

FAMILY HOMES AND DOMESTIC VIOLENCE

Rights to occupy matrimonial home

30 Rights concerning matrimonial home where one spouse has no estate, etc

- (1) This section applies if—
 - (a) one spouse is entitled to occupy a dwelling-house by virtue of—
 - (i) a beneficial estate or interest or contract; or
 - (ii) any enactment giving that spouse the right to remain in occupation; and
 - (b) the other spouse is not so entitled.
- (2) Subject to the provisions of this Part, the spouse not so entitled has the following rights (“matrimonial home rights”)—
 - (a) if in occupation, a right not to be evicted or excluded from the dwelling-house or any part of it by the other spouse except with the leave of the court given by an order under section 33;
 - (b) if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling-house.
- (3) If a spouse is entitled under this section to occupy a dwelling-house or any part of a dwelling-house, any payment or tender made or other thing done by that spouse in or towards satisfaction of any liability of the other spouse in respect of rent, mortgage payments or other outgoings affecting the dwelling-house is, whether or not it is made or done in pursuance of an order under section 40, as good as if made or done by the other spouse.
- (4) A spouse’s occupation by virtue of this section—

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- (a) is to be treated, for the purposes of the Rent (Agriculture) Act 1976 and the Rent Act 1977 (other than Part V and sections 103 to 106 of that Act), as occupation by the other spouse as the other spouse's residence, and
 - (b) if the spouse occupies the dwelling-house as that spouse's only or principal home, is to be treated, for the purposes of the Housing Act 1985 and Part I of the Housing Act 1988, as occupation by the other spouse as the other spouse's only or principal home.
- (5) If a spouse ("the first spouse")—
- (a) is entitled under this section to occupy a dwelling-house or any part of a dwelling-house, and
 - (b) makes any payment in or towards satisfaction of any liability of the other spouse ("the second spouse") in respect of mortgage payments affecting the dwelling-house,
- the person to whom the payment is made may treat it as having been made by the second spouse, but the fact that that person has treated any such payment as having been so made does not affect any claim of the first spouse against the second spouse to an interest in the dwelling-house by virtue of the payment.
- (6) If a spouse is entitled under this section to occupy a dwelling-house or part of a dwelling-house by reason of an interest of the other spouse under a trust, all the provisions of subsections (3) to (5) apply in relation to the trustees as they apply in relation to the other spouse.
- (7) This section does not apply to a dwelling-house which has at no time been, and which was at no time intended by the spouses to be, a matrimonial home of theirs.
- (8) A spouse's matrimonial home rights continue—
- (a) only so long as the marriage subsists, except to the extent that an order under section 33(5) otherwise provides; and
 - (b) only so long as the other spouse is entitled as mentioned in subsection (1) to occupy the dwelling-house, except where provision is made by section 31 for those rights to be a charge on an estate or interest in the dwelling-house.
- (9) It is hereby declared that a spouse—
- (a) who has an equitable interest in a dwelling-house or in its proceeds of sale, but
 - (b) is not a spouse in whom there is vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house,
- is to be treated, only for the purpose of determining whether he has matrimonial home rights, as not being entitled to occupy the dwelling-house by virtue of that interest.

31 Effect of matrimonial home rights as charge on dwelling-house

- (1) Subsections (2) and (3) apply if, at any time during a marriage, one spouse is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest.
- (2) The other spouse's matrimonial home rights are a charge on the estate or interest.
- (3) The charge created by subsection (2) has the same priority as if it were an equitable interest created at whichever is the latest of the following dates—
 - (a) the date on which the spouse so entitled acquires the estate or interest;
 - (b) the date of the marriage; and

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- (c) 1st January 1968 (the commencement date of the Matrimonial Homes Act 1967).
- (4) Subsections (5) and (6) apply if, at any time when a spouse's matrimonial home rights are a charge on an interest of the other spouse under a trust, there are, apart from either of the spouses, no persons, living or unborn, who are or could become beneficiaries under the trust.
- (5) The rights are a charge also on the estate or interest of the trustees for the other spouse.
- (6) The charge created by subsection (5) has the same priority as if it were an equitable interest created (under powers overriding the trusts) on the date when it arises.
- (7) In determining for the purposes of subsection (4) whether there are any persons who are not, but could become, beneficiaries under the trust, there is to be disregarded any potential exercise of a general power of appointment exercisable by either or both of the spouses alone (whether or not the exercise of it requires the consent of another person).
- (8) Even though a spouse's matrimonial home rights are a charge on an estate or interest in the dwelling-house, those rights are brought to an end by—
- (a) the death of the other spouse, or
 - (b) the termination (otherwise than by death) of the marriage,
- unless the court directs otherwise by an order made under section 33(5).
- (9) If—
- (a) a spouse's matrimonial home rights are a charge on an estate or interest in the dwelling-house, and
 - (b) that estate or interest is surrendered to merge in some other estate or interest expectant on it in such circumstances that, but for the merger, the person taking the estate or interest would be bound by the charge,
- the surrender has effect subject to the charge and the persons thereafter entitled to the other estate or interest are, for so long as the estate or interest surrendered would have endured if not so surrendered, to be treated for all purposes of this Part as deriving title to the other estate or interest under the other spouse or, as the case may be, under the trustees for the other spouse, by virtue of the surrender.
- (10) If the title to the legal estate by virtue of which a spouse is entitled to occupy a dwelling-house (including any legal estate held by trustees for that spouse) is registered under the Land Registration Act 1925 or any enactment replaced by that Act—
- (a) registration of a land charge affecting the dwelling-house by virtue of this Part is to be effected by registering a notice under that Act; and
 - (b) a spouse's matrimonial home rights are not an overriding interest within the meaning of that Act affecting the dwelling-house even though the spouse is in actual occupation of the dwelling-house.
- (11) A spouse's matrimonial home rights (whether or not constituting a charge) do not entitle that spouse to lodge a caution under section 54 of the Land Registration Act 1925.
- (12) If—
- (a) a spouse's matrimonial home rights are a charge on the estate of the other spouse or of trustees of the other spouse, and

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(b) that estate is the subject of a mortgage,
then if, after the date of the creation of the mortgage (“the first mortgage”), the charge is registered under section 2 of the Land Charges Act 1972, the charge is, for the purposes of section 94 of the Law of Property Act 1925 (which regulates the rights of mortgagees to make further advances ranking in priority to subsequent mortgages), to be deemed to be a mortgage subsequent in date to the first mortgage.

(13) It is hereby declared that a charge under subsection (2) or (5) is not registrable under subsection (10) or under section 2 of the Land Charges Act 1972 unless it is a charge on a legal estate.

32 Further provisions relating to matrimonial home rights

Schedule 4 re-enacts with consequential amendments and minor modifications provisions of the Matrimonial Homes Act 1983.