

Status: Point in time view as at 25/11/2008.

Changes to legislation: Family Law Act 1996, SCHEDULE 4 is up to date with all changes known to be in force on or before 19 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 4

Section 32.

PROVISIONS SUPPLEMENTARY TO SECTIONS 30 AND 31

Interpretation

- 1 (1) In this Schedule—
- (a) any reference to a solicitor includes a reference to a licensed conveyancer or a recognised body, and
 - (b) any reference to a person’s solicitor includes a reference to a licensed conveyancer or recognised body acting for that person.
- (2) In sub-paragraph (1)—
- “licensed conveyancer” has the meaning given by section 11(2) of the ^{M1}Administration of Justice Act 1985;
 - “recognised body” means a body corporate for the time being recognised under section 9 (incorporated practices) or section 32 (provision of conveyancing by recognised bodies) of that Act.

Marginal Citations

M1 1985 c. 61.

Restriction on registration where spouse entitled to more than one charge

- 2 Where one spouse [^{F1}or civil partner] is entitled by virtue of section 31 to a registrable charge in respect of each of two or more dwelling-houses, only one of the charges to which that spouse [^{F1}or civil partner] is so entitled shall be registered under section 31(10) or under section 2 of the ^{M2}Land Charges Act 1972 at any one time, and if any of those charges is registered under either of those provisions the Chief Land Registrar, on being satisfied that any other of them is so registered, shall cancel the registration of the charge first registered.

Textual Amendments

F1 Words in Sch. 4 para. 2 inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 15(2); S.I. 2005/3175, art. 2(1), Sch. 1

Marginal Citations

M2 1972 c. 61.

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Contract for sale of house affected by registered charge to include term requiring cancellation of registration before completion

- 3 (1) Where one spouse [^{F2}or civil partner] is entitled by virtue of section 31 to a charge on an estate in a dwelling-house and the charge is registered under section 31(10) or section 2 of the Land Charges Act 1972, it shall be a term of any contract for the sale of that estate whereby the vendor agrees to give vacant possession of the dwelling-house on completion of the contract that the vendor will before such completion procure the cancellation of the registration of the charge at his expense.
- (2) Sub-paragraph (1) shall not apply to any such contract made by a vendor who is entitled to sell the estate in the dwelling-house freed from any such charge.
- (3) If, on the completion of such a contract as is referred to in sub-paragraph (1), there is delivered to the purchaser or his solicitor an application by the spouse [^{F3}or civil partner] entitled to the charge for the cancellation of the registration of that charge, the term of the contract for which sub-paragraph (1) provides shall be deemed to have been performed.
- (4) This paragraph applies only if and so far as a contrary intention is not expressed in the contract.
- (5) This paragraph shall apply to a contract for exchange as it applies to a contract for sale.
- (6) This paragraph shall, with the necessary modifications, apply to a contract for the grant of a lease or underlease of a dwelling-house as it applies to a contract for the sale of an estate in a dwelling-house.

Textual Amendments

- F2** Words in Sch. 4 para. 3(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 15(3); S.I. 2005/3175, art. 2(1), Sch. 1
- F3** Words in Sch. 4 para. 3(3) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 15(3); S.I. 2005/3175, art. 2(1), Sch. 1

Cancellation of registration after termination of marriage [^{F4}or civil partnership], etc.

Textual Amendments

- F4** Words in Sch. 4 para. 4 heading inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 15(8); S.I. 2005/3175, art. 2(1), Sch. 1

- 4 (1) Where a [^{F5}spouse's or civil partner's home rights] are a charge on an estate in the dwelling-house and the charge is registered under section 31(10) or under section 2 of the ^{M3}Land Charges Act 1972, the Chief Land Registrar shall, subject to sub-paragraph (2), cancel the registration of the charge if he is satisfied—
- [^{F6}(a) in the case of a marriage—
- (i) by the production of a certificate or other sufficient evidence, that either spouse is dead,

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- (ii) by the production of an official copy of a decree or order of a court, that the marriage has been terminated otherwise than by death, or
- (iii) by the production of an order of the court, that the spouse's home rights constituting the charge have been terminated by the order, and
- (b) in the case of a civil partnership—
 - (i) by the production of a certificate or other sufficient evidence, that either civil partner is dead,
 - (ii) by the production of an official copy of an order or decree of a court, that the civil partnership has been terminated otherwise than by death, or
 - (iii) by the production of an order of the court, that the civil partner's home rights constituting the charge have been terminated by the order.]

(2) Where—

- (a) the marriage [^{F7}or civil partnership] in question has been terminated by the death of the spouse [^{F8}or civil partner] entitled to an estate in the dwelling-house or otherwise than by death, and
- (b) an order affecting the charge of the spouse [^{F9}or civil partner] not so entitled had been made under section 33(5),

then if, after the making of the order, registration of the charge was renewed or the charge registered in pursuance of sub-paragraph (3), the Chief Land Registrar shall not cancel the registration of the charge in accordance with sub-paragraph (1) unless he is also satisfied that the order has ceased to have effect.

(3) Where such an order has been made, then, for the purposes of sub-paragraph (2), the spouse [^{F10}or civil partner] entitled to the charge affected by the order may—

- (a) if before the date of the order the charge was registered under section 31(10) or under section 2 of the Land Charges Act 1972, renew the registration of the charge, and
- (b) if before the said date the charge was not so registered, register the charge under section 31(10) or under section 2 of the Land Charges Act 1972.

(4) Renewal of the registration of a charge in pursuance of sub-paragraph (3) shall be effected in such manner as may be prescribed, and an application for such renewal or for registration of a charge in pursuance of that sub-paragraph shall contain such particulars of any order affecting the charge made under section 33(5) as may be prescribed.

(5) The renewal in pursuance of sub-paragraph (3) of the registration of a charge shall not affect the priority of the charge.

(6) In this paragraph “prescribed” means prescribed by rules made under section 16 of the Land Charges Act 1972 or [^{F11}by land registration rules under the Land Registration Act 2002], as the circumstances of the case require.

Textual Amendments

F5 Words in Sch. 4 para. 4(1) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 82, 263, [Sch. 9 para. 15\(4\)](#); S.I. 2005/3175, [art. 2\(1\)](#), Sch. 1

F6 Sch. 4 para. 4(1)(a)(b) substituted (5.12.2005) for Sch. 4 para. 4(1)(a)-(c) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 82, 263, [Sch. 9 para. 15\(5\)](#); S.I. 2005/3175, [art. 2\(1\)](#), Sch. 1

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- F7** Words in Sch. 4 para. 4(2)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 15(6)(a)(i)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F8** Words in Sch. 4 para. 4(2)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 15(6)(a)(ii)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F9** Words in Sch. 4 para. 4(2)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 15(6)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F10** Words in Sch. 4 para. 4(3) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 15(7)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F11** Words in Sch. 4 para. 4(6) substituted (13.10.2003) by 2002 c. 9, ss. 133, 136(2), Sch. 11 para. 34(3) (with s. 129); S.I. 2003/1725, **art. 2(1)** (subject to art. 2(2))

Marginal Citations

- M3** 1972 c. 61.

Release of [F12]home rights]

Textual Amendments

- F12** Words in Sch. 4 para. 5 heading substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 15(11)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

- 5 (1) A [F13]spouse or civil partner entitled to home rights] may by a release in writing release those rights or release them as respects part only of the dwelling-house affected by them.
- (2) Where a contract is made for the sale of an estate or interest in a dwelling-house, or for the grant of a lease or underlease of a dwelling-house, being (in either case) a dwelling-house affected by a charge registered under section 31(10) or under section 2 of the Land Charges Act 1972, then, without prejudice to sub-paragraph (1), the [F14]home rights] constituting the charge shall be deemed to have been released on the happening of whichever of the following events first occurs—
- (a) the delivery to the purchaser or lessee, as the case may be, or his solicitor on completion of the contract of an application by the spouse [F15]or civil partner] entitled to the charge for the cancellation of the registration of the charge; or
 - (b) the lodging of such an application at Her Majesty's Land Registry.

Textual Amendments

- F13** Words in Sch. 4 para. 5(1) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 15(9)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F14** Words in Sch. 4 para. 5(2) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 15(10)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F15** Words in Sch. 4 para. 5(2)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 15(10)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

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Postponement of priority of charge

- 6 A spouse [^{F16}or civil partner] entitled by virtue of section 31 to a charge on an estate or interest may agree in writing that any other charge on, or interest in, that estate or interest shall rank in priority to the charge to which that spouse [^{F16}or civil partner] is so entitled.

Textual Amendments

F16 Words in Sch. 4 para. 6 inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 15(12); S.I. 2005/3175, art. 2(1), Sch. 1

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