

FAMILY LAW (SCOTLAND) ACT 2006

EXPLANATORY NOTES

THE ACT

Matrimonial homes

Section 5: Occupancy rights: duration

12. **Section 5** concerns the matrimonial home and the rights of the “non-entitled” spouse to occupy the home. An “entitled” spouse is one who has a right to occupy the matrimonial home, whether because he or she is the owner or tenant or because he or she is allowed by a third party to occupy it. A spouse with no such right is a “non-entitled” spouse. The Matrimonial Homes (Family Protection) (Scotland) Act 1981 gives the non-entitled spouse a right to live in the matrimonial home by providing that, if already living there, he or she has the right to continue to occupy it and where not living there he or she has a right to occupy it. Section 5 introduces a time bar to this latter right. Where there has been no cohabitation between a married couple for two years during which the non-entitled spouse has not occupied the matrimonial home, the non-entitled spouse will cease to have occupancy rights.

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.

Section 7: Occupancy rights: proposed dealings with third parties

15. Section 7 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 details the circumstances in which courts can dispense with the consent of the non-entitled spouse to the dealing of a matrimonial home. Paragraph (b) of section 7 of the Act amends the 1981 Act by further defining these circumstances making them subject to conditions, including: that negotiations on the sale of the home to a third party must not have begun, or at least the price not yet agreed; the agreed sale price is no less than that specified in the court order dispensing with consent; and that the contract for sale be concluded within a specified time period.

16. **Section 7(c)** of the Act provides that if courts refuse an application to dispense with the consent of the non-entitled spouse, they may make an order requiring the non-entitled spouse who becomes the occupier of the matrimonial home to either make specified payment to the owner of the home or otherwise comply with specified conditions.

Section 8: Occupancy rights: effect of court action

17. This section provides that where an application is made under section 3(1), 4(1) or 5(1) of the Matrimonial Homes (Family Protection) Act 1981, and the application is made to the court within the two year period in which parties cease to cohabit and the non-entitled spouse does not occupy the matrimonial home, then calculation of the two year period is suspended for the duration of the court action. In effect the clock stops ticking once the court action is raised and starts again once the court action is determined.

Section 9: Amendment of definition of “matrimonial home”

18. This section amends the 1981 Act’s definition (at section 22) of the term “matrimonial home”. This amendment provides that where the tenancy of a matrimonial home has been transferred from one spouse to the other and becomes the other spouse’s separate residence, it should no longer be regarded as the matrimonial home.