



# Family Law Act 1996

## 1996 CHAPTER 27

### PART IV

#### FAMILY HOMES AND DOMESTIC VIOLENCE

##### *Dwelling-house subject to mortgage*

#### **54 Dwelling-house subject to mortgage**

- (1) In determining for the purposes of this Part whether a person is entitled to occupy a dwelling-house by virtue of an estate or interest, any right to possession of the dwelling-house conferred on a mortgagee of the dwelling-house under or by virtue of his mortgage is to be disregarded.
- (2) Subsection (1) applies whether or not the mortgagee is in possession.
- (3) Where a person ("A") is entitled to occupy a dwelling-house by virtue of an estate or interest, a connected person does not by virtue of—
  - (a) any matrimonial home rights conferred by section 30, or
  - (b) any rights conferred by an order under section 35 or 36,have any larger right against the mortgagee to occupy the dwelling-house than A has by virtue of his estate or interest and of any contract with the mortgagee.
- (4) Subsection (3) does not apply, in the case of matrimonial home rights, if under section 31 those rights are a charge, affecting the mortgagee, on the estate or interest mortgaged.
- (5) In this section "connected person", in relation to any person, means that person's spouse, former spouse, cohabitant or former cohabitant.

#### **55 Actions by mortgagees: joining connected persons as parties**

- (1) This section applies if a mortgagee of land which consists of or includes a dwelling-house brings an action in any court for the enforcement of his security.

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*Status: This is the original version (as it was originally enacted).*

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- (2) A connected person who is not already a party to the action is entitled to be made a party in the circumstances mentioned in subsection (3).
- (3) The circumstances are that—
- (a) the connected person is enabled by section 30(3) or (6) (or by section 30(3) or (6) as applied by section 35(13) or 36(13)), to meet the mortgagor’s liabilities under the mortgage;
  - (b) he has applied to the court before the action is finally disposed of in that court; and
  - (c) the court sees no special reason against his being made a party to the action and is satisfied—
    - (i) that he may be expected to make such payments or do such other things in or towards satisfaction of the mortgagor’s liabilities or obligations as might affect the outcome of the proceedings; or
    - (ii) that the expectation of it should be considered under section 36 of the Administration of Justice Act 1970.
- (4) In this section “connected person” has the same meaning as in section 54.

## **56 Actions by mortgagees: service of notice on certain persons**

- (1) This section applies if a mortgagee of land which consists, or substantially consists, of a dwelling-house brings an action for the enforcement of his security, and at the relevant time there is—
- (a) in the case of unregistered land, a land charge of Class F registered against the person who is the estate owner at the relevant time or any person who, where the estate owner is a trustee, preceded him as trustee during the subsistence of the mortgage; or
  - (b) in the case of registered land, a subsisting registration of—
    - (i) a notice under section 31(10);
    - (ii) a notice under section 2(8) of the Matrimonial Homes Act 1983; or
    - (iii) a notice or caution under section 2(7) of the Matrimonial Homes Act 1967.
- (2) If the person on whose behalf—
- (a) the land charge is registered, or
  - (b) the notice or caution is entered,
- is not a party to the action, the mortgagee must serve notice of the action on him.
- (3) If—
- (a) an official search has been made on behalf of the mortgagee which would disclose any land charge of Class F, notice or caution within subsection (1) (a) or (b),
  - (b) a certificate of the result of the search has been issued, and
  - (c) the action is commenced within the priority period,
- the relevant time is the date of the certificate.
- (4) In any other case the relevant time is the time when the action is commenced.

- (5) The priority period is, for both registered and unregistered land, the period for which, in accordance with section 11(5) and (6) of the Land Charges Act 1972, a certificate on an official search operates in favour of a purchaser.