



# Family Law (Scotland) Act 2006

## 2006 asp 2

### *Matrimonial homes*

#### **5 Occupancy rights: duration**

In section 1 of the 1981 Act (right of spouse without title to occupy matrimonial home), after subsection (6) there shall be added—

“(7) Subject to subsection (5), if—

- (a) there has been no cohabitation between an entitled spouse and a non-entitled spouse during a continuous period of two years; and
- (b) during that period the non-entitled spouse has not occupied the matrimonial home,

the non-entitled spouse shall, on the expiry of that period, cease to have occupancy rights in the matrimonial home.

(8) A non-entitled spouse who has ceased to have occupancy rights by virtue of subsection (7) may not apply to the court for an order under section 3(1).”.

#### **6 Occupancy rights: dealings with third parties**

(1) Section 6 of the 1981 Act (continued exercise of occupancy rights after dealing) shall be amended in accordance with subsections (2) and (3).

(2) After subsection (1), there shall be inserted—

“(1A) The occupancy rights of a non-entitled spouse in relation to a matrimonial home shall not be exercisable in relation to the home where, following a dealing of the entitled spouse relating to the home—

- (a) a person acquires the home, or an interest in it, in good faith and for value from a person other than the person who is or, as the case may be, was the entitled spouse; or
- (b) a person derives title to the home from a person who acquired title as mentioned in paragraph (a).”.

(3) In subsection (3)—

- (a) in paragraph (e)—

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*Status: This is the original version (as it was originally enacted).*

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- (i) for “sale”, where it first occurs, there shall be substituted “transfer for value”; and
- (ii) for the words from “seller”, where it first occurs, to the end of the paragraph there shall be substituted “transferor—
  - (i) a written declaration signed by the transferor, or a person acting on behalf of the transferor under a power of attorney or as a guardian (within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4)), that the subjects of the transfer are not, or were not at the time of the dealing, a matrimonial home in relation to which a spouse of the transferor has or had occupancy rights; or
  - (ii) a renunciation of occupancy rights or consent to the dealing which bears to have been properly made or given by the non-entitled spouse or a person acting on behalf of the non-entitled spouse under a power of attorney or as a guardian (within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4)).”; and
- (b) in paragraph (f), for “5” there shall be substituted “2”.

## 7 **Occupancy rights: proposed dealings with third parties**

In section 7 of the 1981 Act (court’s power to dispense with spouse’s consent to dealing and proposed dealing)—

- (a) in subsection (1), at the beginning there shall be inserted “Subject to subsections (1A) to (1D) below,”;
- (b) after that subsection there shall be inserted—
  - “(1A) Subsection (1B) applies if, in relation to a proposed sale—
    - (a) negotiations with a third party have not begun; or
    - (b) negotiations have begun but a price has not been agreed.
  - (1B) An order under subsection (1) dispensing with consent may be made only if—
    - (a) the price agreed for the sale is no less than such amount as the court specifies in the order; and
    - (b) the contract for the sale is concluded before the expiry of such period as may be so specified.
  - (1C) Subsection (1D) applies if the proposed dealing is the grant of a heritable security.
  - (1D) An order under subsection (1) dispensing with consent may be made only if—
    - (a) the heritable security is granted for a loan of no more than such amount as the court specifies in the order; and
    - (b) the security is executed before the expiry of such period as may be so specified.”; and

(c) after subsection (3) there shall be inserted—

“(3A) If the court refuses an application for an order under subsection (1), it may make an order requiring a non-entitled spouse who is or becomes the occupier of the matrimonial home—

- (a) to make such payments to the owner of the home in respect of that spouse’s occupation of it as may be specified in the order;
- (b) to comply with such other conditions relating to that spouse’s occupation of the matrimonial home as may be so specified.”.

## **8 Occupancy rights: effect of court action**

After section 9 of the 1981 Act (provisions where both spouses have title) there shall be inserted—

*“Reckoning of non-cohabitation periods in sections 1 and 6*

### **9A Effect of court action under section 3, 4 or 5 on reckoning of periods in sections 1 and 6**

- (1) Subsection (2) applies where an application is made under section 3(1), 4(1) or 5(1) of this Act.
- (2) In calculating the period of two years mentioned in section 1(7)(a) or 6(3)(f) of this Act, no account shall be taken of the period mentioned in subsection (3) below.
- (3) The period is the period beginning with the date on which the application is made and—
  - (a) in the case of an application under section 3(1) or 4(1) of this Act, ending on the date on which—
    - (i) an order under section 3(3) or, as the case may be, 4(2) of this Act is made; or
    - (ii) the application is otherwise finally determined or abandoned;
  - (b) in the case of an application under section 5(1) of this Act, ending on the date on which—
    - (i) the order under section 3(3) or, as the case may be, 4(2) is varied or recalled; or
    - (ii) the application is otherwise finally determined or abandoned.”.

## **9 Amendment of definition of “matrimonial home”**

In section 22 of the 1981 Act (interpretation) (which shall become subsection (1) of that section)—

- (a) in the definition of “matrimonial home”—
  - (i) after “means” there shall be inserted “subject to subsection (2),”; and
  - (ii) for the words “one spouse for that” there shall be substituted “a person for one”; and
- (b) at the end there shall be inserted—

“(2) If—

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- (a) the tenancy of a matrimonial home is transferred from one spouse to the other by agreement or under any enactment; and
  - (b) following the transfer, the spouse to whom the tenancy was transferred occupies the home but the other spouse does not,
- the home shall, on such transfer, cease to be a matrimonial home.”.