



# Family Law Act 1996

## 1996 CHAPTER 27

### PART IV

#### FAMILY HOMES AND DOMESTIC VIOLENCE

##### *Rights to occupy matrimonial [F<sup>1</sup> or civil partnership] home*

#### **31 Effect of [F<sup>1</sup> home rights] as charge on dwelling-house.**

- (1) Subsections (2) and (3) apply if, at any time during a [F<sup>2</sup> marriage or civil partnership, A] is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest.
- (2) [F<sup>3</sup>B's 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 [F<sup>4</sup>A] acquires the estate or interest;
  - (b) the date of the marriage [F<sup>5</sup> or of the formation of the civil partnership]; and
  - (c) 1st January 1968 (the commencement date of the <sup>M1</sup>Matrimonial Homes Act 1967).
- (4) Subsections (5) and (6) apply if, at any time when [F<sup>6</sup>B's home rights] are a charge on an interest of [F<sup>7</sup>A] under a trust, there are, apart from [F<sup>8</sup>A or B], 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 [F<sup>9</sup>A].
- (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 [F<sup>10</sup>A and B] alone (whether or not the exercise of it requires the consent of another person).

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- (8) Even though [F<sup>11</sup>B’s 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 [F<sup>12</sup>A], or
  - (b) the termination (otherwise than by death) of the marriage [F<sup>13</sup>or civil partnership],
 unless the court directs otherwise by an order made under section 33(5).

- (9) If—
  - (a) [F<sup>14</sup>B’s 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 [F<sup>15</sup>A] or, as the case may be, under the trustees for [F<sup>15</sup>A], by virtue of the surrender.

- (10) If the title to the legal estate by virtue of which [F<sup>16</sup>A] is entitled to occupy a dwelling-house (including any legal estate held by trustees for [F<sup>16</sup>A]) is registered under the [F<sup>17</sup>Land Registration Act 2002] 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
  - [F<sup>18</sup>(b) [F<sup>19</sup>B’s home rights] are not to be capable of falling within paragraph 2 of Schedule 1 or 3 to that Act.]

(11) F<sup>20</sup> .....

- (12) If—
  - [F<sup>21</sup>(a) B’s home rights are a charge on the estate of A or of trustees of A, and]
  - (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 M<sup>2</sup>Land Charges Act 1972, the charge is, for the purposes of section 94 of the M<sup>3</sup>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.

<b>Textual Amendments</b>	
<b>F1</b>	Words in s. 31 heading substituted (5.12.2005) by <a href="#">Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 2(1)(12)</a> ; S.I. 2005/3175, <a href="#">art. 2(1)</a> , Sch. 1
<b>F2</b>	Words in s. 31(1) substituted (5.12.2005) by <a href="#">Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 2(1)(2)</a> ; S.I. 2005/3175, <a href="#">art. 2(1)</a> , Sch. 1
<b>F3</b>	Words in s. 31(2) substituted (5.12.2005) by <a href="#">Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 2(1)(3)</a> ; S.I. 2005/3175, <a href="#">art. 2(1)</a> , Sch. 1

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- F4** Words in s. 31(3)(a) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(4)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F5** Words in s. 31(3)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(4)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F6** Words in s. 31(4) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(5)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F7** Words in s. 31(4) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(5)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F8** Words in s. 31(4) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(5)(c)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F9** Words in s. 31(5) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(6)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F10** Words in s. 31(7) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(7)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F11** Words in s. 31(8) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(8)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F12** Words in s. 31(8)(a) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(8)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F13** Words in s. 31(8)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(8)(c)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F14** Words in s. 31(9)(a) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(9)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F15** Word in s. 31(9) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(9)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F16** Word in s. 31(10) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(10)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F17** Words in s. 31(10) substituted (13.10.2003) by 2002 c. 9, ss. 133, 136(2), Sch. 11 para. 34(2)(a) (with s. 129); S.I. 2003/1725, **art. 2(1)** (subject to art. 2(2))
- F18** S. 31(10)(b) substituted (13.10.2003) by 2002 c. 9, ss. 133, 136(2), Sch. 11 para. 34(2)(b) (with s. 129); S.I. 2003/1725, **art. 2(1)** (subject to art. 2(2))
- F19** Words in s. 31(10)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(10)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F20** S. 31(11) repealed (13.10.2003) by 2002 c. 9, ss. 135, 136(2), Sch. 13 (with s. 129, Sch. 12 para. 1); S.I. 2003/1725, **art. 2(1)** (subject to art. 2(2))
- F21** S. 31(12)(a) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(11)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

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**Modifications etc. (not altering text)**

- C1** S. 31(10) restricted (1.10.1997) by 1996 c. 27, s. 32, **Sch. 4 para. 2**; S.I. 1997/1892, **art. 3**  
S. 31(10) extended (1.10.1997) by 1996 c. 27, s. 32, **Sch. 4 para. 4(3)(b)**; S.I. 1997/1892, **art. 3**

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**Marginal Citations**

- M1** 1967 c. 75.  
**M2** 1972 c. 61.  
**M3** 1925 c. 20.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 63(2)(k) inserted by [2021 c. 17 s. 52\(2\)](#)