

Protection against Unilateral Dispositions of the Family Home: An Irish Perspective

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Introduction

- ‘One of the most intractable problems to confront the legal system in recent decades is how far a spouse who has no legal title to the matrimonial home should have protection against dispositions by the legal owner (the other spouse) which may jeopardise the “non-owning” spouse’s right of occupation’
 - (Wylie, 2000).

Ireland

- **Family Home Protection Act 1976**
- Section 3 – Requires the written consent of the non-owning spouse for the conveyance of any interest in the family home
 - *Bank of Ireland v Smyth [1993]* – ‘free’ and ‘fully informed’ consent
 - Sanction – void transfer
 - Limited exceptions
- Section 4 – Power to dispense with consent
- Replicated for Civil Partners in 2010 Act

British Columbia

- **Land (Spouse Protection) Act 1996**
- An 'entry' with the Land Title and Survey Authority triggers requirement for consent
- Use? Alternative to certificate of pending litigation

- **Equitable protection – Unjust enrichment?**
- Constructive trust? Not necessarily
- Presumed remedy – 'personal restitutionary award'
- Land Title Act 1996 – abolishes doctrine of notice

England & Wales

- **Family Law Act 1996**
- ‘Home rights’
- ‘... mass invalidation of the statutory charges for want of registration...’ *per* Megarry J in *Wroth v Tyler* [1974]

- **Common intention constructive trust**
- Wider scope? *Stack v Dowden* [2007]; *Jones v Kernott* [2011]
- Land Registration Act – overriding interest

England & Wales

- No legal or equitable interest (& no registered home rights)?
- **Recommended conveyancing practice**
- Silverman; Abbey & Richards
- Consent required to ensure no late registration of home rights & guarantee vacant possession
- Problem solved?

England & Wales

- What about the 'Hoodwinked Wife'?!
 - No legal or equitable interest
 - Unaware of need to register her home rights
 - Unaware of the impending sale

Conclusion

- Support for reform
 - Gray & Gray
 - Elizabeth Cooke, Anne Barlow & Thérèse Callus
- Right of veto ought to be conferred automatically on all spouses
- Family Home Protection Act 1976 presents a useful template