

Home Rights – What are they?

One purpose of the Family Law Act 1996 (referred to as 'The Act' within the rest of this Fact Sheet), is to protect the rights of occupation of a husband or wife, in respect of the matrimonial home. These rights will be especially important if you have been deserted or your marriage is in danger of breaking down. The rights operate against anyone who might acquire an interest in your matrimonial home from your spouse, and ensures that they do not oust you. At the same time, any potential purchasers will know that they can safely purchase a house free from any possible Home Rights if no such rights have been registered.

If your spouse, as the sole owner, is entitled to live in a house which is, or once was, or was intended to be the matrimonial home then, under the Act, you have statutory Home Rights in the house. Your rights are a charge on your spouse's interest in the house, which arises on the latest one of the following dates, namely:-

- i. the date when your spouse acquired the house; or
- ii. the date of your marriage; or
- iii. 1 January 1968

Your charge will continue only while your marriage lasts (i.e. until Decree Absolute within Divorce proceedings) unless there is a Court Order to the contrary.

Unless your rights have been protected by registration, they cannot be enforced against certain people who acquire an interest in the house (usually a purchaser). The method of protection of your rights will vary according to whether or not your spouse's ownership of the house is registered with the Land Registry. The first thing to do is to find out the nature of your spouse's interest. For example, is it Freehold; Leasehold; or a Short Tenancy. Then you need to find out if your spouse's interest in the house is registered or unregistered. If your spouse's interest in the house is registered under the Land Registrations Acts, your rights can be protected by a 'Notice' in the register kept by HM Land Registry. If your spouse's ownership of the house is not registered then your rights can be protected by a 'Class F Land Charge' in the records kept by the Land Charges Department. Therefore, if you think that your spouse, without your knowledge and consent, is about to do something such as sell or re-mortgage the house in which you have rights, it is vital that you protect those rights.

Your spouse's interest in the matrimonial home (whether or not it is mortgaged) may be the ownership of the freehold or a lesser interest such as a long-term lease or short tenancy. To protect your rights, you must first find out whether the ownership of that interest in the house is registered under the Land Registration Act, because registration of your right in the wrong place will not protect you. You should note that a tenancy agreement or a lease for 21 years (or less) cannot be registered at the Land Registry. Longer leases or freehold ownerships may be, but are not necessarily, registered there. Each different interest in a house is registered under a different number. Just because one interest in a house is registered, it does not mean that all the others necessarily have to be.

Often these days, the house is jointly owned by the husband and the wife, whether or not it is registered, and whether or not it is mortgaged. If this is the case, then you have rights of occupation simply by reason of your co-ownership. In such a case, no action is needed under the Act and the following will not apply to you. You may, however, need to see a Solicitor to find out how to enforce your rights.

How to find out whether or not your spouse's house is registered at the Land Registry

You may already know if your spouse's interest in the house is registered and, if it is, the title number under which it is registered. If you do not know, we can make an application for Office Copy Entries of the Register at the Land Registry to find out for you.

Protection restricted to one house only!

Please note that you can only protect your rights of occupation in respect of one house at any one time, whether your spouse's interest is held under a registered or unregistered title.

We hope this information is of some assistance to you. Please do not hesitate to contact us if you have any queries on the information contained in this document or there is anything you would like to discuss in more detail.