



Matrimonial Homes (Family Protection) (Scotland) Act 1981

1981 CHAPTER 59

Occupancy rights in relation to dealings with third parties

7 Dispensation by court with spouse's consent to dealing.

- (1) [^{F1}Subject to subsections (1A) to (1D) below,] The court may, on the application of an entitled spouse or any other person having an interest, make an order dispensing with the consent of a non-entitled spouse to a dealing which has taken place or a proposed dealing, if—
- such consent is unreasonably withheld;
 - such consent cannot be given by reason of physical or mental disability;
 - the non-entitled spouse cannot be found after reasonable steps have been taken to trace him or her; or
 - the non-entitled spouse is [^{F2}under legal disability by reason of nonage].

[^{F3}(1A) Subsection (1B) applies if, in relation to a proposed sale—

- negotiations with a third party have not begun; or
- negotiations have begun but a price has not been agreed.

(1B) An order under subsection (1) dispensing with consent may be made only if—

- the price agreed for the sale is no less than such amount as the court specifies in the order; and
- 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—

- the heritable security is granted for a loan of no more than such amount as the court specifies in the order; and
- the security is executed before the expiry of such period as may be so specified.]

Changes to legislation: Matrimonial Homes (Family Protection) (Scotland) Act 1981, Section 7 is up to date with all changes known to be in force on or before 22 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (2) For the purposes of subsection (1)(a) above, a non-entitled spouse shall have unreasonably withheld consent to a dealing which has taken place or a proposed dealing, where it appears to the court—
- (a) that the non-entitled spouse has led the entitled spouse to believe that he or she would consent to the dealing and that the non-entitled spouse would not be prejudiced by any change in the circumstances of the case since such apparent consent was given; or
 - (b) that the entitled spouse has, having taken all reasonable steps to do so, been unable to obtain an answer to a request for consent.
- (3) The court, in considering whether to make an order under subsection (1) above, shall have regard to all the circumstances of the case including the matters specified in paragraphs (a) to (e) of section 3(3) of this Act.
- [^{F4}(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.]
- (4) Where—
- (a) an application is made for an order under this section; and
 - (b) an action is or has been raised by a non-entitled spouse to enforce occupancy rights,
- the action shall be sisted until the conclusion of the proceedings on the application.
- (5) ^{F5}

Textual Amendments

- F1** Words in s. 7(1) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 7(a), 46(2); S.S.I. 2006/212, art. 2
- F2** Words in s. 7(1)(d) substituted by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), s. 10(1), Sch. 1 para. 37
- F3** S. 7(1A)-(1D) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 7(b), 46(2); S.S.I. 2006/212, art. 2
- F4** S. 7(3A) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 7(c), 46(2); S.S.I. 2006/212, art. 2
- F5** S. 7(5) repealed by Family Law (Scotland) Act 1985 (c. 37, SIF 49:3), ss. 28(2), 29(4), Sch. 2

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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. 2(8A) inserted by [2023 asp 3 s. 56\(2\)](#)
- s. 3(9) inserted by [2023 asp 3 s. 56\(4\)](#)
- s. 8(2C) inserted by [2023 asp 3 s. 56\(7\)](#)