



AN BILLE UM THEACH AN PHÓSTA, 1993
MATRIMONIAL HOME BILL, 1993

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As initiated

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ACTS REFERRED TO

Bankruptcy Act, 1988	1988, No. 27
Building Societies (Amendment) Act, 1983	1983, No. 25
Capital Acquisitions Tax Act, 1976	1976, No. 8
Conveyancing Act, 1881	1881, c. 41
Deeds of Arrangement Act, 1887	1887, c. 57
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Family Law Act, 1981	1981, No. 22
Judgments (Ireland) Act, 1844	1844, c. 90
Judicial Separation and Family Law Reform Act, 1989	1989, No. 6
Land Act, 1965	1965, No. 2
Landlord and Tenant Law Amendment Act, Ireland, 1860	1860, c. 154
Married Women's Status Act, 1957	1957, No. 5
Registration of Title Act, 1964	1964, No. 16
Succession Act, 1965	1965, No. 27
Trustee Act, 1893	1893, c. 53



AN BILLE UM THEACH AN PHÓSTA, 1993
MATRIMONIAL HOME BILL, 1993

BILL

entitled

5 AN ACT TO MAKE PROVISION, IN THE INTERESTS OF THE
COMMON GOOD, IN RELATION TO THE OWNERSHIP
OF MATRIMONIAL HOMES, TO PROVIDE FOR CER-
TAIN OTHER MATTERS AFFECTING SPOUSES IN
10 RELATION TO PROPERTY AND TO PROVIDE FOR
RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Matrimonial Home Act, 1993. Short title and commencement.
15 (2) This Act (other than *section 7*) shall come into operation on
the day that is 6 months after the date of its passing.

2.—(1) In this Act, unless the context otherwise requires— Interpretation.
“the Act of 1964” means the Registration of Title Act, 1964;
“the Act of 1965” means the Succession Act, 1965;
20 “the Act of 1976” means the Family Home Protection Act, 1976;
“the Act of 1989” means the Judicial Separation and Family Law
Reform Act, 1989;
“conveyance” includes a mortgage, lease, assent, transfer, disclaimer,
release and any other disposition of property otherwise than by a will
25 or a *donatio mortis causa* and also includes an enforceable agreement
(whether conditional or unconditional) to make any such conveyance;
“dwelling” means any building or part of a building occupied as a
separate dwelling and includes any garden or other land usually
occupied with the dwelling, being land that is subsidiary and ancillary
30 to it, is required for its amenity or convenience and is not being used
or developed primarily for commercial purposes, but does not include

a structure that is not permanently attached to the ground or a vehicle, or vessel, whether mobile or not;

“easements” includes rights and profits *à prendre*;

“family home” has the meaning assigned to it by the Act of 1976;

“household chattels” has the meaning assigned to it by section 9 (7) 5
of the Act of 1976;

“matrimonial home” means the dwelling in which a married couple ordinarily resided, or reside, either immediately before or at any time after the commencement of this section as their sole or principal residence and any easements attached or annexed to such a dwelling and exercisable over any other land; 10

“matrimonial home to which *section 4* applies” means a matrimonial home an interest in which vests in both spouses as joint tenants by virtue of *section 4*;

“the Minister” means the Minister for Equality and Law Reform; 15

“mobile home” has the meaning assigned to it by *section 11*;

“personal representative” means the executor or the administrator for the time being of a deceased person;

“registered land”, “the Registrar”, “Registry of Deeds” and “unregistered land” have the meanings assigned to them by the Act of 1964; 20

“purchaser”, in relation to a matrimonial home, means a person who acquires an estate or interest in the home;

“spouse in whose favour *section 4* applies” means the spouse who, by virtue of the operation of *section 4*, becomes or would become entitled to a share, or an enlarged share, to which he would not otherwise have been entitled in an interest in the matrimonial home concerned; 25

and any cognate words shall be construed accordingly.

(2) References in this Act to a dwelling, a home, a matrimonial home, a matrimonial family home or a former matrimonial residence include references to a part of the dwelling, home, matrimonial home, matrimonial family home or former matrimonial residence, as the case may be. 30

(3) In this Act—

(a) a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any subsequent enactment including this Act, 35

(b) a reference to a Part or section is a reference to a Part or section of this Act unless it is indicated that reference to some other enactment is intended, 40

(c) a reference to a subsection or paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

3.—(1) Section 12 of the Married Women's Status Act, 1957, is hereby repealed. Repeal.

(2) Proceedings instituted under the said section 12 before the commencement of this section may be continued and determined as if *subsection (1)* had not been enacted.

PART II

JOINT OWNERSHIP OF MATRIMONIAL HOME

4.—(1) This section applies to any interest in a matrimonial home, whether the interest is legal or equitable, or realty or personalty, including an interest under a tenancy agreement but excluding an interest held as trustee or licensee or the interest of a tenant under a letting made for the period of his continuance in any office, appointment or employment or *bona fide* for his or the landlord's temporary convenience or to meet a temporary necessity of either of them. Joint ownership of matrimonial home.

(2) Where, immediately before the commencement of this section, either or both of the spouses concerned was or were entitled to an interest to which this section applies in a matrimonial home, the interest shall, upon such commencement, subject to the provisions of this Act, vest in them as joint tenants.

(3) Where, at any time after such commencement, but for this subsection, either or both of the spouses concerned would become entitled to an interest to which this section applies in a matrimonial home, thereupon, the interest shall, subject to the provisions of this Act, vest in them as joint tenants.

(4) The interest vesting in both spouses by virtue of *subsection (2)* or *(3)* shall be an equitable interest only in the matrimonial home concerned irrespective of whether, immediately before the application of the subsection, the interest in the home to which either or both of the spouses was or were entitled was a legal interest.

(5) Where, by virtue of *subsection (2)* or *(3)*, an interest to which this section applies in a matrimonial home vests in the spouses concerned, then (in addition to any easements already attached or annexed to the home) such (if any) easements exercisable over any other land that is the property of either or both of the spouses, or of either or both of them and another person, as are necessary for the reasonable, beneficial use, occupation and enjoyment of the home and (in the case of any land that is the property of either or both of them and another person) as would not materially prejudice the use, development or amenity of the land or a part of it shall, subject to the provisions of this Act, be deemed to be attached or annexed to the home.

(6) The interest in a matrimonial home vested in both spouses by virtue of *subsections (2)* and *(3)* shall be subject to—

(a) any easements already attached or annexed to any other land and exercisable over the home, and

(b) such (if any) other easements exercisable over the home as are necessary for the reasonable, beneficial use, occupation and enjoyment of any other land the property of

either or both of the spouses or of either or both of them and another person.

(7) Subject to the provisions of this Act, *subsections (2) and (3)* shall have effect notwithstanding any limitation, covenant or condition restricting or excluding the right of the spouse or spouses concerned to dispose of or otherwise deal with his or their interest in the matrimonial home concerned. 5

(8) (a) Where, immediately before the application of *subsection (2) or (3)* to a matrimonial home, an interest in the home or dwelling concerned was or is held (whether alone or with other land) by a person ("the spouse") who was or who, upon such application, becomes one of the spouses concerned and one or more other persons as joint tenants, then, upon such application— 10

(i) the joint tenancy shall become and be severed, 15

(ii) the spouse and the other person or persons shall hold the interest aforesaid as tenants in common in equal shares,

(iii) the share of the spouse in the tenancy in common shall, by virtue of such application, be held by him and the other spouse as joint tenants, and 20

(iv) in case any land other than the home or dwelling was held on the joint tenancy existing immediately before such application, that land shall continue to be held by the spouse concerned and the other person or persons as joint tenants. 25

(b) *Paragraph (a)* applies to the case where the interest referred to therein was held by the persons who were or who, upon the application aforesaid, became the spouses concerned as it applies to the case specified in that paragraph, with any necessary modifications. 30

(9) The proviso to section 14 of the Landlord and Tenant Law Amendment Act, Ireland, 1860, shall not apply to an assignment by virtue of this section.

(10) Any easements arising by virtue of *subsections (5) and (6) (b)* shall be deemed to be burdens to which section 72 (1) of the Act of 1964 applies. 35

(11) This section shall not be construed as preventing the alienation (including the alienation by operation of law), division or severance of the interest, or part of the interest, held by both spouses in a matrimonial home by virtue of this section and, upon any such alienation, division or severance, this section shall cease to apply to any resulting interest of either spouse in the home. 40

Exclusions and
saver.

5.—(1) Where the spouses concerned are entitled (otherwise than by virtue of *section 4*) as joint tenants or as tenants in common in equal shares to an interest to which that section applies in a matrimonial home, *section 4* shall not apply as respects those spouses to the interest during the period during which either of them remains entitled to any share in the interest. 45

(2) Section 45 of the Land Act, 1965, shall not apply to the vesting under *section 4* or *8* of an interest to which *section 4* applies in a matrimonial home.

5 (3) Nothing in this Act shall be construed as preventing a court from exercising any jurisdiction conferred on it by *section 5* of the Act of 1976 or Part II of the Act of 1989.

6.—(1) The court may, in relation to a matrimonial home to which *section 4* applies, on application to it in that behalf in a summary manner by either of the spouses concerned or by the personal representative, or by or on behalf of a child, of a deceased spouse, make an order declaring that—

Jurisdiction of court to exclude application of *section 4*.

(a) as on and from such date as may be specified in the order, *section 4* shall cease to apply to the home, or

15 (b) in the case of an application by the personal representative, or by or on behalf of a child, of a deceased spouse, that, immediately before the death of the spouse, *section 4* shall be deemed to have ceased to apply to the home,

and, if the court makes the order, as on and from the date or time aforesaid—

20 (i) *section 4* shall cease or be deemed to have ceased to apply to the home, and

(ii) subject and without prejudice to the rights of any other person, the interest in the home vested by virtue of *section 4* in the spouse in whose favour *section 4* applies shall become and be, or be deemed to have been, re-vested in his spouse.

25 (2) An application under *subsection (1)* by the personal representative, or by or on behalf of a child, of a deceased spouse shall be made not later than 9 months after the death of the spouse or 30 months after the grant of representation, whichever is the later.

(3) A child (not being a minor) of a deceased spouse or, with the prior approval of the court, a parent or guardian of a child (being a minor) of a deceased spouse may give an undertaking in writing that the child will not make an application under *subsection (1)* in relation to a specified matrimonial home and, if such an undertaking is given, the child concerned shall not be entitled to make such an application in relation to that home.

40 (4) Notice of an application under *subsection (1)* or of proceedings for the purposes of *subsection (3)* shall be given to the other spouse concerned and to such, if any, other person as the court may direct.

(5) The court shall not grant an application under *subsection (1)* unless it is satisfied, having had regard to the circumstances of the spouses, including in particular those mentioned in the following paragraphs, that it would be unjust not to grant it:

45 (a) any conduct on the part of the spouse in whose favour *section 4* applies,

(b) any failure or refusal by that spouse (having been requested by the other spouse to do so) to contribute or to contribute adequately in all the circumstances to the payment of

amounts due under a mortgage, or as rent under a lease or other tenancy, of the matrimonial home or in respect of other necessary expenditure on or in relation to the home if the financial circumstances of the first-mentioned spouse are such as to enable him to make such a contribution, 5

(c) the fact (if it be the case) that, having regard to the financial circumstances of the spouse in whose favour *section 4* applies, the application of that section to the matrimonial home concerned enriched him unfairly. 10

(6) On an application under *subsection (1)*, the court may—

(a) make an order under section 4 of the Act of 1976 dispensing with the consent referred to in that section,

(b) make an order under *section 18* in relation to the family home concerned. 15

(7) In *subsection (5) (b)* “mortgage” includes an equitable mortgage and a charge on registered land but does not include a charge mentioned in paragraph (a) or (b) of section 1 (1) of the Building Societies (Amendment) Act, 1983.

Contracting out.

7.—(1) A husband and wife, in relation to their matrimonial home or their intended matrimonial home, or a couple contemplating marriage, in relation to their intended matrimonial home, may agree in writing that *section 4* either, as the case may be— 20

(a) shall cease to apply to the matrimonial home, or

(b) shall not apply to the intended matrimonial home, 25

and, if they so agree either, as the case may be—

(i) on and from the date on which the agreement takes effect,

(I) *section 4* shall cease to apply to the matrimonial home, and

(II) subject and without prejudice to any rights of any other person, any interest in the home then vested by virtue of *section 4* in the spouse in whose favour *section 4* applies shall thereupon become and be re-vested in his spouse, 30

or 35

(ii) if the couple aforesaid marry and the intended matrimonial home becomes their matrimonial home, *section 4* shall not apply to it.

(2) The parties to an agreement under *subsection (1)* may annul the agreement by an agreement in writing made between them and, if an agreement under this subsection is made, *section 4* shall, on and from the date on which it takes effect, apply to the matrimonial home or intended matrimonial home concerned. 40

(3) The Minister may by regulations provide that an agreement under *subsection (1)* or (2) shall be in a specified form or a form to the like effect. 45

(4) An agreement under *subsection (1) or (2)* shall specify the matrimonial home or the intended matrimonial home to which it relates.

5 8.—(1) Where an interest in a matrimonial home has vested in both spouses by virtue of *section 4*—

Registration or conveyance of joint tenancy interest under *section 4*.

(a) in the case of registered land, if one only of the spouses is registered in a register maintained under the Act of 1964 as owner of the interest, both spouses shall be entitled to be registered as owners thereof, or

10 (b) in the case of unregistered land, if one only of the spouses appears from a deed or deeds registered in the Registry of Deeds to be the sole owner of the interest, a declaration in writing that the interest has so vested may be made by that spouse and a copy of the declaration, certified by him
15 to be a true copy, may be registered in that Registry,

and, upon such registration or the making of such declaration, any legal interest in the home vested, or becoming vested, in the spouse who is so registered or who appears from those deeds to be such owner shall vest in both spouses as joint tenants.

20 (2) (a) An application for registration pursuant to *subsection (1)* and the declaration mentioned in that subsection shall be made by the spouse aforesaid if so requested by the other spouse and, upon the making of such a declaration, a copy thereof, certified as aforesaid, shall be registered by the
25 first-mentioned spouse in the Registry of Deeds.

(b) Where a spouse fails or refuses to comply with a request under *paragraph (a)*, the court may, on application to it in a summary manner by the other spouse, make such order to secure compliance with the request as it considers
30 appropriate.

(3) Section 126 (making of rules by Registration of Title Rules Committee) of the Act of 1964 shall apply to registration pursuant to *subsection (1) (a)* as it applies to registration under that Act.

35 (4) The Minister may by regulations provide that a declaration under *subsection (1) (b)* shall be in a specified form or a form to the like effect.

9.—(1) In this section “matrimonial family home” means a matrimonial home to which *section 4* applies and which is also a family home.

Acquisition and disposal of matrimonial family home.

40 (2) Subject to the provisions of this Act, a purchaser of any interest held by both spouses in a matrimonial family home shall hold it freed and discharged from any interest of the spouse in whose favour *section 4* applies only in any of the following circumstances:

45 (a) where both spouses convey the first-mentioned interest to the purchaser by deed or deeds,

(b) where—

(i) the purchase is from one spouse only (not being the spouse in whose favour *section 4* applies),

(ii) it is a *bona fide* purchase for full value (within the meaning of section 3 of the Act of 1976), and

(iii) the purchaser is without notice of the fact that the home is a matrimonial family home,

(c) where— 5

(i) the purchase is from a person, or a successor in title of his, who purchased the said first-mentioned interest but the purchase made by that person does not fall within *paragraph (a) or (b)*,

(ii) it is for full value (within the meaning aforesaid), and 10

(iii) the person making the purchase, or any person acting on his behalf in relation to the purchase, is without actual notice of the fact that the home is a matrimonial family home,

and section 31 (conclusiveness of register) and sections 52 to 58 (effect of transfers of land or interests in land) of the Act of 1964 shall be construed accordingly. 15

(3) Where, pursuant to section 4 (4) of the Act of 1976, a court gives on behalf of a spouse the consent required by section 3 (1) of that Act to the conveyance of an interest in a matrimonial family home to a purchaser thereof, the purchaser shall hold the interest freed and discharged from any interest of the spouse in the home by virtue of *section 4*. 20

(4) *Subsections (2) and (3)* are without prejudice to the right of the spouse in whose favour *section 4* applies to enforce any right of his under that section in respect of the matrimonial family home otherwise than against the home. 25

(5) On the death of a spouse who is entitled to a legal interest in a matrimonial family home, his personal representative shall, unless otherwise requested by the other spouse and subject to the rights of any other person, execute an assent under section 52 (2) of the Act of 1965 vesting that interest in the other spouse or, if he is dead, in the person entitled thereto (within the meaning of that section). 30

(6) It shall not be the duty of the Registrar, prior to the registration in a register maintained under the Act of 1964 of a person as owner of land, to ascertain whether any other person has an interest in that land arising by virtue of *section 4*. 35

Trust for sale in relation to former matrimonial residence.

10.—(1) In this section—

“former matrimonial residence” means a matrimonial home to which *section 4* applies which is not a family home; 40

“trustee spouse” and “the other spouse” shall be construed in relation to a former matrimonial residence in accordance with *subsections (2) and (6)* respectively.

(2) Where a spouse (referred to subsequently in this section as “the trustee spouse”)— 45

(a) is registered in a register maintained under the Act of 1964 as owner of the interest to which *section 4* applies in

a former matrimonial residence and appears from such registration to be the sole owner of that interest, or

- 5 (b) is shown, whether by a deed or deeds registered in the Registry of Deeds or otherwise, to be the sole owner of such an interest,

the trustee spouse shall hold the interest in trust for sale for both spouses as joint tenants.

(3) Subject to the provisions of this section, a trustee spouse may—

- 10 (a) sell the interest or part of the interest of both spouses in a former matrimonial residence by public auction or private contract, sell it subject to depreciaory conditions and, in his discretion, postpone the sale thereof indefinitely without being liable for any loss incurred by reason of the postponement,

- 15 (b) convey such an interest or part as aforesaid,

- (c) borrow money for the purpose of purchasing any interest in a former matrimonial residence or of its maintenance, repair or improvement and for those purposes mortgage or charge it,

- 20 (d) insure a former matrimonial residence,

- (e) act by an attorney,

- (f) give receipts for money and authorise the giving of such receipts by a solicitor,

25 and may, as a sole trustee, exercise those powers and shall have, and may, as a sole trustee, exercise, in relation to a former matrimonial residence, any other powers conferred on trustees by the Trustee Act, 1893 (which Act shall apply as if the trust concerned was created by deed), or conferred otherwise by law.

30 (4) In a conveyance of a former matrimonial residence by a trustee spouse, the covenants specified in section 7 (1) of the Conveyancing Act, 1881, shall be implied and be deemed to be included and subsections (6) and (7) of that section shall apply to a covenant implied by virtue of this subsection.

35 (5) (a) A purchaser of a former matrimonial residence from the trustee spouse shall not be concerned with the trust affecting any proceeds of the conveyance concerned or the rents or profits of the residence prior to its conveyance and—

- 40 (i) in the case of registered land, upon the registration of the purchaser in a register maintained under the Act of 1964 as owner of the residence, or

- (ii) in the case of unregistered land, upon conveyance of the residence by the trustee spouse to the purchaser,

45 the purchaser shall (subject, in the case of registered land, to section 72 (1) (j) and the other provisions of the Act of 1964) hold it freed and discharged from any interest of the other spouse (referred to subsequently in this section as "the other spouse") arising by virtue of section 4.

(b) A trustee spouse shall, in so far as is practicable, give effect to the wishes of the other spouse in the exercise of his powers under this section in relation to a former matrimonial residence.

(c) Where, in the exercise of his powers under this section, a trustee spouse sells the interest or part of the interest of both spouses in a former matrimonial residence, the purchaser shall not be concerned to ascertain whether, or to ensure that, those wishes have been given effect to and it shall not be necessary for the other spouse to convey his interest in, or join in the conveyance of, the residence.

(6) On the death of a trustee spouse, his personal representative shall, unless otherwise requested by the other spouse and subject to the rights of any other person, execute an assent under section 52 (2) of the Act of 1965 vesting any legal interest to which the trustee spouse was entitled in the former matrimonial residence concerned in the other spouse or, if he is dead, in the person entitled thereto (within the meaning of that section).

(7) The court may, on application to it in a summary manner by a trustee spouse or his personal representative or the other spouse, make such order, including an order conferring additional powers on the trustee spouse or his personal representative, as it considers necessary or expedient for the purposes of managing, disposing of, preserving, maintaining, improving or repairing a former matrimonial residence or safeguarding the rights or interest of either spouse in the residence or his rights in relation to it.

Joint ownership of mobile homes.

11.—(1) In this section “mobile home” means—

(a) a structure that is not permanently attached to the ground, or

(b) a vehicle, or vessel, whether mobile or not,

in which a married couple ordinarily resided, or reside, either immediately before or at any time after the commencement of this section as their sole or principal residence and includes any existing rights or privileges exercisable by either or both of the spouses over any land that is not owned by either or both of them, being rights or privileges necessary for the reasonable, beneficial use, occupation and enjoyment of the residence.

(2) (a) A mobile home shall, upon the commencement of this section, to the extent that, immediately before such commencement, it was owned by either or both of the spouses concerned and in the absence of any express agreement to the contrary, belong to both spouses as joint owners.

(b) Where, at any time after such commencement, a mobile home becomes owned to any extent by a spouse or spouses, the home shall thereupon, to that extent and in the absence of any express agreement to the contrary, belong to both spouses as joint owners.

(c) This Act shall apply to any garden or other land usually occupied with a mobile home, being land that is subsidiary or ancillary to it, is required for its amenity or convenience and is not being used or developed primarily for commercial purposes as if the home was a matrimonial home.

(3) Sections 4 (5), 6 and 18 (2) shall apply, with any necessary modifications, in relation to a mobile home as they apply in relation to a matrimonial home to which section 4 applies.

5 12.—(1) A purchaser of an interest to which section 4 applies in a matrimonial home from one of the spouses, not being the spouse in whose favour section 4 applies, or a successor in title of such a purchaser shall—

Title of purchaser of matrimonial home.

(a) on the expiration of 6 years from the date of the conveyance of the interest to the purchaser, or

10 (b) if, immediately before such expiration, the other spouse is in actual occupation of the home, on the cesser of such occupation,

hold the interest freed and discharged from any interest therein of that spouse arising by virtue of section 4.

15 (2) Subsection (1) is without prejudice to an order of a court affecting such an interest as aforesaid—

(a) in proceedings—

(i) that are instituted, and

20 (ii) in respect of which a *lis pendens* stands registered under the Judgments (Ireland) Act, 1844, or in a register maintained under the Act of 1964,

not later than 6 years after the date of the conveyance aforesaid, or

25 (b) in proceedings instituted not later than 6 years after that date of which the purchaser aforesaid has actual notice.

13.—No stamp duty shall be payable in respect of an agreement under subsection (1) or (2) of section 7 or so much of an agreement as constitutes such an agreement.

Exemption from stamp duty.

30 14.—Where an interest in a matrimonial home to which section 4 applies has been charged by one of the spouses with the payment of money, whether by way of legal or equitable mortgage or charge (including a lien for unpaid purchase money but not a charge mentioned in paragraph (a) or (b) of section 1 (1) of the Building Societies (Amendment) Act, 1983) or otherwise and that spouse dies leaving 35 the other spouse surviving him, section 47 of the Act of 1965 shall apply to the interest as if the deceased spouse had been entitled, immediately before the death, to the ownership thereof and the surviving spouse had become entitled to such ownership on that death.

Application of section 47 of Act of 1965.

40 15.—Household chattels in a matrimonial home or mobile home shall, to the extent that they are owned by either or both of the spouses concerned and in the absence of any express agreement to the contrary, belong to both spouses as joint owners.

Joint ownership of household chattels.

16.—(1) In this section—

Bankruptcy.

“the Act” means the Bankruptcy Act, 1988;

“arranging debtor” means a person who has been granted an order for protection under Part IV of the Act or a person who has executed a deed of arrangement within the meaning of section 4 of the Deeds of Arrangement Act, 1887; 5

“matrimonial home” includes a mobile home;

“Official Assignee” has the meaning assigned to it by the Act;

“spouse in whose favour section 4 or 11 applies” means the spouse who, by virtue of section 4 or 11, becomes or would become entitled to a share, or an enlarged share, to which he would not otherwise have been entitled in an interest in the home concerned. 10

(2) If, at the time when section 4 or 11 would, but for this subsection, commence to apply to, or to an interest in, a matrimonial home, the spouse in whose favour that section applies is a bankrupt, that section shall not apply to the interest. 15

(3) If, at the time when section 4 or 11 would, but for this subsection, commence to apply to, or to an interest in, a matrimonial home, the spouse in whose favour that section applies is an arranging debtor and the interest in the matrimonial home to which that spouse would become entitled by virtue of such application would, but for this subsection, vest in the Official Assignee or any other person, that section shall not apply to the first-mentioned interest. 20

(4) Where section 4 or 11 applies to, or to an interest in, a matrimonial home and the spouse other than the spouse in whose favour section 4 or 11 applies is adjudicated bankrupt under the Act or becomes an arranging debtor, section 4 or 11, as the case may be, shall continue so to apply. 25

(5) Section 44 of the Act shall not apply to household chattels which are jointly owned by virtue of section 15; and the chattels that a bankrupt is entitled to retain by virtue of the foregoing restriction shall be in addition to the articles that he is entitled to retain as excepted articles by virtue of section 45 of the Act. 30

Transitional.

17.—Where, before the commencement of this section, a spouse had entered into an enforceable agreement for the sale of an interest in a matrimonial home to which section 4 applies but the sale was not completed before such commencement, then, without prejudice to the interest of the spouse in whose favour section 4 applies in the purchase money, the sale may be completed as if this Act had not been passed. 35

Determination of questions relating to matrimonial home.

18.—(1) Where a question arises— 40

(a) as to whether specified land or any part of specified land is or was at any particular time comprised in a matrimonial home to which section 4 applies,

(b) as to what part of specified land constitutes, or at any particular time constituted, or is, or was at any particular time, comprised in, such a home, or 45

(c) under section 9 or 10,

the court may, on application to it in that behalf in a summary manner by a spouse, or the spouses, concerned or any other interested party or in proceedings before it relating to the sale or negotiations for the sale of any land as respects which the question is relevant, determine the question and may also, if appropriate, specify the amount or proportion of any purchase money that is attributable to land comprised in or constituting the matrimonial home and the amount or proportion of any purchase money that is attributable to other land.

10 (2) (a) Where a question arises as to the existence of, or otherwise in relation to, an easement—

(i) attached or annexed, or claimed to be attached or annexed (whether by virtue of *section 4* or otherwise) to a matrimonial home to which *section 4* applies, or

15 (ii) attached or annexed, or claimed to be attached or annexed, to other land and to be exercisable over a matrimonial home to which *section 4* applies,

the court may, on application to it in that behalf in a summary manner by a spouse, or the spouses, concerned or any other interested party or in proceedings before it in relation to the sale or negotiations for the sale of any land as respects which the question is relevant, determine the question and may also, if appropriate, specify—

20 (iii) the nature and extent of the easement, and

(iv) the land to which it is attached or annexed or over which it is exercisable.

25 (b) In the case of an easement that is exercisable over land that is the property of either or both of the spouses concerned and another person and exists by virtue of *section 4 (5)*, the court may, on application to it in a summary manner by that other person, order the payment to that other person by either or, as may be appropriate, both of the spouses of such compensation (if any) as it considers reasonable in all the circumstances in respect of any diminution in value of the interest of that other person in the land caused by the easement.

30 (c) Where the court orders the payment of compensation under *paragraph (b)*, it may, on application to it in that behalf in a summary manner by a spouse, or the spouses, concerned—

40 (i) annul the order in so far as it relates to the payment of compensation and extinguish the easement concerned, or

45 (ii) reduce the amount of the compensation and so restrict or otherwise alter the easement that the amount of the compensation, as so reduced, is an amount that it considers reasonable in all the circumstances in respect of the diminution in value of the interest in the land concerned of the other person concerned caused by the easement, as so restricted or altered.

50 (3) In any proceedings under or referred to in *subsection (1)* or *(2)* in which a question referred to in either subsection is determined by

the court, the court may make such further order in relation to the question or any matter connected therewith (including an order as to the costs of the proceedings in so far as they relate to the question or any matter connected therewith) as it considers appropriate.

אם בית דין יורה עוד צו כלשהו (למשל צו עלות) הקשור לשאלה או לבעיה

PART III

5

MISCELLANEOUS

Determination of questions between spouses in relation to property.

19.—(1) Either spouse may apply to the court in a summary manner to determine any question arising between them as to the title to or possession of any property including (except in the case of a spouse referred to in *paragraph (b), (c) or (d) of subsection (8))* any such question arising by virtue of *Part II*. 10

(2) On application to it under *subsection (1)*, the court may—

(a) make such order with respect to the property in dispute (including an order that it be sold or partitioned) and as to the costs consequent upon the application, and 15

(b) direct such inquiries, and give such other directions, in relation to the application,

as the court considers appropriate.

(3) Either spouse or a child of a deceased spouse (in this section referred to subsequently as “the plaintiff spouse”) may, subject to the exception specified in *subsection (1)*, make an application specified in that subsection where it is claimed that the other spouse (in this section referred to subsequently as “the defendant spouse”) has had in his possession or under his control— 20

(a) money to which, or to a share of which, the plaintiff spouse was beneficially entitled whether by reason of the fact that it represented the proceeds of property to which, or to an interest in which (whether by virtue of *section 4* or otherwise), the plaintiff spouse was beneficially entitled or for any other reason, or 25 30

(b) property (other than money) to which, or to an interest in which (whether by virtue of *section 4* or otherwise), the plaintiff spouse was beneficially entitled,

and that either that money or other property has ceased to be in the possession or under the control of the defendant spouse or that the plaintiff spouse does not know whether it is still in the possession or under the control of the defendant spouse. 35

(4) Where an application under *subsection (1)* is made by virtue of *subsection (3)* and the court is satisfied that—

(a) (i) the defendant spouse concerned has had in his possession or under his control money or other property to which *paragraph (a) or (b) of subsection (3)* relates, or 40

(ii) the defendant spouse has in his possession or under his control property that represents the whole or part of the money or other property aforesaid, 45

and

- (b) the defendant spouse has not made to the plaintiff spouse concerned such payment or disposition (not being a testamentary disposition) as would have been appropriate in all the circumstances,
- 5 the court may make an order under *subsection (2)* in relation to the application and may, in addition to or in lieu of such an order, make an order requiring the defendant spouse to pay to the plaintiff spouse, either, as the case may be—
- 10 (i) such sum in respect of the money to which the application relates, or the plaintiff spouse's share thereof, or
- (ii) such sum in respect of the value of the property (other than money) referred to in *paragraph (a)*, or the plaintiff spouse's interest therein,

as the court considers appropriate.

15 (5) In any proceedings under this section, a person (other than the plaintiff spouse concerned or the defendant spouse concerned) who is a party thereto shall, for the purposes of costs or any other matter, be treated as a stakeholder only.

20 (6) This section is without prejudice to section 2 (which prescribes the legal capacity of married women) of the Married Women's Status Act, 1957.

25 (7) (a) Where a marriage has been annulled under the law of the State or another state or has been dissolved under the law of another state and is, by reason of that dissolution, no longer a subsisting valid marriage under the law of the State, an application under this section shall not be made by either of the spouses more than 3 years after the date of the annulment or dissolution.

30 (b) Where a marriage is void but has not been so declared under the law of the State or another state, an application shall not be made under this section by either of the spouses more than 3 years after the parties have ceased to be ordinarily resident together.

(8) In this section references to a spouse include references to—

- 35 (a) a personal representative of a deceased spouse,
- (b) either of the parties to a void marriage, whether or not it has been declared to be void under the law of the State,
- (c) either of the parties to a voidable marriage that has been annulled under the law of the State,
- 40 (d) either of the parties to a marriage that has been annulled under the law of another state and that is, by reason of the annulment, no longer a subsisting valid marriage under the law of the State, and
- 45 (e) either of the parties to a marriage that has been dissolved under the law of another state and that is, by reason of the dissolution, no longer a subsisting valid marriage under the law of the State.

Property of engaged couples.

20.—For the avoidance of doubt, it is hereby declared that the reference in section 5 (1) of the Family Law Act, 1981, to the rules of law relating to the rights of spouses in relation to property in which either or both of them has or have a beneficial interest shall relate and be deemed always to have related only to the rules of law for the determination of disputes between spouses, or a claim by one of them, in relation to the beneficial ownership of property in which either or both of them has or have a beneficial interest and, in particular, does not relate, and shall be deemed never to have related, to the rules of law relating to the rights of spouses under the Act of 1965, the Act of 1976, the Act of 1989 or *Part II*.

Contributions by spouse in money or money's worth to improvement of property.

21.—(1) Where a spouse contributes in money or money's worth to the improvement of real property or personal property (other than household chattels) in which or in the proceeds of the sale of which either or both of the spouses has or have a beneficial interest, the spouse so contributing shall, if the contribution is of a substantial nature and subject to any express or implied agreement between the spouses to the contrary, be treated as having then acquired by virtue of his contribution a share or an enlarged share, as the case may be, in that beneficial interest of such an extent as may have been then agreed or, in default of such agreement, as may seem in all the circumstances just to any court before which the question of the existence or extent of the beneficial interest of the spouse arises (whether in proceedings between them or in any other proceedings).

(2) *Subsection (1)* does not apply to a contribution to the improvement of a matrimonial home or mobile home made at a time when any interest in the matrimonial home was vested in the spouses as joint tenants whether by virtue of *section 4* or otherwise or when the mobile home belonged to both spouses as joint owners whether by virtue of *section 11* or otherwise.

Jurisdiction of courts.

22.—(1) Subject to *subsection (2)*, the jurisdiction conferred on a court by this Act may, in addition to being exercised by the High Court, be exercised by the Circuit Court and (in so far as the proceedings relate to a matrimonial home whose rateable valuation is not more than £25, or a mobile home, or the household chattels therein) the District Court.

(2) Where the rateable valuation of the land to which proceedings in the Circuit Court under this Act relate exceeds £200, that Court shall, on application to it in that behalf by a respondent in the proceedings, transfer the proceedings to the High Court, but any order made or act done in the course of such proceedings before the transfer shall be valid unless discharged or varied by the High Court by order.

(3) The jurisdiction conferred on a court by this Act may be exercised—

(a) in the case of the Circuit Court, by the judge of the circuit, and

(b) in the case of the District Court, by the judge assigned to the district court district,

in which any of the parties to the proceedings ordinarily resides or carries on any business, profession or occupation or in which the matrimonial home, or mobile home, concerned is situated.

23.—Proceedings under this Act shall be heard otherwise than in public.

Proceedings otherwise than in public.

24.—The Act of 1976 is hereby amended—

Amendment of section 3 of Act of 1976.

5 (a) in section 2, by the substitution of the following subsection for subsection (2):

10 “(2) In subsection (1) ‘dwelling’ means any building or part of a building occupied as a separate dwelling and includes any garden or other land usually occupied with the dwelling, being land that is subsidiary and ancillary to it, is required for its amenity or convenience and is not being used or developed primarily for commercial purposes, and includes a structure that is not permanently attached to the ground and a vehicle, or vessel, whether mobile or not.”.

(b) in section 3—

(i) by the substitution in subsection (1) of “subsections (2), (3) and (8)” for “subsections (2) and (3)”, and

20 (ii) the insertion of the following subsections after subsection (7):

“(8) (a) In this subsection ‘conveyance’ means a conveyance or purported conveyance of land (other than land registered under the Registration of Title Act, 1964).

25 (b) (i) Proceedings shall not be instituted to have a conveyance declared void by reason only of subsection (1) after the expiration of 6 years from the date of the conveyance.

30 (ii) Subparagraph (i) does not apply to any such proceedings instituted by a spouse who has been in actual occupation of the land concerned from immediately before the expiration of 6 years from the date of the conveyance concerned until the institution of the proceedings.

35 (iii) Subparagraph (i) is without prejudice to any right of the other spouse referred to in subsection (1) to seek redress for a contravention of that subsection otherwise than by proceedings referred to in that subparagraph.

45 (c) A conveyance shall be deemed not to be and never to have been void by reason of subsection (1) unless—

(i) it has been declared void by a court

by reason of subsection (1) in proceedings instituted—

(I) before the commencement of the *Matrimonial Home Act, 1993*, or

(II) on or after such commencement and complying with paragraph (b), 5

or

(ii) subject to the rights of any other person concerned, it is void by reason of subsection (1) and the parties to the conveyance or their successors in title so state in writing before the expiration of 6 years from the date of the conveyance. 15

(9) If a spouse gives a general consent in writing to any future conveyance of any interest in a dwelling that is or was the family home of that spouse and the deed for any such conveyance is executed after the date of that consent, the consent shall be deemed, for the purposes of subsection (1), to be a prior consent in writing of the spouse to that conveyance.”. 20

Restriction of
Capital
Acquisitions Tax
Act, 1976.

25.—Where—

(a) a person takes or would, but for *section 4*, take a gift or an inheritance, whether before or after the commencement of this Act, of an interest in a dwelling, 25

(b) the dwelling is or becomes the matrimonial home of the person and his spouse, and

(c) *section 4* applies to the matrimonial home, 30

then, notwithstanding section 8 of the Capital Acquisitions Tax Act, 1976, but without prejudice to the liability of the person for gift tax or inheritance tax under that Act in respect of the whole of the gift or inheritance, his spouse shall not be deemed for the purposes of that Act to have acquired the interest in the matrimonial home arising by virtue of *section 4* as a gift or inheritance taken from the person who makes the disposition under which the first-mentioned gift or inheritance is taken. 35

Laying of
regulations before
Houses of
Oireachtas.

26.—Regulations under this Act shall be laid before each House of the Oireachtas as soon as may be after they are made and, if a resolution annulling the regulations is passed by either such House within the next 21 days on which that House has sat after the regulations are laid before it, the regulations shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 40

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do dhéanamh socrú, ar mhaithe le leas an phobail, i ndáil le húinéireacht tithe pósta, do dhéanamh socrú i dtaobh nithe áirithe eile a fhearann ar chéilí i ndáil le maoin agus do dhéanamh socrú i dtaobh nithe gaolmhara.

BILL

(as initiated)

entitled

An Act to make provision, in the interests of the common good, in relation to the ownership of matrimonial homes, to provide for certain other matters affecting spouses in relation to property and to provide for related matters.

*An tAire Comhionannais agus Athchóirithe Dlí a
thíolaic,
23 Meitheamh, 1993*

*Presented by the Minister for Equality and Law
Reform,
23rd June, 1993*

BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

Le ceannach díreach ón Oifig Dhíolta Foilseachán Rialtais,
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