



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

*Mar a ritheadh ag dhá Theach an Oireachtais
As passed by both Houses of the Oireachtas*

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ACTS REFERRED TO

Bankruptcy Act, 1988	1988, No. 27
Building Societies Act, 1989	1989, No. 17
Capital Acquisitions Tax Act, 1976	1976, No. 8
Child Abduction and Enforcement of Custody Orders Act, 1991	1991, No. 6
Companies Act, 1963	1963, No. 33
Deeds of Arrangement Act, 1887	1887, c. 57
Family Home Protection Act, 1976	1976, No. 27
Family Law Act, 1981	1981, No. 22
Judgment Mortgage (Ireland) Act, 1850	1850, c. 29
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



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 *sections 2, 3, 5 (6) and 7, subsections (1), (3) and (4) of section 10 and Part III*) shall come into operation on the day that is 3 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;
- 20 “the Act of 1965” means the Succession Act, 1965;
- “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;
- 25 “conveyance” includes a mortgage, lease, transfer, disclaimer, release and any other disposition of property otherwise than by a will or a *donatio mortis causa* and also includes an enforceable agreement (whether conditional or unconditional) to make any such conveyance;
- 30 “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, 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*;

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

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

“matrimonial home” means a dwelling in which a married couple 10
ordinarily resided or reside on or at any time after the 25th day of June, 1993, as their sole or principal residence and includes any easements attached or annexed to such a dwelling and exercisable over any other land;

“matrimonial home to which *section 4* applies” means a matrimonial 15
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;

“mobile home” has the meaning assigned to it by *section 10*;

“personal representative” means the executor or the administrator 20
for the time being of a deceased person;

“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 25
virtue of the operation of *section 4*, becomes entitled to a share, or an enlarged share, to which the spouse would not otherwise have been entitled in an interest in the matrimonial home concerned;

and any cognate words shall be construed accordingly.

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

(3) In this Act—

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

(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,

(c) a reference to a subsection, paragraph or subparagraph is a 40
reference to the subsection, paragraph or subparagraph 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 the tenant's continuance in any office, appointment or employment or *bona fide* for the tenant's or the landlord's temporary convenience or to meet a temporary necessity of either of them. Joint ownership of matrimonial home.

(2) Where, upon the commencement of this section, either or both of the spouses concerned is or are 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.

(3) Where, at any time after such commencement either or both of the spouses concerned becomes or 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, upon 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—

(a) in addition to any easements already attached or annexed to the home, such (if any) easements exercisable over any other land that is occupied by either or both of the spouses, or either or both of them and another person, as are necessary for the reasonable, beneficial use, occupation and enjoyment of the home shall, subject to the provisions of this Act and to any rights of other persons having an estate or interest in that land, be deemed to be attached or annexed to the home, and

(b) in addition to any easements already attached or annexed to any other land and exercisable over the home, such (if any) easements exercisable over the home as are necessary for the reasonable, beneficial use, occupation and enjoyment of any other land that is occupied by either or both of the spouses, or either or both of them and another person, shall, subject to the provisions of this Act and to any rights of other persons having an estate or interest in

the home, be deemed to be attached or annexed to such other land.

(6) 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 the interest of that spouse or both spouses in the matrimonial home concerned. 5

(7) (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 both spouses 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

(8) 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.

(9) Any easements arising by virtue of *subsection (5)* shall be deemed to be burdens to which section 72 (1) of the Act of 1964 applies. 35

(10) 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 (other than this subsection) shall not apply to any resulting interest of either spouse in the home. 40

(11) (a) Where— 45

(i) (I) on or after the 25th day of June, 1993, and before the commencement of this section, a company ("the relevant company") became entitled to an interest, being an interest to which this section applies in a matrimonial home or an interest in 50

a dwelling which subsequently became a matrimonial home, and, immediately before such commencement—

5 (A) the company was entitled to that interest, and

(B) either or both of the spouses owned shares in the relevant company or in a company that held shares in the relevant company,

or

10 (II) on or at any time after such commencement—

(A) a company (“the relevant company”) is entitled to such an interest, and

15 (B) either or both of the spouses owns or own shares in the relevant company or in a company that holds shares in the relevant company,

and

20 (ii) the interest referred to in *clause (I) or (II) of subparagraph (i)* was transferred to the relevant company for the purpose of avoiding the application of this section to any interest in the home,

25 the High Court, on application to it in that behalf in a summary manner by either of the spouses, may order that an amount, determined in accordance with *paragraph (b)* and having such priority (if any) as may be so determined, shall be charged in favour of each spouse or either spouse on the interest of the relevant company in the home or, if the home has been sold or otherwise disposed of, on the assets of the relevant company.

30 (b) A charge under *paragraph (a)* shall be of such amount and shall have such priority (if any) as the court considers just and appropriate, having regard to the provisions and the spirit of this Act, the circumstances of the case and the rights of any persons, including those holding shares in, and creditors of, the relevant company.

(c) An order under *paragraph (a)* may make such provision (if any) as may be necessary for its implementation.

40 (d) References in *clauses (I) (B) and (II) (B) of paragraph (a) (i) and paragraph (b)* to a company include, if the company is a subsidiary, references to its holding company and any holding company of that holding company and so on.

(e) In this subsection “company”, “holding company” and “subsidiary” have the meanings assigned to them by the Companies Act, 1963.

45 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

Exclusions from *section 4*, restrictions and saver.

the interest during the period during which either of them remains entitled to any share in the interest.

(2) Where—

- (a) a spouse in whose favour *section 4* applies is convicted of the murder of the other spouse, and 5
- (b) immediately before the death of the other spouse, an interest in the matrimonial home was vested by virtue of *section 4* in the spouse in whose favour *section 4* applies,

then, as on and from such death—

- (i) *section 4* shall be deemed to have ceased to apply to the interest to which that section applied in the home, and 10
- (ii) subject and without prejudice to the rights of any other person, the first-mentioned interest shall be deemed to have been re-vested in the other spouse.

(3) Where a married couple have separated during the period beginning on the 25th day of June, 1993, and ending on the commencement of *section 4* or agreed during that period to separate, the application of that section to the matrimonial home concerned shall be subject and without prejudice to the provisions of any agreement made between the spouses in connection with the separation or the agreement to separate. 15 20

(4) The Judgment Mortgage (Ireland) Act, 1850, shall not apply so as to enable a judgment against the spouse in whose favour *section 4* applies to be registered against the interest to which that spouse becomes entitled by virtue of that section in the matrimonial home concerned in respect of debts, obligations or other liabilities arising out of acts or omissions occurring before the application of *subsection (2) or (3)* of that section to the interest of the other spouse in the home. 25

(5) Sections 12 and 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. 30

(6) Nothing in this Act shall be construed as preventing a court from exercising on or after the passing of this Act any jurisdiction conferred on it by section 5 of the Act of 1976 or Part II of the Act of 1989 or as affecting any order under those provisions made before such passing. 35

Exclusion by court.

6.—(1) The court may, in relation to an interest to which *section 4* applies or applied in a matrimonial home, on application to it in that behalf in a summary manner by the spouse who is not the spouse in whose favour *section 4* applies or, if the first-mentioned spouse has died, by the personal representative, or by or on behalf of a child, of that spouse, make an order declaring that— 40

- (a) as on and from such date as may be specified in the order, *section 4* shall cease to apply to the interest, or 45
- (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 interest,

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

- (i) *section 4* shall cease or be deemed to have ceased to apply to the interest, and
- 5 (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 the other spouse.
- 10 (2) An application under *subsection (1)* by the personal representative, or by or on behalf of a child, of a deceased spouse shall not be made later than 9 months after the death of the spouse or 3 months after the grant of representation, whichever is the later.
- (3) A personal representative or a child (not being a minor) of a
15 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 personal representative or, as the case may be, the child will not make an application under *subsection (1)* in relation to a specified matrimonial home and, if such an undertaking
20 is given, the personal representative, or the child, concerned shall not be entitled to make such an application in relation to that home.
- (4) (a) Subject to *paragraph (c)*, notice of an application under *subsection (1)* shall be given to the other spouse, or the surviving spouse, concerned, as the case may be, and to
25 such, if any, other person as the court may direct.
- (b) Subject to *paragraph (c)*, notice of proceedings for the purposes of *subsection (3)* shall be given, where appropriate, to the surviving spouse concerned and to such, if any, other person as the court may direct.
- 30 (c) Where the court is satisfied that, after the making of all appropriate, reasonable inquiries by the person making an application, or instituting proceedings, such as aforesaid, the whereabouts of the surviving, or other, spouse concerned cannot be ascertained, it may dispense with the requirement as to the giving of notice in *paragraph (a)* or
35 (b), as the case may be, to such spouse.
- (5) The court shall not grant an application under *subsection (1)* unless it is satisfied that it would be unjust not to grant it, having regard to all the circumstances, including—
- 40 (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
45 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 that spouse to make such a
50 contribution,
- (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 that spouse unfairly,

- (d) if the application is by the personal representative, or by or on behalf of a child, of a deceased spouse, the fact (if it be the case) that an application under *subsection (1)* had not been made by that spouse in relation to the matrimonial home concerned. 5
- (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, 10
- (b) make an order under *section 17* in relation to the family home (within the meaning of that Act) concerned.
- (7) Where an order is made under *subsection (1)*, a copy of the order, certified to be a true copy by the registrar or clerk of the court concerned, may— 15
- (a) in the case of registered land, be lodged in the Land Registry for registration in a register maintained under the Act of 1964 and thereupon an entry shall be made in the appropriate register to the effect that, as on and from the date specified in the order, the matrimonial home concerned ceased to be a matrimonial home to which *section 4* applies, or 20
- (b) in the case of unregistered land, be registered in the Registry of Deeds,

and, upon such registration, any legal interest in the home vested in the spouse in whose favour *section 4* applies or applied shall, subject and without prejudice to the rights of any other person, become and be, or be deemed to have been, re-vested in the other spouse. 25

(8) In *subsection (5) (b)* “mortgage” includes an equitable mortgage and a charge on registered land but does not include a charge specified under paragraph (a) or referred to in paragraph (b) of section 22 (5) of the Building Societies Act, 1989. 30

Exclusion by benefiting spouse.

- 7.—(1) (a) In relation to a matrimonial home, the spouse in whose favour *section 4* applies (or would apply on the commencement of that section) may make a declaration in writing that the home shall cease to be, or shall not be, a matrimonial home to which *section 4* applies. 35
- (b) In relation to the intended matrimonial home of persons contemplating marriage, the person who in relation to that home would become the spouse in whose favour *section 4* applies may make a declaration in writing that the home shall not be a matrimonial home to which *section 4* applies. 40
- (2) (a) A declaration under *subsection (1)* shall be void unless, before making it, the spouse concerned has received advice from a lawyer in relation to the declaration and its effect. 45
- (b) In relation to such a declaration, a certificate purporting to

5 be signed by a lawyer and stating that the spouse concerned has, before making the declaration, received advice in relation to it and its effect from the person purporting to sign the certificate shall, without proof of the signature of that person or that such person was a lawyer, be evidence in any proceedings of the matters stated in the certificate.

10 (c) In this subsection "lawyer", in relation to advice to a spouse, does not include a lawyer who is acting or has acted on behalf of the other spouse or who is a member of a firm of lawyers which, or another member of which, is so acting or has so acted and, in relation to persons contemplating marriage, "spouse" and "other spouse" include whichever of those persons is appropriate in the context.

(3) Where a declaration has been made under *subsection (1)*—

20 (a) in the case of registered land, the declaration may be lodged in the Land Registry for registration in a register maintained under the Act of 1964 and thereupon an entry shall be made in the appropriate register to the effect that the matrimonial home has ceased to be, or is not, a matrimonial home to which *section 4* applies, or

25 (b) in the case of unregistered land, a copy of the declaration, certified to be a true copy by the spouse or person concerned (or, if that spouse or person is dead, by the personal representative concerned), may be registered in the Registry of Deeds,

and, thereupon—

30 (i) the matrimonial home, or the intended matrimonial home, concerned shall cease to be, or shall not be, a matrimonial home to which *section 4* applies, and

35 (ii) subject and without prejudice to the 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 the other spouse.

(4) A declaration under *subsection (1)* in relation to a matrimonial home or an intended matrimonial home, or a copy of such a declaration, shall not be registered pursuant to *subsection (3)*—

40 (a) if the declaration relates to a matrimonial home, before the commencement of *section 4*, and

45 (b) if the declaration relates to an intended matrimonial home, before such commencement or before the home becomes the matrimonial home of the persons concerned, whichever is the later.

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

50 (6) A declaration under *subsection (1)* shall specify the matrimonial home or intended matrimonial home to which it relates.

(7) The Minister may by regulations provide that a declaration

under *subsection (1)* shall be in a specified form or a form to the like effect.

Registration of
joint tenancy
interest.

8.—(1) Where an interest in a matrimonial home has vested in both spouses by virtue of *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 or (in case the spouse so registered has died) the surviving spouse shall be entitled, on application in the prescribed form by either of the spouses or by the surviving spouse, to be registered as owners or owner thereof, or

(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 or otherwise to be the sole owner of the interest, a declaration in writing that the interest has so vested may be made by either of the spouses or, as the case may be, by the surviving spouse and a copy of the declaration, certified by that spouse to be a true copy, may be registered in that Registry,

and, upon such registration, any legal interest in the home vested, or becoming vested, in the spouse who is so registered or who appears from the deed or deeds to be such owner shall, subject and without prejudice to the rights of any other person, vest in both spouses as joint tenants or, as the case may be, in the surviving spouse.

(2) On an application pursuant to *subsection (1) (a)* by a spouse who is not the registered owner of the land concerned for registration in such a register as aforesaid of both spouses or (as the case may be) the surviving spouse as owners or owner of the matrimonial home, the Registrar shall be bound to assume that the applicant is acting correctly in relation to the application, and *section 61 (2)* (which provides that the Registrar shall recognise personal representatives alone as having any rights in respect of land of the deceased) of the Act of 1964 shall not apply in relation to such an application by a surviving spouse.

(3) (a) On the death of a spouse who is entitled to a legal interest in a matrimonial home to which *section 4* applied, the personal representative of that spouse shall not execute an assent in relation to that interest or otherwise transfer it to any person.

(b) If the surviving spouse has died without the legal interest in the matrimonial home concerned having vested in that spouse pursuant to *subsection (1)*, that subsection shall apply to the personal representative of the surviving spouse as it applies to that spouse and, accordingly, upon compliance by that personal representative with that subsection, that interest shall, subject and without prejudice to the rights of any other person, vest in that personal representative for the purposes of the administration of that spouse's estate.

(4) *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.

(5) 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.

5 9.—(1) Subject to the provisions of this Act, a purchaser of any interest held by both spouses in a matrimonial 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: Acquisition and disposal of matrimonial home.

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

(b) where—

10 (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

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

(c) where—

20 (i) the purchase is from a person, or a successor in title of that person, 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

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

30 (2) 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 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*.

35 (3) *Subsections (1)* and *(2)* are without prejudice to the right of the spouse in whose favour *section 4* applies to enforce any right of that spouse under that section in respect of the matrimonial home otherwise than against the home.

40 (4) 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*.

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

Joint ownership of mobile home.

45 (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 on or at any time after the 25th day of June, 1993, as their sole or principal residence and includes any rights or privileges exercisable by either or both of the spouses over any land, being rights or privileges necessary for the reasonable, beneficial use, occupation and enjoyment of the home. 5

(2) (a) A mobile home shall, upon the commencement of this subsection, to the extent that, immediately before such commencement, it was owned by either or both of the spouses concerned, belong to both spouses as joint owners. 10

(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, belong to both spouses as joint owners. 15

(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. 20

(3) Sections 4 (5), 5 (3), 6, 7, 15 and 17 (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.

(4) (a) If a spouse who by virtue of the operation of paragraph (a) or (b) of subsection (2) (and not otherwise) becomes or would become joint owner of the mobile home concerned makes a declaration in writing that either such paragraph shall cease to apply, or shall not apply, in relation to the home, that paragraph shall cease to apply, or shall not apply, as the case may be, in relation to it. 25 30

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

Title of purchaser of matrimonial home.

11.—(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— 35

(a) on the expiration of 6 years from the date of the conveyance of the interest to the purchaser, or 40

(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. 45

(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

(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,

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

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

12.—(1) No stamp duty shall be payable on a declaration under *section 7 (1), 8 (1) (b) or 10 (4) (a)*. Exemption from fees.

(2) No court fee shall be payable in respect of a certified copy of an order of the court under *section 6 (1)*.

15 (3) No fee shall be payable in respect of registration in the Land Registry under *section 6 (7) (a), 7 (3) (a) or 8 (1) (a)* or registration in the Registry of Deeds of a document referred to in *section 6 (7), 7 (3) (b) or 8 (1) (b)*.

13.—Where an interest to which *section 4* applies in a matrimonial home 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 specified under paragraph (a) or referred to in paragraph (b) of section 22 (5) of the Building Societies Act, 1989) or otherwise and that spouse dies leaving the other spouse surviving, 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.

14.—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.

15.—(1) In this section—

Bankruptcy.

“the Act” means the Bankruptcy Act, 1988;

35 “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;

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

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

(2) If, at the time when *section 4* would, but for this subsection, commence to apply 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.

(3) If, at the time when *section 4* would, but for this subsection, commence to apply 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. 5

(4) Where *section 4* applies to an interest in a matrimonial home and the spouse other than the spouse in whose favour *section 4* applies is adjudicated bankrupt under the Act or becomes an arranging debtor, *section 4* shall continue so to apply. 10

(5) Where *section 4* applies to an interest in a matrimonial home and— 15

(a) the spouse in whose favour that section applies is adjudicated bankrupt under the Act, or

(b) that spouse becomes an arranging debtor and the interest in the home to which that spouse became entitled by virtue of such application vests in the Official Assignee, 20

the interest in the home to which that spouse became so entitled shall not be realised for distribution in accordance with the provisions of the Act in respect of any debts, obligations or other liabilities arising out of acts or omissions occurring before the application of *subsection (2)* or *(3)* of that section to the first-mentioned interest in the home and *section 61* of the Act shall have effect accordingly. 25

(6) *Section 44* of the Act shall not apply to household chattels which are jointly owned by virtue of *section 14*; and the chattels that a bankrupt is entitled to retain by virtue of the foregoing restriction shall be in addition to the articles that the bankrupt is entitled to retain as excepted articles by virtue of *section 45* of the Act. 30

Transitional.

16.—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.

17.—(1) Where a question arises—

(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, 40

(b) as to whether—

(i) specified land is or was at any particular time a matrimonial home, or 45

(ii) a specified structure, vehicle or vessel is or was at any particular time a mobile home,

(c) 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,

5 (d) in a case where the matrimonial home concerned is held under a lease or other tenancy agreement with any other land, as to the apportionment of the rent under the lease or agreement between the home and the other land, or

(e) under *section 9*,

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.

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

20 (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

(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,

25 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—

30 (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.

35 (b) In the case of an easement that exists by virtue of *section 4* (5) (a), the court may, on application to it in a summary manner by any person, order the payment to that person by either or both of the spouses concerned or, where appropriate, a successor in title 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 person in the land caused by the easement.

40 (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—

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

50 (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 person concerned caused by the easement, as so restricted or altered.

5

(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.

10

PART III

MISCELLANEOUS

Determination of questions between spouses in relation to property.

18.—(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*.

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(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

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

as the court considers proper.

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(3) Either spouse or a child of a deceased spouse (in this section referred to subsequently as “the plaintiff spouse”) may, subject, as respects a question arising by virtue of *Part II*, 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 or her possession or under his or her control—

30

(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

35

(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,

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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.

45

(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 or her possession or under his or her control money or other property to which *paragraph (a)* or *(b)* of *subsection (3)* relates, or
- 5 (ii) the defendant spouse has in his or her possession or under his or her control property that represents the whole or part of the money or other property aforesaid,
- and
- 10 (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,

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—

- (i) such sum in respect of the money to which the application relates, or the plaintiff spouse's share thereof, or
- 20 (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 proper.

(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.

(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.

- (7) (a) Where a marriage—
- (i) has been annulled under the law of the State, or
- (ii) has been annulled or dissolved under the law of another state and is, by reason of that annulment or divorce, not or no longer a subsisting valid marriage under the law of the State,
- 35

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 divorce.

(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—

- (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,
- (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, not a subsisting valid marriage under the law of the State, and
- (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 divorce, no longer a subsisting valid marriage under the law of the State.

Property of engaged couples.

19.—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.

20.—(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 such 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 as tenants in common in equal shares or when the mobile home belonged to both spouses as joint owners whether by virtue of *section 10* or otherwise.

Jurisdiction of courts.

21.—(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 £20, 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.

5 (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

10 (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.

15 (4) The District Court may, for the purpose of determining whether it has jurisdiction in proceedings under this Act in relation to a matrimonial home that has not been given a rateable valuation or is the subject with other land of a rateable valuation, determine that its rateable valuation would exceed, or would not exceed, £20.

20 (5) Section 18 (which deals with jurisdiction of the court) of the Act of 1964 is hereby amended—

(a) by the insertion in subsection (1), after “Circuit Court”, of “and, in relation to a matrimonial home (within the meaning of the *Matrimonial Home Act, 1993*) whose rateable valuation is not more than £20, the District Court”, and

25 (b) by the substitution of the following subsection for subsection (3):

“(3) The jurisdiction conferred on a court by this section to hear and determine any matter under this Act in relation to land may be exercised—

30 (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 the land or any part of the land is situated.”.

35 22.—(1) Proceedings under this Act shall be heard otherwise than in public. Proceedings.

(2) The proceedings to which section 33 (conduct of family law proceedings in Circuit Court and High Court) of the Act of 1989 applies shall be deemed to include proceedings under this Act.

40 (3) Section 45 (conduct of family law proceedings in District Court) of that Act, as amended by section 39 (3) of the Child Abduction and Enforcement of Custody Orders Act, 1991, is hereby further amended by the substitution in subsection (1) of “the Child Abduction and Enforcement of Custody Orders Act, 1991, and the *Matrimonial*
45 *Home Act, 1993*,” for “and the Child Abduction and Enforcement of Custody Orders Act, 1991”.

23.—(1) The Act of 1976 is hereby amended—

(a) by the substitution of the following section for section 2:

“Family home.

2. (1) In this Act ‘family home’ means a dwelling in which a married couple ordinarily reside at any time after the passing of the *Matrimonial Home Act, 1993*, as their sole or principal residence. 5

(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.”. 10 15

(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) (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. 25

(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. 30 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. 40

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

(i) it has been declared void by a court by reason of subsection (1) in proceedings instituted—

(I) before the passing of the *Matrimonial Home Act, 1993*, or 50

(II) on or after such passing and complying with paragraph (a),

or

5 (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.

10 (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.”

15 (2) The amendment effected by *subsection (1) (a)* does not apply in relation to—

(a) any conveyances referred to in section 3 of the Act of 1976, the dates of which are,

(b) any proceedings under or referred to in that Act which are instituted,

25 (c) any thing referred to in section 6 of that Act which is done, and

(d) any transactions referred to in section 14 of that Act which occur,

before the passing of this Act.

30 (3) Where, before the passing of this Act, a dwelling was a family home (within the meaning of the Act of 1976) by virtue of the fact that, before such passing—

(i) the spouse whose protection was in issue (“the spouse”) ordinarily resided in it, or

35 (ii) if the spouse had left the other spouse, the spouse ordinarily resided in it before so leaving,

the amendment effected by *subsection (1) (a)* shall not apply as respects the spouse in relation to the dwelling.

40 (4) The Act of 1989 is hereby amended by the substitution in section 16 of the following paragraph for paragraph (c):

“(c) an order under *section 6 or 18 of the Matrimonial Home Act, 1993*.”

45 (5) Where a court, when granting a decree of judicial separation under the Act of 1989, orders that the ownership of the family home (within the meaning of the Act of 1976) shall be vested in one of the spouses, it shall, unless it sees reason to the contrary, order that section 3 (1) (prior consent of spouse to conveyance of interest in

family home) of the Act of 1976 shall not apply to any conveyance by that spouse of an interest in the home and, if the court so orders, the said section 3 (1) shall have effect accordingly.

Restriction of
Capital Acquisitions
Tax Act, 1976.

24.—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, 5
- (b) the dwelling is or becomes the matrimonial home of the person and the spouse of the person, and
- (c) *section 4* applies to the interest, 10

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, the spouse of the person 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. 15

Laying of
regulations before
Houses of
Oireachtas.

25.—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. 20
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BILLE

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

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.

*Ritheadh ag dhá Theach an Oireachtais,
25 Samhain, 1993*

*Passed by both Houses of the Oireachtas,
25th November, 1993*

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ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR**

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