



**SEANAD ÉIREANN**

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**AN BILLE UM ATHCHÓIRIÚ AN DLÍ TALÚN AGUS  
TÍOLACHTA 2006  
LAND AND CONVEYANCING LAW REFORM BILL 2006**

**LEASUITHE TUARASCÁLA  
REPORT AMENDMENTS**

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# SEANAD ÉIREANN

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## AN BILLE UM ATHCHÓIRIÚ AN DLÍ TALÚN AGUS TÍOLACHTA 2006 —AN TUARASCÁIL

### LAND AND CONVEYANCING LAW REFORM BILL 2006 —REPORT

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*Leasuithe  
Amendments*

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*\*Government amendments are distinguished by an asterisk.*

1. In page 13, line 15, to delete “and Conveyancing”.  
—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O'Meara, Derek McDowell,  
Michael McCarthy.*
2. In page 15, line 5, after “land,” to insert “unless excluded from any interest in land.”.  
—*Senators Maurice Cummins, Brian Hayes.*
- \*3. In page 17, to delete line 13 and substitute the following:  
“(e) if the person concerned has agreed to service of notices by means of an electronic communication (within the meaning assigned by section 2 of the Electronic Commerce Act 2000) to that person (being an addressee within the meaning assigned by that section) and provided that there is a facility to confirm receipt of electronic mail and that such receipt has been confirmed, then by that means; or  
  
(f) by sending it by means of a facsimile machine to a device or facility for the reception of facsimiles located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the sender’s facsimile machine generates a message confirming successful transmission of the total number of pages of the notice; or  
  
(g) by any other means that may be prescribed.”.
4. In page 17, line 13, before “by” where it firstly occurs to insert the following:  
“in the case of a person who has consented to receive notice by electronic means, and subject to any conditions of such consent,”.  
—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O'Meara, Derek McDowell,  
Michael McCarthy.*
5. In page 17, line 37, after “giving” to insert “full”.  
—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O'Meara, Derek McDowell,  
Michael McCarthy.*
6. In page 17, to delete lines 38 to 47.  
—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O'Meara, Derek McDowell,  
Michael McCarthy.*
7. In page 18, line 27, after “subsection (1),” to insert the following:

“and without prejudice to section 26(2)(f) of the Act of 2005.”

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O'Meara, Derek McDowell, Michael McCarthy.*

**8.** In page 18, after line 40, to insert the following:

“(3) In so far as they survive, titles of honour or dignity arising from feudal baronies and manorial lordships are abolished.

(4) If after the commencement of this section a person purports to sell or offer for sale a title of honour or dignity abolished by *subsection (3)*, he or she shall be guilty of an offence.”

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O'Meara, Derek McDowell, Michael McCarthy.*

**9.** In page 19, line 5, to delete “in” and substitute “under”.

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O'Meara, Derek McDowell, Michael McCarthy.*

**10.** In page 19, between lines 10 and 11, to insert the following:

“(4) Subject to this Act a fee simple shall be freely alienable by the owner thereof.”

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O'Meara, Derek McDowell, Michael McCarthy.*

**11.** In page 19, between lines 10 and 11, to insert the following:

“(4) A tenant of a local authority who whether before or after the commencement of this section purchases a fee simple from the authority may alienate the fee simple without the consent of the authority.”

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O'Meara, Derek McDowell, Michael McCarthy.*

**12.** In page 20, between lines 35 and 36, to insert the following:

“Interests in  
apartment  
developments.

12.—(1) (a) It shall be a condition of any planning permission for an apartment development that the applicant will form a management company and arrange for the issue of shares in the company to purchasers of apartments in the development.

(b) Where a permission has been granted prior to the commencement of this section for an apartment development, the developer shall form a management company (if not already formed) and arrange for the issue of shares in the company to purchasers of apartments in the development (if not already issued) within 12 months of the commencement of this section.

(2) Section 34(4)(f) of the Act of 2000 is amended by the addition after “houses” of “or apartments”.

(3) On demand made by a majority of the purchasers of apartments in an apartment development, or on completion of the development, whichever first occurs, or in the case of developments completed prior to the commencement of this section, on the date which is 12 months from the commencement of this section, the developer shall transfer ownership and management of all common areas to the management company referred to in *subsection (1)*.

(4) A purchaser may apply in a summary manner to the court in the event of a failure to comply with this section and the court may require the applicant or developer to take such steps as the court directs to comply with the section and to pay compensation to the purchaser in such amount as the court thinks fit.”

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O'Meara, Derek McDowell, Michael McCarthy.*

**13.** In page 21, line 14, to delete “*section 11(4)*” and substitute “*section 11(3)*”.

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O'Meara, Derek McDowell, Michael McCarthy.*

**14.** In page 21, between lines 31 and 32, to insert the following:

“(4) Where on the commencement of this section, or on a person becoming entitled to a fee tail after such commencement, another person’s estate or interest in land is extinguished by virtue of *subsection (3)*, the second-mentioned person may apply to the court within 12 years of such extinguishment for an order determining the amount of compensation if any that should be paid to the second-mentioned person, and such order may make provision for charging the payment on the land subject to such conditions as the court sees fit.”

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O'Meara, Derek McDowell, Michael McCarthy.*

**\*15.** In page 23, to delete lines 29 to 32 and substitute the following:

“(6) If such presumption is applied to a person but subsequently rebutted by proof to the contrary, that person may bring an action for damages or another remedy for any loss suffered.

(7) In dealing with an action under *subsection (6)*, the court may make such order as appears to it to be just and equitable in the circumstances of the case.”

**16.** In page 27, between lines 36 and 37 to insert the following:

“Creation of a joint tenancy.

28.—Where a co-ownership is to be established, it shall be established as a tenancy in common and no joint tenancy shall be created unless—

(a) it is the stated intention of all parties to the co-ownership to create a joint tenancy, and

(b) each party to the co-ownership has signed a declaration to the effect that he or she understands—

(i) the difference between a tenancy in common and a joint tenancy,

(ii) that the creation of a joint tenancy means that, upon his or her death, his or her interest in the land passes automatically to the surviving co-owner(s), and

(iii) that a joint tenancy cannot be severed other than in accordance with *section 28*.”

—*Senators Maurice Cummins, Brian Hayes.*

**\*17.** In page 28, line 1, to delete “one” and substitute “a”.

**\*18.** In page 28, line 2, after “equity” to insert “unless such consent is dispensed with under *section 29(2)(d)*”.

**\*19.** In page 28, to delete lines 6 to 11 and substitute the following:

“(3) From the commencement of this Part, registration of a judgment mortgage against the estate or interest in land of a joint tenant does not sever the joint tenancy and if the joint tenancy remains unsevered, the judgment mortgage is extinguished upon the death of the judgment debtor.”.

\*20. In page 28, line 27, to delete “the court thinks fit” and substitute “appears to the court to be just and equitable”.

\*21. In page 28, line 37, after “creditor” to insert “, a judgment mortgagee”.

22. In page 30, line 28, to delete “only on registration of a court order” and substitute “on registration of a court order or otherwise”.

—*Senators Maurice Cummins, Brian Hayes.*

\*23. In page 32, line 5, to delete “any part disposed of” and substitute “such part or parts”.

\*24. In page 32, line 6, to delete “by the grantor”.

\*25. In page 32, line 8, after “of,” to insert “and”.

26. In page 34, to delete line 38 to 40 and substitute the following:

“43.—(1) Where a building owner and an adjoining owner are in dispute in relation to the exercise or proposed exercise of rights under *section 42*, either party may apply to the court in a summary manner and the court may give such directions as it thinks fit, and may in particular make an order authorising the carrying out of specified”.

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O'Meara, Derek McDowell, Michael McCarthy.*

27. In page 35, between lines 22 and 23 to insert the following:

“High hedges.

46.—Where a person complains that trees or hedges grown or maintained by a neighbouring owner are of such a height as to constitute an unreasonable interference with any easement enjoyed by the complaining owner, or unreasonably interfere with light whether or not an easement exists in that regard, the person may apply to the court which may make such order, including an order directing the neighbouring owner to remove or reduce the height of any trees or hedges.”.

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O'Meara, Derek McDowell, Michael McCarthy.*

28. In page 38, line 12, to delete “as it thinks fit” and substitute “as is just and equitable”.

—*Senators Maurice Cummins, Brian Hayes.*

29. In page 39, to delete lines 19 to 23.

—*Senators Maurice Cummins, Brian Hayes.*

\*30. In page 39, line 20, to delete “prescribed by” and substitute “referred to in”.

\*31. In page 43, to delete lines 19 to 22 and substitute the following:

“(III) the individual’s signature is acknowledged by him or her in the presence of a witness who attests the signature, and

(IV) if the instrument would not be enforceable unless it is made under seal, it is sealed by the individual;”.

\*32. In page 54, line 25, to delete “purporting to” and substitute “which would otherwise”.

\*33. In page 54, line 34, to delete “charge” and substitute “mortgage”.

\*34. In page 54, line 35, to delete “charge” and substitute “mortgage”.

\*35. In page 55, line 9, to delete “legal”.

\*36. In page 55, line 20, to delete “legal”.

37. In page 58, line 9, after “unless” to insert the following:

“, not more than one year before such taking of possession,”.

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O'Meara, Derek McDowell, Michael McCarthy.*

38. In page 59, line 4, after “apply” to insert “*ex parte*”.

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O'Meara, Derek McDowell, Michael McCarthy.*

39. In page 59, lines 4 to 6, to delete all words from and including “the” where it secondly occurs in line 4 down to and including “property,” in line 6 and substitute “the court or the District Court”.

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O'Meara, Derek McDowell, Michael McCarthy.*

\*40. In page 59, line 7, to delete “on such terms and conditions as the court thinks fit”.

\*41. In page 59, between lines 7 and 8, to insert the following:

“(2) On such an application the court may make an order authorising the mortgagee to take possession of the property on such terms and conditions as the court thinks fit, notwithstanding that the mortgagor dissents or does not appear.”.

\*42. In page 59, line 8, to delete “*subsection (1)*” and substitute “*subsection (2)*”.

\*43. In page 64, line 1, to delete “*subsection (2)* and”.

\*44. In page 67, lines 29 and 30, to delete “the prescribed manner” and substitute “such manner as may be prescribed by rules of court”.

\*45. In page 68, to delete lines 12 to 16 and substitute the following:

“114.—(1) Registration of a judgment mortgage under *section 113* entitles the judgment mortgagee to apply to the court for an order for sale of the judgment debtor’s estate or interest in the land.

(2) On such an application the court may make such an order for sale or such other order for enforcement of the judgment mortgage as the court thinks appropriate.”.

\*46. In page 69, line 38, to delete “the prescribed manner” and substitute “such manner as may be prescribed by rules of court”.

\*47. In page 81, between lines 45 and 46, to insert the following:

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No. 3 of 1937	Circuit Court (Registration of Judgments) Act 1937	Section 4
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**\*48.** In page 82, between lines #7 and #8, to insert the following:

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No. 11 of 1981	Courts Act 1981	Section 24
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*[# Note: A printing error has resulted in incorrect line references in page 82 of the Bill. The line references in this amendment relate to the actual number of lines of text contained in page 82 of the Bill.]*