



Isle of Man Land Registry - Practice Guide

Matrimonial Charges (“home rights” - the rights to occupy the matrimonial or civil partnership home)

This Practice Guide sets out the procedure to be followed in the Land Registry in order to protect and secure the statutory rights of occupation which a spouse or a civil partner has to occupy a dwelling house, in which such spouse or civil partner does not have an estate or interest, situated on registered land.

1. The nature of the rights to be protected

A spouse or a civil partner who is not the owner or a co-owner of what has historically been described as the “matrimonial home”, may wish to protect his or her right to occupy the home, particularly where the marriage or the civil partnership is in jeopardy.

The rights which an applicant seeks to protect by registration either in the Deeds Registry (unregistered land) or in the Land Registry (registered land) are known as “home rights.”

This Guide is intended to deal with those situations where the matrimonial home is part of land which is registered in the Land Registry.

2. Brief history of the development of ‘home rights’

Historically, a spouse in a marriage who did not have any proprietary rights in the matrimonial home in which she lived with her spouse, was reliant for her rights of occupation on a personal right to cohabitation and support and the right to have somewhere to live.

In the Isle of Man the Matrimonial Homes Act 1971 (“the MHA 1971”) sought to remedy that situation. The spouse who did not ‘own’ (did not have an estate or interest in) the matrimonial home owned by the other spouse was granted certain statutory “rights of occupation” which gave protection from eviction from the matrimonial home. The MHA 1971 came into operation on 21st August 1972 but was repealed by the Matrimonial Proceedings Act 2003 (“the MPA 2003”) which came into operation on 1st April 2004.

The statutory rights to occupy the matrimonial home were referred to as “matrimonial home rights” in Part 5: ‘Family Homes and Domestic Violence’ of the MPA 2003 but this was amended by the Civil Partnership Act 2011 which came into operation on 15th March 2011 to extend the Act to civil partnerships. The statutory rights of occupation are now known as ‘home rights.’

3. "Home rights" in terms of the Matrimonial Proceedings Act 2003 ("the MPA 2003")

The rights to occupy a matrimonial home or civil partnership home are dealt with in section 92 of the MPA 2003.

Section 92(1) and (2) of the MPA 2003 provides that:

"92. Rights concerning home where one spouse or civil partner has no estate, etc

- (1) This section applies if -
- (a) one spouse or civil partner ("A") is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract; and
 - (b) the other spouse or civil partner ("B") is not so entitled.
- (2) Subject to the provisions of this Part, B has the following rights ("home rights") -
- (a) if in occupation, a right not to be evicted or excluded from the dwelling-house or any part of it by A except with the leave of the court given by an order under section 95;
 - (b) if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling-house."

The spouse or partner entitled to occupy is referred to as "A" in the MPA 2003 and the other spouse or partner not entitled to occupy as "B" and for the sake of expedience we will use those abbreviations.

Please note that:

- (i) although Section 116 (Interpretation of Part 5) defines a "dwelling-house" as including (a) any building or part of a building which is occupied as a dwelling and (b) any caravan, house-boat or structure which is occupied as a dwelling, as well as any yard, garden, garage or outhouse belonging to and occupied with either, Section 116(3) provides that for the purposes of Sections 93, 94 and 113 (Proceedings by mortgagees) paragraph (b) above of the definition of 'dwelling-house' is to be omitted. The 'home right' therefore applies only to a building or part of a building occupied as a dwelling.; and
- (ii) the MPA 2003 does not apply to a dwelling house which has at no time been, and was at no time intended by them to be, in the case of spouses, their matrimonial home and, in the case of civil partners, their civil partnership home. Since home rights are in respect of rights regarding a dwelling house, the application should relate only to the title which contains the dwelling house, and not to any other land owned by the spouse or civil partner.

3. Registration of the “home rights” as a charge on the estate or interest

The protection of home rights to which B is entitled is dealt with primarily under sections 93 and 94 and Schedule 2 of the MPA 2003 which provide as follows:

“93 Rights as charge on dwelling-house

- (1) If, at any time during a marriage or civil partnership, A is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest –
- (a) B’s home rights are a charge on the estate or interest; and
 - (b) that charge has the same priority as if it were an equitable interest created at whichever is the latest of the following dates –
 - (i) the date on which A acquired the estate or interest;
 - (ii) the date of the marriage or of the formation of the civil partnership; and
 - (iii) 21st August 1972 (the commencement date of the Matrimonial Homes Act 1971)."

Section 94 provides as follows:

“94 Registration of home rights

Schedule 2 has effect with respect to the registration of home rights.”

Schedule 2 makes provision for the registration of home rights in both the Deeds Registry under the Registration of Deeds Act 1961 (unregistered land) and in the Land Registry under the Land Registration Act 1982 (registered land) (“the LRA 1982”).

The Schedule deals with a number of important issues relating to the registration of home rights, the most important of which is that the charge is registrable as a Schedule 6 burden on the title register in accordance with Section 36(1) of the LRA 1982.

It also deals with a number of other issues which are summarised as follows:

- (a) if the spouse or civil partner is entitled to a registrable charge in respect of each of two or more dwelling-houses, only one of the charges to which that spouse or civil partner is so entitled shall be registered at any one time;
- (b) a contract for the sale or for the grant of a lease or underlease of the dwelling-house whereby the vendor is to give vacant possession on completion of the contract, must include a term that the vendor will, before such completion, procure the cancellation of the registration of the charge at his expense;
- (c) the situations where the registration of the charge is to be cancelled and the evidence which is required to be produced to the Chief Registrar;

- (d) that a spouse or civil partner entitled to home rights may release in writing those rights; and
- (e) the priority which a registered charge enjoys in the estate may be postponed in favour of another charge or interest in that estate.

4. When to bring the application

Home rights are created as an equitable interest at any time during the marriage or civil partnership as soon as one spouse – A – acquires an estate or interest in the dwelling house. Once created, the question arises as to when the party who is entitled to occupy the dwelling house should assert his or her rights. Although the application may be brought at any time during the marriage or civil partnership, in practice the application would usually be precipitated by a breakdown in the marriage relationship or civil partnership.

As stated in Ruoff & Roper (paragraph 45.014), when discussing the protection of the charge by the entry of an agreed notice in the charges register of the registered title in England and Wales:

“.....even though a spouse or civil partner has home rights which are a charge on the matrimonial or civil partnership home, it has never been expected that he or she would seek to protect them by registration until, at the earliest, the marriage or civil partnership appeared to be in jeopardy. As soon as there is any danger that the matrimonial or civil partnership home may be sold on the breakdown of a marriage or civil partnership and against the wishes and interests of a spouse or civil partner with home rights, it is essential that he or she should apply for registration to avoid being powerless against a purchaser or mortgagee.....Nevertheless, it is not permissible to misuse the registration process by attempting to employ it to prevent a transaction taking place when there is no intention to enter and occupy the property concerned.”

Although the Isle of Man Land Registry does not have a statutory charges register, the comments set out above would be applicable in this jurisdiction.

5. Effect of registration of the home right as a charge

Where the home right has been registered as a charge on the estate in the dwelling house and the registered owner wishes to sell the registered estate, he or she will have to include a term in the agreement for sale, whereby the vendor has agreed to give vacant possession of the dwelling-house on completion of the sale, to the effect that the vendor will, before completion, procure the cancellation of the registration of the charge at his expense [Article 4 Schedule 2 of the MPA 2003]. This applies to a contract for the grant of a lease or underlease of a dwelling house as well as to a contract for the sale or exchange of the freehold estate in the dwelling-house.

6. Procedure for the registration of home rights in the Land Registry

Where B decides to protect the home rights to which he or she is entitled by registering such rights as a charge burden on the title register in the Land Registry, he or she must follow the procedures laid down in, and lodge the appropriate Forms and the supporting documentation which is prescribed by -

- section 36(1) and Part 1 of Schedule 6 of the LRA 1982
- Rule 42: Application to register Schedule 6 burden of the Land Registry Rules 2000 ('LRR 2000'); and
- Rule 61: Registration of matrimonial charges of the LRR 2000.

7. Documents to be lodged in the Land Registry for registration of charge

The applicant should lodge the following documents:

- (a) Form 100: Submission of an application
- (b) Form 21: Application to register an entry affecting Registered Title
- (c) a sworn affidavit or statutory declaration by the applicant (spouse B) in support of the application which should set out fully the grounds upon which the applicant relies in support of the application
- (d) a certified copy of the certificate relating to the marriage or the civil partnership
- (e) any release of part of the dwelling house from the rights of occupation
- (f) any document postponing the priority of the charge
- (g) such further evidence as the Registrar may require, and
- (h) the fee prescribed by the Land Registration (Fees) Order in place at the time.

Please note that Rule 61 has not been amended to take into account the changes brought about by the MPA 2003 and as such still refers to "matrimonial charges" and the Matrimonial Homes Act 1971 and does not include a reference to the civil partnership register. Although the Rule has not been updated, it follows that the Rule refers to the registration of 'home rights.'

8. Description of the entry of the 'home right' as a burden on the title register

The 'home rights' are to be registered as a burden in accordance with Category 1 of Part 1 of Schedule 6 of the LRA 1982:

"Any charge on the land whether created before or after the first registration of the land other than a charge referred to in entry 12 of Part 1 of Schedule 5."

On registration, the Land Registry will make an entry on the register of the title to the land on which the dwelling house is situated, substantially along the following lines:

“Home Rights by virtue of Sections 93 and 94 of the Matrimonial Proceedings Act 2003 have been registered in favour of the person named below.”

Where the home rights have been extended in terms of Section 95(4) of the MPA 2003 or varied for any other reason, it may be necessary for the Land Registry to qualify and supplement the entry accordingly.

9. Termination of home rights

The termination of the home rights is dealt with by section 93(4) and paragraph 5 of Schedule 2 of the MPA 2003. The home rights are brought to an end and the registration thereof may be cancelled:

- on the death of either spouse or civil partner or
- on the termination of the marriage or the civil partnership by an order of the Court (unless the Court had previously directed under section 95(4) that the home rights were not to terminate by death or dissolution); or
- by an order of the Court terminating the spouse's or civil partner's home rights.

The home rights may also be released in writing by the spouse or civil partner or they may be released in respect of part only of the dwelling house (paragraph 7 of Schedule 2).

The home rights may also be varied, for instance, by an order made in terms of Section 95(4) of the MPA 2003, extending the home rights after the death of the other spouse or civil partner or termination (otherwise than by death) of the marriage or civil partnership, or by postponing the priority which the home rights enjoy in favour of another charge or interest in the estate.

10. Procedure for the cancellation, release or variation of title entries relating to matrimonial charges

The procedure to follow to cancel, release or to vary the home right as a Schedule 6 burden on registered land is outlined in Rule 62: Cancellation and variation of entries relating to matrimonial charges [home rights] of the LRR 2000.

The applicant should lodge the following documents in the Land Registry:

- (a) Form 100: Submission of an application
- (b) Form 20: Application to register a change to a Registered Title
- (c) a sworn affidavit or statutory declaration by the applicant in support of the application which set out fully the grounds upon which the applicant relies in support of the application and depending on the nature of the change which the applicant requires to the charge, one or more of the following documents which are relevant:
- (d) a certified copy of the death certificate relating to the spouse or civil partner

- (e) a certified copy of a decree or order of a Court that the marriage or the civil partnership has been terminated otherwise than by death
- (f) a certified copy of the order of the Court that the home rights of a spouse or civil partner have been terminated by the order
- (g) a certified copy of any order of the Court in relation to the home rights such as an order made under Section 95(4) of the MPA 2003 or
- (h) such further evidence as the Registrar may require as to the death of either spouse or civil partner or the nullity of, or termination otherwise than by death of the marriage or civil partnership in question and
- (i) the appropriate fee.

11. Caution or inhibition to provide additional protection

At the same time as the application for the registration of the home right as a charge on the property, the applicant may also seek additional protection by the registration of a caution or an inhibition on the title register.

Spouse B may want prior notice of any dealing with the dwelling-house by spouse A and may therefore decide to register a caution. The purpose of the caution is to ensure that B (the cautioner) receives notice of a dealing with the registered land by A (the registered owner) which will then place the onus on B to take the appropriate legal action to prevent the registration of any transaction that conflicts with the home rights. Cautions are dealt with in Section 61: (Cautions against registered dispositions) of the LRA 1982 and Rule 65 of the LRR 2000.

Protection may also be afforded by registering an inhibition which would restrict all dealings with the land by the owner unless the consent of his spouse or civil partner (B) was first obtained. Whilst a caution is a hostile procedure which does not require the applicant to give prior notice of the application to the registered owner, an inhibition may only be registered with the consent of or after prior notice has been given to the registered owner. Where the relationship has broken down the registered owner is unlikely to agree to an inhibition. Inhibitions are dealt with by Section 62: (Inhibitions of registered dealings) of the LRA 1982 and Rules 68 to 73 of the LRR 2000.

This Practice Guide provides general guidance in relation to the protection of home rights in the Isle of Man Land Registry. The guide should not be treated as a complete and authoritative statement of the law.

Please note that Land Registry staff are prohibited from giving legal advice or offering opinions and therefore if you are in any doubt about your rights, or of the procedure to follow in relation to protecting your home rights, you should seek legal advice.

Isle of Man Land Registry

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