

CHIVERS WALSH

FAMILY LAW

Information Leaflet

Home rights notices

What is it?

A registration on the “Land Register” that records that the spouse of the person who owns the property has a legal right to occupy it. (The Land Register is a central record giving details of who owns a property and of any mortgages and other legal charges over it. Most properties appear on the Land Register. Notices relating to “unregistered” properties are dealt with differently.)

Why register?

The registration of a notice effectively blocks a sale of a property. Anyone who purchased it after a notice had been registered would buy it subject to the right of the spouse of the seller to live in it after sale. No sane person would buy a house in which the seller’s spouse had a legal right to live following the sale. Neither would any lender would make a mortgage available to buy such a property.

Registration of a notice is therefore used by people whose marriages have broken down where the home in which they lived with their spouse is owned in the sole name of that spouse. It prevents a sale until financial issues have been resolved. It also effectively prevents a new mortgage being created over the property (although an existing mortgage lender may make a “further advance” (lend more money) under the existing mortgage but may not do so if it is brought to their attention that a home rights notice has been registered).

Who may register?

A married person may register a home rights notice over any property which:

- was occupied as a home by that person and their spouse or was intended to be so occupied; and
- is owned by their spouse.

People who have lived together outside marriage may not register a notice.

For how long does the notice last?

For as long as the marriage continues, unless a court orders that it should:

- continue after the marriage; or
- terminate before the end of the marriage.

In divorce proceedings, "decree absolute" terminates the marriage. In many cases it is appropriate for a person who has petitioned for divorce and registered a notice to delay the application for decree absolute until financial issues have been resolved.

This procedure is also available to civil partners (same-sex partners who have been through a civil partnership ceremony together).