

Land Law and Conveyancing Law: (5) Further General Proposals

In October 1992, the Commission published a Report on [Land Law and Conveyancing Law: \(5\) Further General Proposals \(LRC 44-1992\)](#), following a 1987 request by the Attorney General. The Working Group tasked with looking at this area took the view that it is difficult, in practice, to separate areas of land law and conveyancing law which relate to house purchase and those which relate to the transfer of other types of property or interest in property. Accordingly, while some of the suggestions relate primarily to transfer of residences, others are of more general effect. Anomalies in the law, the origins of which vary from the continuing existence of obsolete provisions to unforeseen difficulties which have been created by more modern legislation, have been identified in this Report.

The report contains the following 13 recommendations grouped under 3 separate headings:

The simplifying of conveyancing and land law generally

- (i) The requirement that documents transferring an interest in land executed by corporate bodies incorporated outside the State must be sealed should be abolished. Such documents should be accepted if they are executed in accordance with the provision of the jurisdiction in which the body is incorporated.
- (ii) Unincorporated associations should, subject to any existing provisions in their rules or constitution, be permitted to appoint new trustees to hold the association's property by election at general meetings of the association. It should be provided that a minute of the passing of the resolution appointing the new trustee should be deemed to be a vesting deed for the purpose of section 12 of the *Trustee Act, 1893*.
- (iii) There should no longer be a requirement to include words of limitation in any assurance of unregistered land; and,
- (iv) A provision that a joint tenant should be able to unilaterally sever a joint tenancy by giving notice to the other joint tenant that the property would henceforth be held under a tenancy in common should not be introduced.

Rectification of anomalies arising from modern legislation

- (v) The jurisdiction of planning authorities should be extended so as to enable the authorities to grant valid planning permissions in respect of land below the high water mark.
- (vi) A register of charges should be established for companies incorporated outside the State which have not established a place of business in the State but which own land in the State; and,
- (vii) Section 90 of the *Registration of Title Act, 1964* should be extended so as to permit the granting of leases by a person who is not a registered owner but is entitled to be registered as owner.

Amendments to landlord and tenant law

- (viii) The *Landlord and Tenant (Amendment) Act, 1971*, dealing with sporting leases, should be amended so as to restrict a sporting or recreational club from acquiring the fee simple in the land held under the lease. Alternatively if a sporting or recreational club is to be so entitled any covenants in the lease requiring the lands to be used in connection with an outdoor sport or recreation should survive;
- (ix) Section 28(1) of the *Landlord and Tenant (Amendment) Act, 1978* should be amended so as to ensure that the section only applies where a person has acquired the fee simple and all the intermediate interests between his leasehold interest and the ultimate fee simple;
- (x) Section 5(3) of the *Landlord and Tenant (Amendment) Act, 1980* should be amended to provide, firstly, that where an individual lessee has transferred the lessee's interest in the tenancy to a limited company without the lessor's consent, the right to a new tenancy under the act should remain vested in the individual lessee. Secondly, that the protection of the section be extended to the situation where the lessee's interest was vested in the company but the trading in the premises was being carried on by an individual who was the principal of the company;
- (xi) Section 13(1)(a) of the *Landlord and Tenant (Amendment) Act, 1980* should be amended so as to require the relevant property to have been a "tenement" within the meaning of the act during the whole of the period for the three years ending at the relevant time;
- (xii) Section 17(2) of the *Landlord and Tenant (Amendment) Act, 1980* should be amended so as to entitle a landlord to refuse to grant a new tenancy, subject to compensation for the tenant, where the landlord requires the premises for occupation as a residence for himself or any person bona fide residing or to reside with him or for occupation as a residence for a person in the whole time employment of the landlord. This should bring the provisions into line with those in the *Housing (Private Rented Dwelling) Act, 1982*; and,
- (xiii) Section 15 of the *Landlord and Tenant Act, 1984* should be amended so as to ensure that rent reviews should operate on a 5 yearly pattern, commencing on the date of commencement of the lease.
- (xiv)

Draft Legislation in Report

Draft legislative provisions are included in the Report.

Information on Implementation

Recommendations of the Commission were implemented by the *Landlord and Tenant (Amendment) Act 1994* and the *Civil Law (Miscellaneous Provisions) Act 2008, s.47*