

# TITLE CONDITIONS (SCOTLAND) ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Real Burdens: General**

##### *Section 9: Persons against whom burdens are enforceable*

67. In the past it was unclear whether liability extended to parties connected with the burdened property other than the owner. *Section 9* resolves this doubt by identifying who has liability in respect of a real burden. The terminology (“affirmative”, “negative” and “ancillary” burdens) is explained in the note on section 2.
68. *Subsection (1)* provides that burdens which provide for an obligation to do something (an **affirmative burden**) should only be enforceable against the **owner** of the benefited property.
69. *Subsection (2)* provides that burdens other than affirmative burdens (**negative** or **ancillary** burdens) should be enforceable against **anyone having use of the burdened property**.