

# TITLE CONDITIONS (SCOTLAND) ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: Community Burdens**

#### ***Section 37: Preservation of community burden in respect of which deed of variation or discharge has been granted as mentioned in [section 35\(1\)](#)***

170. *Subsection (1)* allows any owner of a benefited property (or an owner of the burdened property: see the note on section 36(1)) who did not grant the deed to apply to the Lands Tribunal for its preservation, provided the application is made within 8 weeks of the date of the last intimation under section 36(2). Subsection (6) provides that intimation by affixing is given on the first day when the notice is affixed. A successful application means that the enforcement rights and the burdens in the titles of all those units whose owners have not all signed the deed are unaffected by the registration of the deed.
171. The deed of variation or discharge will vary or discharge the community burden in respect of any unit whose owner has granted it, or if there are several co-owners, where they have all granted the deed. In respect of benefited properties whose owners did not grant the deed (or for burdened properties where there was a co-owner who did not sign), *subsection (2)* provides that the burden will not be varied or discharged unless a certificate is endorsed on the deed by the Lands Tribunal stating that no application for preservation has been received by the Tribunal (or all such applications have been withdrawn) or the application only relates to some of the burdens referred to in the deed. The Tribunal cannot give a certificate until after the 8 week period has expired. For practical purposes the oath or affirmation required by subsection (3) will need to be endorsed before sending the deed to the Tribunal in order to provide the Tribunal with sufficient information as to the date the 8 week period expired.
172. *Subsection (3)* provides that the enforcement rights of and the burdens in the titles of those units whose owners have not all signed the deed are not affected by the deed in respect of a burden described in the Lands Tribunal certificate, that is one which is the subject of an application for preservation.
173. *Subsection (4)* provides that a person, before submitting a deed of variation or discharge under section 35 for registration, must swear or affirm before a notary public that the proposal to register the deed has been duly intimated.
174. *In subsection (5)* the provisions of section 22(2) are adopted in relation to circumstances in which the granter is unable to grant in person.