

# TITLE CONDITIONS (SCOTLAND) ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 2: Community Burdens

##### *Section 33: Majority etc. variation and discharge of community burdens*

152. The procedure in *section 33* allows a community burden to be discharged or varied in relation to any or all of the units in a community. Section 33 both allows a constitutive deed to make provision for the variation or discharge of community burdens (subsection (1)(a) and provides a default rule (subsection (2)). Essentially, the default procedure involves: signature of a deed by the owners of a majority of the units; notification of the proposal to those owners who did not sign; a period of 8 weeks in which those owners can raise the matter in the Lands Tribunal and if they do not, the endorsement on the deed of an oath by the person proposing to register the deed that the intimation procedure has been complied with and a certificate by the Tribunal. The deed can then be registered and is effective against the whole community. The unit(s) which are to have the burden modified or removed - '*affected units*' - will each require to have the deed of variation or discharge registered against them. *Subsection (1)* prescribes those who may grant the deed. Paragraph (a) provides that an express provision in the title deeds specifying those who may grant such a deed will apply. Where the titles do not make provision, subsection (2) will operate. An express provision in the title deeds nominating certain properties would have to comply with the requirements of section 3 on what constitutes a valid real burden. The procedural requirements set out in section 34 only apply to deeds granted under subsection (2) and do not apply where there is express provision in the constitutive deed for owners to vary or discharge burdens as envisaged by section 33(1)(a). However, it should be noted that in terms of section 55, before the procedure under section 33(1) or (2) can be used in sheltered or retirement housing, a community consultation notice must be issued and the consultation period observed.
153. *Subsection (2)* provides that variation and discharge is granted either by the owners of a majority of units or, where authorised to do so, by the manager. Authorisation to the manager might be contained in the constitutive deed (section 26(1)(c)), or might be given following a decision by a majority of owners (section 28(1)(b) and (2)(c)). Paragraph (a) ensures that the majority must always consist of at least 2 owners, regardless of the number of units one owner may have.
154. *Subsection (3)* ensures that if the owner(s) of the affected unit(s) (i.e. the grantee(s)) sign, their unit(s) count for the purposes of assembling a majority.
155. *Subsection (4)* provides that an owner (or owners collectively owning more than half of a unit owned in common) can grant the deed for the purposes of section 33. Where, however, a unit is held in equal shares and the owners who are willing to sign the discharge do not own a majority share of the unit, that unit would not count towards a majority. It is possible for other ownership arrangements to occur and for ownership to be split unequally e.g. on a 75%/25% basis. Unlike under the present law, 'owner'

*These notes relate to the Title Conditions (Scotland) Act  
2003 (asp 9) which received Royal Assent on 3 April 2003*

includes a person who has right to the property but has not completed title by registration (section 123(1)(a)); but (section 60(1)) there must then be deduction of title (other than for units on the Land Register). A manager, however, need not deduce title (section 60(2)). The owner 'grants' a deed by subscribing it in accordance with section 2 of the Requirements of Writing (Scotland) Act 1995, and in practice the deed will also be witnessed under section 3 of that Act. A grantee is not required (section 69(1)) but would be normal in practice. No particular deed or form of deed is specified. Registration can be by a granter as well as by a grantee (section 69(2) and (3)); and while the deed need only be registered against the affected unit, the Keeper has power to make a corresponding entry against the title sheets of the other units in the community (section 105).

156. *Subsection (5)* refers to the provisions in section 54 for 'core burdens' within sheltered or retirement housing. The effect is that a deed under section 33(2) can only vary and not discharge a "core burden" as defined in section 54(4). Furthermore, a two thirds majority would be needed rather than a simple majority. In relation to non-core burdens a simple majority would suffice. The modifications made by section 54(5) do not apply to a deed of variation or discharge granted in accordance with provisions made in the constitutive deed (i.e. under section 33 (1)(a)).