

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Real Burdens: Miscellaneous

Section 60: Grant of deed where title not completed: requirements

272. *Section 60* introduces a requirement of deduction of title in cases where the owner granting some types of deed does not have a registered title. This means that the person's ownership must be traced back from the last owner whose title was registered, listing any other unregistered owners who held the property in the intervening period. *Subsection (1)* will require an unregistered owner who wishes to create, discharge or vary a real burden to establish ownership in this way. 'Owner' in this section does not include a heritable creditor in possession (section 123(3)(a)). Section 4 provides the rules for granting a constitutive deed and deeds of variation or discharge are granted in terms of sections 15, 33 and 35 (a deed of discharge under section 48 is not granted by an 'owner' and so does not come within section 60). The relevant land is the burdened property in the case of constitutive deeds, and the benefited property in the case of deeds of variation and discharge. The meaning of 'midcouple' is given in section 122(1), and deduction of title should in practice follow the style set out in schedule A form 1 to the Conveyancing (Scotland) Act 1924. Deduction is not necessary where the property is already on the Land Register (Land Registration (Scotland) Act 1979 section 15(3), as amended by schedule 14 paragraph 7(6) of this Act).
273. *Subsection (2)* makes clear that, if a deed of variation or discharge is granted by a manager, it does not matter if the owners (or some of them) do not have a completed title. No deduction of title is needed, nor, in Land Register cases, need midcouples be produced to the Keeper under section 15(3) of the 1979 Act.