

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Real Burdens: Miscellaneous

Section 64: Overriding power to dismiss and appoint manager

289. In the absence of any provision in the titles the manager may be dismissed by the owners of a majority of the units (section 28(1)(d)). But this rule can be altered in the titles, and a higher threshold imposed. *Section 64* restricts that threshold. Whatever the titles may say, the owners of two-thirds of units can always dismiss the manager once the manager burden has been extinguished. The meaning of ‘owner’ is given in section 122. The section is not confined to communities and community burdens, and applies to any group of related properties.
290. The rule in section 28 of the Act for dismissal of a manager by a simple majority will not come into play whilst a manager burden is still in effect. As a consequence, dismissal by a simple majority under section 28(1)(d) will not be possible until either the last unit is sold or the three, five or thirty year period has elapsed. In a similar way the two-thirds rule provided by section 64(1) could not be used until the time period has expired or the last unit is sold, with one exception. This exception is that the owners of two-thirds of the properties in estates subject to the thirty year period provided for in section 63(5) (purchasers in right-to-buy sales) can remove a manager at any time, i.e. before the expiry of the thirty year period. In all other schemes (those subject to the three or five year limit), the two-thirds dismissal rule would not be available while the manager burden was exercisable.