



Title Conditions (Scotland) Act 2003

2003 asp 9

PART 7

SERVITUDES

Positive servitudes

75 Creation of positive servitude by writing: deed to be registered

- (1) A deed is not effective to create a positive servitude by express provision unless it is registered against both the benefited property and the burdened property.
- (2) It shall be no objection to the validity of a positive servitude that, at the time when the deed was registered as mentioned in subsection (1) above, the same person owned the benefited property and the burdened property; but, notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.), the servitude shall not be created while that person remains owner of both those properties.
- (3) Subsection (1) above—
 - (a) is subject to section 3(1) of the Prescription and Limitation (Scotland) Act 1973 (c. 52) (creation of positive servitude by 20 years' possession following execution of deed); and
 - (b) does not apply to servitudes such as are mentioned in section 77(1) of this Act.