

TENEMENTS (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Miscellaneous and General

Section 28 – Meaning of “owner”, determination of liability etc.

121. *Section 28* defines the meaning of “owner” for the purposes of the Act. The question of exactly when people become the owner of a flat is important since they will acquire rights and obligations at that point. This section brings the Act into line with the definition in the Title Conditions Act.
122. *Subsection (1)* makes it clear that where the word “owner” appears in the Act without any further clarification or addition, then it means the owner of a flat in the tenement. Some sections, for example, *section 8*, use the expression “owner of part of a tenement building” and in those cases the term “owner” is not intended to be limited to the owner of a flat.
123. In *subsection (2)* an owner in relation to a flat is defined as someone who has a right to a flat, that is someone who is entitled to take entry under a conveyance of the flat in question. It will not be necessary for them to have completed their title by registering it in the property registers before they can be considered owners. If more than one person comes within the description of an owner, then for the purposes of the Act the “owner” is the person who has most recently acquired that right (to take entry under a conveyance).
124. At present heritable creditors are generally regarded as standing in the place of the owner when they enter into the possession of security subjects. *Subsection (3)* extends the meaning of “owner” to mean heritable creditors who have entered into lawful possession of a flat.
125. *Subsection (4)* provides that where two or more people own a flat the term “owner” applies to both or all of them. This provision is qualified however by *subsection (5)*. The provisions listed confer rights on owners (as opposed to obligations) and the effect of this subsection is that any *pro-indiviso* owner (part owner) is able to exercise these rights independently.
126. *Subsection (6)* applies *subsections (2) to (5)* of *section 28* to owners of part of the tenement as if they owned a tenement flat (and in any such case any reference to a flat will be read as being to the part of the tenement owned by that person).
127. Where two or more people own a flat, under *subsection (7)(a)* they are jointly and severally liable for costs arising from the operation of the Act. The other owners in the tenement have a right to sue any of them for the full amount owed. When one co-owner pays a debt, there is a right of relief against the other co-owner or co-owners. Paragraph (b) provides that in relation to each other co-owners should be liable in the proportions in which they own the flat.