

SCHEDULE 3  
SALE UNDER SECTION 22(3) OR 23(1)

*Application to sheriff for power to sell*

- 1 (1) Where an owner is entitled to apply—
- (a) under section 22(3), for power to sell the site; or
  - (b) under section 23(1), for power to sell the tenement building,
- the owner may make a summary application to the sheriff seeking an order (referred to in this Act as a “power of sale order”) conferring such power on the owner.
- (2) The site or tenement building in relation to which an application or order is made under sub-paragraph (1) is referred to in this schedule as the “sale subjects”.
- (3) An owner making an application under sub-paragraph (1) shall give notice of it to each of the other owners of the sale subjects.
- (4) The sheriff shall, on an application under sub-paragraph (1)—
- (a) grant the power of sale order sought unless satisfied that to do so would—
    - (i) not be in the best interests of all (or both) the owners taken as a group; or
    - (ii) be unfairly prejudicial to one or more of the owners; and
  - (b) if a power of sale order has previously been granted in respect of the same sale subjects, revoke that previous order.
- (5) A power of sale order shall contain—
- (a) the name and address of the owner in whose favour it is granted;
  - (b) the postal address of each flat or, as the case may be, former flat comprised in the sale subjects to which the order relates; and
  - (c) a sufficient conveyancing description of each of those flats or former flats.
- (6) A description of a flat or former flat is a sufficient conveyancing description for the purposes of sub-paragraph (5)(c) if—
- (a) where the interest of the proprietor of the land comprising the flat or former flat has been registered in the Land Register of Scotland, the description refers to the number of the title sheet of that interest; or
  - (b) in relation to any other flat or former flat, the description is by reference to a deed recorded in the Register of Sasines.
- (7) An application under sub-paragraph (1) shall state the applicant’s conclusions as to—
- (a) which of subsections (4) and (5) of section 22 applies for the purpose of determining how the net proceeds of any sale of the sale subjects in pursuance of a power of sale order are to be shared among the owners of those subjects; and
  - (b) if subsection (5) of that section is stated as applying for that purpose—
    - (i) the floor area of each of the flats or former flats comprised in the sale subjects; and
    - (ii) the proportion of the net proceeds of sale allocated to that flat.