



Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

PART 4

LAND ATTACHMENT AND RESIDUAL ATTACHMENT

CHAPTER 2

ATTACHMENT OF LAND

Preparations for sale of attached land

92 Application for warrant to sell attached land

(1) Where—

- (a) a land attachment is in effect;
- (b) the period of 6 months, beginning with the day or, as the case may be, the last day on which the notice of land attachment is registered, has expired;
- (c) the sum recoverable by the land attachment exceeds the sum mentioned in subsection (3) below (in this Chapter, the “prescribed sum”); and
- (d) the sum recoverable has not been paid,

the creditor may, subject to subsection (2) below, apply to the sheriff for a warrant for sale of the attached land or such part of it as may be specified in the application.

(2) The Scottish Ministers may by regulations provide that where attached land, or any part of it, is—

- (a) a dwellinghouse; or
- (b) a dwellinghouse of such description or class as may be specified in the regulations,

an application under subsection (1) above may be made only in relation to such part of the attached land which is not a dwellinghouse or, as the case may be, such a dwellinghouse.

Status: This is the original version (as it was originally enacted).

- (3) The prescribed sum is—
- (a) £3,000; or
 - (b) such other sum as may be prescribed by the Scottish Ministers by regulations.
- (4) An application under subsection (1) above must—
- (a) be in (or as nearly as may be in) the form prescribed by Act of Sederunt;
 - (b) specify—
 - (i) the attached land (or part of it) in relation to which the warrant for sale is sought; and
 - (ii) a solicitor who is willing to execute any warrant for sale granted; and
 - (c) be accompanied by—
 - (i) a report on a search in the appropriate property register in respect of the land specified in the application;
 - (ii) a report on a search in the Register of Inhibitions in respect of the debtor and any person who owns the attached land in common with the debtor;
 - (iii) a copy of the notice of land attachment;
 - (iv) a copy of the certificate of service of that notice on the debtor;
 - (v) a declaration signed by the solicitor mentioned in paragraph (b)(ii) above; and
 - (vi) any other document prescribed by Act of Sederunt.
- (5) An application under subsection (1) above must be intimated to—
- (a) the debtor;
 - (b) if the report mentioned in subsection (4)(c)(ii) above discloses that a notice has been registered under section 91 of this Act, the person at whose instance the notice was registered;
 - (c) any person holding any security or diligence ranking prior to or *pari passu* with the land attachment;
 - (d) any occupier of the land;
 - (e) any person who owns the land in common with the debtor; and
 - (f) any other person belonging to a class of persons prescribed by the Scottish Ministers by regulations.
- (6) A person who receives intimation under subsection (5) above may, before the expiry of the period of 14 days beginning with the day on which intimation is made, lodge objections to the application.
- (7) The Scottish Ministers may, by regulations, make further provision about the reports on searches mentioned in subsection (4)(c)(i) and (ii) above which are to accompany an application under subsection (1) above.
- (8) Where provision is made by virtue of this Chapter or by any other enactment permitting the application under subsection (1) above to be an electronic communication—
- (a) the requirement in paragraph (c) of subsection (4) above that the application be accompanied by the documents mentioned in that paragraph is satisfied by the provision of electronic communications; and
 - (b) the requirement that the declaration mentioned in sub-paragraph (v) of that paragraph be signed is satisfied by a certified electronic signature.

- (9) In this section, “sheriff” means a sheriff of the sheriffdom in which the attached land or any part of it is situated.