

HOME OWNER AND DEBTOR PROTECTION (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 1 – Residential Standard Securities Etc.: Creditor’s Rights on Default

Section 4 – pre-action requirements

25. **Section 4** outlines the pre-action requirements which creditors must satisfy before making an application under section 24(1B) of the 1970 Act or an application under section 5 of the 1894 Act in relation to residential property.
26. Section 4(1) inserts section 24A into the 1970 Act. This relates to proceedings described at section 24(1B) of the 1970 Act (i.e. in relation to residential property). The pre-action requirements at subsections (2) to (6) are that the creditor:
 - provides the debtor with clear information about the terms of the standard security, the amount due (including any arrears and charges in respect of late payment and redemption) and any other obligation under the security in respect of which the debtor is in default;
 - makes reasonable efforts to agree with the debtor proposals for future payments and the fulfilment of any other obligation under the security in respect of which the debtor is in default;
 - refrains from making a section 24 application for repossession or sale where the debtor is taking steps likely to result, within a reasonable period, in the payment of arrears or the principal sum and to fulfil any other obligation for which the debtor is in default;
 - provides the debtor with information about sources of advice and assistance in relation to management of debt;
 - encourages the debtor to contact the local authority in whose area the property is situated.
27. Subsection (7) requires creditors to have regard to guidance issued by Scottish Ministers. Subsection (8) allows Scottish Ministers by subordinate legislation to make further provision about and modify the pre-action requirements, but not to add new categories of pre-action requirements.
28. Section 4(2) inserts section 5B into the 1894 Act. This relates to proceedings described at section 5(2) of the 1894 Act (i.e. residential property). It repeats the pre-action requirements, guidance and powers set out for applications under section 24(1B) of the 1970 Act.