



Home Owner and Debtor Protection (Scotland) Act 2010

2010 asp 6

PART 1

RESIDENTIAL STANDARD SECURITIES ETC.: CREDITOR'S RIGHTS ON DEFAULT

1 Residential standard securities: restriction of creditor's remedies

- (1) In section 20 (creditor's rights on default of debtor on calling-up notice) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35) ("the 1970 Act"), after subsection (2) insert—

“(2A) Where the standard security is over land or a real right in land used to any extent for residential purposes, the creditor is entitled to exercise the rights specified in standard condition 10(2) and (3) (and mentioned in subsections (1) and (2) above) only—

- (a) where the conditions in section 23A of this Act are satisfied, or
- (b) with the warrant of the court, granted on an application under section 24 of this Act.”.

- (2) In section 23 (rights and duties of parties after service of notice of default) of the 1970 Act, after subsection (3) insert—

“(4) Where the standard security is over land or a real right in land used to any extent for residential purposes—

- (a) the creditor is entitled to exercise the right specified in standard condition 10(2) only—
 - (i) where the conditions in section 23A of this Act are satisfied, or
 - (ii) with the warrant of the court, granted on an application under section 24 of this Act, and
- (b) subsection (3) above has effect as if the reference to the last foregoing subsection were a reference to section 24 of this Act.”.

- (3) After section 23 of the 1970 Act insert—

“23A Voluntary surrender of residential property following calling-up notice or notice of default

- (1) The conditions referred to in sections 20(2A)(a) and 23(4)(a)(i) are that—
- (a) the security subjects are unoccupied; and
 - (b) each of the persons specified in subsection (2) below has, in writing—
 - (i) certified that that person does not occupy the security subjects and is not aware of the security subjects being occupied by any other person;
 - (ii) consented to the exercise by the creditor of the creditor’s rights on default; and
 - (iii) certified that the consent is given freely and without coercion of any kind.
- (2) Those persons are—
- (a) the debtor;
 - (b) the proprietor of the security subjects (where the proprietor is not the debtor);
 - (c) the non-entitled spouse of the debtor or the proprietor of security subjects which are (in whole or in part) a matrimonial home;
 - (d) the non-entitled civil partner of the debtor or the proprietor of security subjects which are (in whole or in part) a family home; and
 - (e) a person who has occupancy rights in the security subjects by virtue of an order under section 18(1) (occupancy rights of cohabiting couples) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981.
- (3) In this section—
- “family home” has the meaning given by section 135(1) of the Civil Partnership Act 2004;
 - “matrimonial home” has the meaning given by section 22 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981;
 - “non-entitled civil partner” has the same meaning as “non-entitled partner” in section 101(1) of the Civil Partnership Act 2004;
 - “non-entitled spouse” has the meaning given by section 1 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981.”.