



# Home Owner and Debtor Protection (Scotland) Act 2010

2010 asp 6

## PART 1

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

#### 4 Pre-action requirements

(1) After section 24 of the 1970 Act insert—

##### **“24A Section 24(1B) proceedings: pre-action requirements**

- (1) The pre-action requirements referred to in section 24(1C) of this Act are set out in subsections (2) to (6) below.
- (2) The creditor must provide the debtor with clear information about—
  - (a) the terms of the standard security;
  - (b) the amount due to the creditor under the standard security, including any arrears and any charges in respect of late payment or redemption; and
  - (c) any other obligation under the standard security in respect of which the debtor is in default.
- (3) The creditor must make reasonable efforts to agree with the debtor proposals in respect of future payments to the creditor under the standard security and the fulfilment of any other obligation under the standard security in respect of which the debtor is in default.
- (4) The creditor must not make an application under section 24(1B) of this Act if the debtor is taking steps which are likely to result in—
  - (a) the payment to the creditor within a reasonable time of any arrears, or the whole amount, due to the creditor under the standard security; and
  - (b) fulfilment by the debtor within a reasonable time of any other obligation under the standard security in respect of which the debtor is in default.

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*Status: This is the original version (as it was originally enacted).*

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- (5) The creditor must provide the debtor with information about sources of advice and assistance in relation to management of debt.
- (6) The creditor must encourage the debtor to contact the local authority in whose area the security subjects are situated.
- (7) In complying with the pre-action requirements the creditor must have regard to any guidance issued by the Scottish Ministers.
- (8) The Scottish Ministers may by order made by statutory instrument make further provision about the pre-action requirements, including provision—
  - (a) specifying particular steps to be taken, or not to be taken, by a creditor in complying with any requirement;
  - (b) modifying or removing any requirement;
  - (c) making different provision for different circumstances.
- (9) A statutory instrument containing an order under subsection (8) above is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

(2) After section 5A of the 1894 Act (inserted by section 3 of this Act) insert—

**“5B Section 5 proceedings relating to residential property: pre-action requirements**

- (1) The pre-action requirements referred to in section 5(3) are set out in subsections (2) to (6) below.
- (2) The creditor must provide the debtor with clear information about—
  - (a) the terms of the security,
  - (b) the amount due to the creditor under the security, including any arrears and any charges in respect of late payment or redemption, and
  - (c) any other obligation under the security in respect of which the debtor is in default.
- (3) The creditor must make reasonable efforts to agree with the debtor proposals in respect of future payments to the creditor under the security and the fulfilment of any other obligation under the security in respect of which the debtor is in default.
- (4) The creditor must not make an application under section 5(1) to which section 5A applies if the debtor is taking steps which are likely to result in—
  - (a) the payment to the creditor within a reasonable time of any arrears, or the whole amount, due to the creditor under the security, and
  - (b) fulfilment by the debtor within a reasonable time of any other obligation under the security in respect of which the debtor is in default.
- (5) The creditor must provide the debtor with information about sources of advice and assistance in relation to management of debt.
- (6) The creditor must encourage the debtor to contact the local authority in whose area the security subjects are situated.

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- (7) In complying with the pre-action requirements the creditor must have regard to any guidance issued by the Scottish Ministers.
- (8) The Scottish Ministers may by order made by statutory instrument make further provision about the pre-action requirements, including provision—
  - (a) specifying particular steps to be taken, or not to be taken, by a creditor in complying with any requirement,
  - (b) modifying or removing any requirement,
  - (c) making different provision for different circumstances.
- (9) A statutory instrument containing an order under subsection (8) above is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.