



# Land Registration etc. (Scotland) Act 2012

## 2012 asp 5

### PART 9

#### RIGHTS OF PERSONS ACQUIRING ETC. IN GOOD FAITH

##### *Extinction of encumbrances etc.*

#### **91 Extinction of encumbrance when land disposed**

- (1) Where the conditions mentioned in subsection (2) are met, a person (“A”) who acquires ownership of land on registration or on a later date by virtue of section 86(4)(b)—
  - (a) takes the land free of an encumbrance which is not entered in the title sheet as at the date on which A acquires ownership of the land, and
  - (b) any such encumbrance is extinguished.
- (2) The conditions are that, as at the date on which ownership is acquired—
  - (a) A is in good faith, and
  - (b) the title sheet is not, by virtue of section 67, subject to a caveat relevant to such acquisition by A.
- (3) Subsection (1) does not apply to an heritable security which is not entered in the securities section of a shared plot title sheet by virtue of section 18(3)(b).
- (4) “Encumbrance” in subsection (1) does not include—
  - (a) a public right of way,
  - (b) a path delineated in an order under section 22 of the Land Reform (Scotland) Act 2003 (asp 2) (compulsory powers to delineate paths in land in respect of which access rights are exercisable),
  - (c) a servitude created other than under section 75(1) of the Title Conditions (Scotland) Act 2003 (asp 9),
  - (d) a lease, or
  - (e) an encumbrance the creation of which does not require registration of the constitutive deed.

## **92      Extinction of encumbrance when lease assigned**

- (1) Where the conditions mentioned in subsection (2) are met, a person (“A”) who acquires a registered lease on registration or on a later date by virtue of section 88(4)(b)—
- (a) takes that lease free of an encumbrance—
    - (i) of a kind mentioned in subsection (4), and
    - (ii) which is not entered in the title sheet as at the date on which A acquires the registered lease, and
  - (b) any such encumbrance is extinguished.
- (2) The conditions are that, as at the date on which the lease is acquired—
- (a) A is in good faith, and
  - (b) the title sheet is not, by virtue of section 67, subject to a caveat relevant to such acquisition by A.
- (3) Subsection (1) does not apply to an heritable security which is not entered in the securities section of a shared lease title sheet by virtue of paragraph 8(b) of schedule 1.
- (4) The encumbrances are—
- (a) a heritable security over the lease,
  - (b) a title condition such as is mentioned in paragraph (d) or (e) of the definition of “title condition” in section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9).

## **93      Extinction of floating charge when land disposed**

A person who, in good faith, acquires ownership of land from another person (“A”), takes the land free of any floating charge which was granted by a predecessor in title of A.