



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 4

### LAND ATTACHMENT AND RESIDUAL ATTACHMENT

#### CHAPTER 2

##### ATTACHMENT OF LAND

###### *Consequences of land attachment*

#### **84 Debts secured by land attachment not rendered heritable**

The creation of a land attachment does not convert any moveable debt, in relation to the enforcement of which the notice of land attachment was registered, into a heritable one.

#### **85 Restriction on priority of ranking of certain securities**

After section 13 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35), insert—

##### **“13A Effect of subsequent land attachment on ranking of standard securities**

(1) This section applies where—

- (a) a notice of land attachment, relating to land (or any part of it) which is subject to an existing standard security duly recorded, is registered in accordance with section 83(1)(c) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3);
- (b) a copy of that notice is served on the creditor in that existing standard security; and

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*Status: This is the original version (as it was originally enacted).*

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(c) a land attachment is subsequently created on the expiry of the period of 28 days mentioned in section 81(3) of that Act.

(2) Section 13(1) of this Act shall apply in relation to the effect on the preference in ranking of that existing standard security from the day on which the period referred to in subsection (1)(c) above expires.”.

## **86 Lease granted after registration of notice of land attachment**

(1) This section applies where—

- (a) a notice of land attachment is registered;
- (b) during the period of 28 days mentioned in section 81(3) of this Act—
  - (i) the debtor; or
  - (ii) a tenant of the debtor,
 grants a lease of land (or a part of it) specified in the notice; and
- (c) a land attachment is, on the expiry of that period, created.

(2) Subject to section 163(2) to (4) of this Act (restriction on reduction of leases granted in breach of inhibition), any such lease is reducible at the instance of the creditor.

(3) In subsection (1)(b) above, “tenant” includes any subtenant of the tenant and “lease” includes a sublease.

## **87 Assignment of title deeds etc.**

(1) A land attachment assigns to the creditor the title deeds, including searches and all unregistered conveyances, affecting the attached land or any part of it.

(2) The creditor is, in the event of a sale of the attached land (or part of it) in pursuance of a warrant under section 97(2) of this Act, entitled to—

- (a) deliver the title deeds (so far as in the creditor’s possession and subject to the rights of any person holding prior rights to their possession) to the purchaser; and
- (b) assign to the purchaser any right the creditor has to have the title deeds made forthcoming.

## **88 Acquisition of right to execute land attachment**

(1) This section applies where—

- (a) a person acquires a right as mentioned in section 88(1) (acquisition of right to decree, document, order or determination authorising diligence) of the Debtors (Scotland) Act 1987 (c. 18) (in this Act, the “1987 Act”); and
- (b) a notice of land attachment has, before that acquisition, been registered in pursuance of that right.

(2) The person acquiring the right may, by registering a notice such as is mentioned in subsection (3) below, take or continue to take any steps necessary to enforce the debt by land attachment as if the appropriate clerk had, under section 88(4) of the 1987 Act, granted warrant authorising the person to do so.

(3) The notice referred to in subsection (2) above must—

- (a) be in (or as nearly as may be in) the form prescribed by Act of Sederunt; and

- (b) be registered in—
  - (i) the appropriate property register; and
  - (ii) the Register of Inhibitions.

(4) References in this Chapter to a “creditor” include, unless the context otherwise requires, references to a person who registers a notice under subsection (2) above.

## **89 Effect of debtor’s death before land attachment created**

- (1) This section applies where—
  - (a) a debtor, in relation to whose land a creditor has taken steps to commence or execute a land attachment, dies; and
  - (b) a land attachment has not, before the date of death of the debtor, been created.
- (2) Any steps taken as mentioned in subsection (1)(a) above cease to have effect and any charge relating to the debt is, from the date of death of the debtor, void.
- (3) Nothing in subsection (2) above stops the creditor from subsequently proceeding to raise against any executor or other representative of the debtor an action to constitute the debt.
- (4) Any warrant for diligence in an extract of a decree in such an action authorises land attachment.

## **90 Effect of debtor’s death after land attachment created**

- (1) For the avoidance of doubt, where a debtor, whose land is subject to a land attachment, dies, the land attachment continues to have effect in relation to the attached land.
- (2) The Court of Session may, by Act of Sederunt, provide for the operation of this Chapter in a case to which this section applies and may, in particular—
  - (a) modify the provisions about service of notices of applications for warrant for sale and foreclosure; and
  - (b) confer power on the sheriff to dispense with or modify procedures under this Chapter.

## **91 Caveat by purchaser under missives**

- (1) This section applies where—
  - (a) a person has entered into a contract to purchase land from a debtor; and
  - (b) ownership has not been transferred to that person.
- (2) The person may, for the purpose of receiving intimation of any application, under section 92(1) of this Act, for a warrant for sale of the land, register in the Register of Inhibitions a notice in (or as nearly as may be in) the form prescribed by Act of Sederunt.