



Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

PART 4

LAND ATTACHMENT AND RESIDUAL ATTACHMENT

CHAPTER 2

ATTACHMENT OF LAND

Termination, discharge etc. of land attachment

121 Termination by payment etc.

- (1) If the full sum for payment of which the charge was served is, before the expiry of the period of 28 days mentioned in section 81(3) of this Act, either paid or tendered to the creditor, to a judicial officer or to any other person who has authority to receive payment on behalf of the creditor—
 - (a) the land attachment is not created; and
 - (b) the notice of land attachment ceases to have effect.
- (2) Subject to subsection (3) below, if the full sum recoverable by a land attachment is either paid or tendered to—
 - (a) any of the persons mentioned in subsection (1) above; or
 - (b) the appointed person,the land attachment ceases to have effect.
- (3) Subsection (2) above does not apply unless the sum is paid before—
 - (a) where a warrant for sale of the attached land (or part of it) is granted, a contract of sale of the attached land is concluded; or
 - (b) an extract of a decree of foreclosure in relation to the attached land (or part of it) is registered.

122 Discharge

- (1) This section applies where—
 - (a) under section 121(1)(b) of this Act, a notice of land attachment ceases to have effect; or
 - (b) under subsection (2) of that section, a land attachment ceases to have effect.
- (2) The creditor must discharge—
 - (a) the notice of land attachment; or
 - (b) the land attachment,provided that the expenses of discharge are paid or tendered to any of the persons mentioned in section 121(1) of this Act.
- (3) It is competent to register any such discharge.

123 Recall and restriction of land attachment

- (1) The debtor or any other person having an interest may apply to the sheriff for an order—
 - (a) recalling a land attachment; or
 - (b) restricting such an attachment.
- (2) An application under subsection (1) above must—
 - (a) be in (or as nearly as may be in) the form prescribed by Act of Sederunt; and
 - (b) be intimated to the creditor.
- (3) The sheriff must, if satisfied—
 - (a) that the land attachment—
 - (i) is invalid;
 - (ii) has been executed incompetently or irregularly; or
 - (iii) has ceased to have effect; or
 - (b) that the creditor is, under section 122(2)(b) of this Act, obliged to discharge it, make an order declaring that to be the case and recalling the land attachment.
- (4) The sheriff may, if satisfied that a land attachment is valid but—
 - (a) having regard to the sum recoverable by the land attachment, that significantly more land is attached than need be; and
 - (b) that it is reasonable to do so,make an order restricting the effect of the land attachment to part only of the land to which it relates.
- (5) An order of recall or restriction must be in (or as nearly as may be in) the form prescribed by Act of Sederunt.
- (6) It is competent for a person who obtains an order of recall or restriction to register that order in the appropriate property register.

124 Duration of land attachment

- (1) Subject to sections 121 to 123 of this Act and to subsection (2) below, a land attachment ceases to have effect on the expiry of the period of 5 years beginning with the day or, as the case may be, the last day on which the notice of land attachment is registered.

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

- (2) The creditor may extend the period mentioned in subsection (1) above for a further period of 5 years.
- (3) Such an extension is effected by the creditor registering, during the period of 2 months ending with the day on which the period mentioned in subsection (1) above ends, a notice of extension in (or as nearly as may be in) the form prescribed by Act of Sederunt.
- (4) The creditor may extend the period for which a land attachment has effect on more than one occasion and subsections (1) to (3) above apply as if for the reference in subsection (1) above to the day on which the notice of land attachment is registered there were substituted a reference to the day or, as the case may be, the last day on which the notice of extension is last registered.