



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 4

### LAND ATTACHMENT AND RESIDUAL ATTACHMENT

#### CHAPTER 2

##### ATTACHMENT OF LAND

###### *The sale*

#### **108 Appointed person**

- (1) The appointed person—
  - (a) is an officer of the court; and
  - (b) must act independently of the creditor, the debtor and any other interested person.
- (2) Before exercising any functions conferred by virtue of this Chapter, the appointed person must lodge a bond of caution for such amount as may be prescribed by Act of Sederunt.
- (3) The appointed person may apply to the sheriff who granted the warrant for sale under section 97(2) of this Act for directions as to how to exercise any of that person's functions.
- (4) In executing a warrant for sale granted under section 97(2) of this Act, the appointed person must—
  - (a) exercise the functions conferred—
    - (i) by this Chapter; and
    - (ii) by the Scottish Ministers under subsection (8) below; and
  - (b) comply with any directions made under subsection (3) above.

- (5) The appointed person is liable to the creditor, the debtor, any person who owns the attached land in common with the debtor and any secured creditor for any patrimonial loss caused as a result of the appointed person's negligence in executing the warrant for sale.
- (6) The creditor is liable for the appointed person's reasonable remuneration and outlays incurred in exercising functions conferred by virtue of this Chapter.
- (7) Such remuneration and outlays are expenses incurred by the creditor in executing the land attachment.
- (8) The Scottish Ministers may, by regulations—
  - (a) confer functions on;
  - (b) remove functions from; or
  - (c) otherwise modify the functions of, appointed persons.

#### **109 Method of sale**

- (1) The land in relation to which a warrant for sale is granted under section 97(2) of this Act must be sold in execution of that warrant by the appointed person.
- (2) The land may, unless the sheriff otherwise directs, be sold by private bargain or at auction.
- (3) The appointed person must consult the creditor before determining which of the methods of sale mentioned in subsection (2) above is to be used.
- (4) The appointed person must—
  - (a) advertise the sale of the attached land; and
  - (b) ensure that the price at which the land is sold is the best that can reasonably be obtained.

#### **110 Legal incapacity or disability of debtor not to affect title of purchaser**

Any legal incapacity or disability of a debtor has no effect on the title passed to a purchaser of attached land which has been sold in execution of a warrant for sale.

#### **111 Title of purchaser not to be affected by certain irregularities**

- (1) Where a disposition bearing to be granted in execution of a warrant for sale is registered in the appropriate property register, the validity of that disposition is not, if the conditions mentioned in subsection (2) below are satisfied, challengeable on the ground—
  - (a) that the land attachment was irregularly executed; or
  - (b) that, before the date of settlement of the sale, the land attachment had ceased to have effect.
- (2) The conditions are that—
  - (a) the purchaser acted in good faith in relation to the purchase of the land; and

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- (b) the appointed person grants a certificate, in (or as nearly as may be in) the form prescribed by Act of Sederunt, to the purchaser confirming that the land attachment was regularly executed.
- (3) In subsection (2)(a) above, a purchaser is deemed to have acted in good faith where, immediately before the date of settlement, the purchaser was not aware and could not reasonably have become aware that the land attachment was irregularly executed or, as the case may be, that it had, before that date, ceased to have effect.

## **112 Effect of registration of disposition on securities**

Where a disposition of attached land is granted in execution of a warrant for sale to a purchaser, then, on the registration of the disposition, the land is disburdened of—

- (a) the land attachment; and
- (b) any—
  - (i) heritable security; or
  - (ii) diligence,ranking *pari passu* with, or after, the land attachment.

## **113 Report of sale**

- (1) Where attached land is sold in execution of a warrant for sale, the appointed person must, before the expiry of the period of 28 days beginning with the day on which the sale price is paid, lodge with the sheriff clerk for the court which granted the warrant a report of the sale.
- (2) A report lodged under subsection (1) above must—
- (a) be in (or as nearly as may be in) the form prescribed by Act of Sederunt; and
  - (b) contain—
    - (i) a description of the land (or part) sold and the sale price;
    - (ii) a description of any land which is unsold and the price at which it was last offered for sale (or, if offered for sale at auction, the reserve price);
    - (iii) a statement of the expenses incurred by the creditor in executing the land attachment;
    - (iv) a statement of the amount due under any security or diligence ranking on the proceeds of sale prior to, or *pari passu* with, the land attachment;
    - (v) a statement of the amount due under any security or diligence ranking on the proceeds of sale after the land attachment;
    - (vi) a note of the amount of any surplus of the sale proceeds payable to the debtor; and
    - (vii) a note of any balance of the debt due by the debtor to the creditor.
- (3) If the appointed person—
- (a) without reasonable excuse makes a report of sale after the expiry of the period mentioned in subsection (1) above; or
  - (b) wilfully refuses to make, or delays making, a report after the expiry of that period,

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the sheriff may make an order providing that the appointed person is not entitled to payment from the creditor of the reasonable remuneration and outlays incurred in executing the warrant for sale or so much of such remuneration and outlays as the sheriff specifies.

#### **114 Audit of report of sale**

- (1) Where a report is lodged under section 113(1) of this Act, the sheriff must remit it to the auditor of court for the auditor to report on it within such time as the sheriff may specify.
- (2) The auditor must—
  - (a) tax the expenses of the land attachment chargeable against the debtor;
  - (b) certify the balance due to or by the debtor following the sale; and
  - (c) submit a report to the sheriff.
- (3) The auditor is not entitled to charge a fee in respect of the report submitted under subsection (2)(c) above.
- (4) The report of sale and the auditor's report must be retained by the sheriff clerk for such period as may be prescribed by Act of Sederunt and during that period must be available for inspection by any interested person on payment of such fee as may be prescribed in an order made under section 2 of the Courts of Law Fees (Scotland) Act 1895 (c. 14).

#### **115 Sheriff's consideration of report**

- (1) Where the auditor has submitted a report to the sheriff under section 114(2)(c) of this Act, the sheriff may, after considering that report and the report on sale lodged under section 113(1) of this Act—
  - (a) make an order approving the report of sale subject to such amendments (if any) made—
    - (i) following a hearing under subsection (2) below, by the sheriff; or
    - (ii) by the auditor,as may be specified in the order;
  - (b) if the sheriff is satisfied that there has been a substantial irregularity in the land attachment, make an order—
    - (i) declaring the land attachment to be void; and
    - (ii) making such consequential order as appears to the sheriff to be necessary in the circumstances.
- (2) The sheriff may not make an order under subsection (1) above without first giving all interested persons an opportunity to be heard.
- (3) The sheriff clerk must intimate the order of the sheriff under subsection (1) above to the debtor and any other person appearing to the sheriff clerk to have an interest.
- (4) Any order under subsection (1)(b) above does not affect the title of any person to land sold in execution of the warrant for sale to which the report relates.

## 116 Proceeds of sale

- (1) Where attached land is sold in execution of a warrant for sale, the proceeds of the sale must be disbursed by the appointed person in the following order—
  - (a) subject to subsection (2) below, any expenses due to the creditor by virtue of section 114(2)(a) of this Act;
  - (b) any sums due to any other creditor holding a security or diligence over the land which ranks prior to the land attachment;
  - (c) any sums due to—
    - (i) the attaching creditor in respect of the sum recoverable by the land attachment (other than any such expenses as are mentioned in paragraph (a) above); and
    - (ii) any creditor under a security or diligence which ranks *pari passu* with the land attachment;
  - (d) any sums due to any other creditor under any security or diligence which ranks after the land attachment; and
  - (e) subject to section 37(8C)(b) of the 1985 Act, any balance due to the debtor.
- (2) Subject to section 113(3) of this Act, the appointed person may deduct and retain from the sum mentioned in subsection (1)(a) above such remuneration and outlays incurred by the appointed person in executing the warrant for sale.
- (3) Where there is a balance due to the debtor, the appointed person must pay it to the debtor or any person authorised to give a receipt for the balance on the debtor's behalf.
- (4) Where, by virtue of subsection (1) above, a creditor receives the sums due to the creditor under a security or diligence, that creditor must grant a discharge of that security or diligence.
- (5) If the appointed person is unable to obtain from—
  - (a) the debtor; or
  - (b) any creditor of the debtor;a receipt or discharge in respect of the disbursement of the proceeds of sale, the appointed person may consign the amount due in the sheriff court for the person having right to it.
- (6) Any such consignment discharges the obligation to pay the amount due; and a certificate of the sheriff clerk is sufficient evidence of the discharge.