



Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

PART 4

LAND ATTACHMENT AND RESIDUAL ATTACHMENT

CHAPTER 3

RESIDUAL ATTACHMENT

Termination, discharge etc. of residual attachment

139 Termination by payment etc.

- (1) Subject to subsection (2) below, if the full sum recoverable by the residual attachment is either paid or tendered to—
- (a) the creditor;
 - (b) where one has been appointed, the appointed person; or
 - (c) a judicial officer or any other person who has authority to receive payment on behalf of the creditor,
- the residual attachment ceases to have effect.
- (2) Subsection (1) above does not apply unless the sum is paid or tendered before—
- (a) where a satisfaction order authorising sale of the attached property is made, a contract of sale of the attached property is concluded; or
 - (b) in any other case, the attached property is otherwise disposed of.

140 Recall

- (1) The debtor or any other person having an interest may apply to the court for an order—
- (a) recalling a residual attachment; or
 - (b) restricting such an attachment.

Status: This is the original version (as it was originally enacted).

- (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 court must, if satisfied that the residual attachment—
 - (a) is invalid;
 - (b) has been executed incompetently or irregularly; or
 - (c) has ceased to have effect,
 make an order declaring that to be the case and recalling the residual attachment.
- (4) The court may, if satisfied that the residual attachment is valid but—
 - (a) having regard to the sum recoverable by the residual attachment, that significantly more property is attached than need be; and
 - (b) that it is reasonable to do so,
 make an order restricting the effect of a residual attachment to part only of the property 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.

141 Duration of residual attachment

- (1) Subject to sections 139 and 140 of this Act and to subsection (2) below, a residual attachment ceases to have effect on the expiry of the period of 5 years beginning with the day on which the schedule of residual attachment is served on the debtor.
- (2) The court may, on the application of the creditor during the period of 2 months ending with the day on which the period mentioned in subsection (1) above ends, extend the period during which a residual attachment has effect.
- (3) The court may extend the period for which a residual attachment has effect on more than one occasion and subsections (1) and (2) above apply as if for the reference in subsection (1) above to the day on which the schedule of residual attachment is served on the debtor there were substituted a reference to the day on which the court last extended that period.

142 Effect of death of debtor

- (1) Where, in relation to a debt—
 - (a) the creditor has taken any steps towards obtaining a residual attachment order against the debtor; but
 - (b) has not, before the date of death of the debtor, served a schedule of residual attachment on the debtor,
 any such steps cease to have effect; and accordingly any residual attachment order relating to that debt becomes, on that date, void.
- (2) Where a residual attachment is created before the death of the debtor, it continues to have effect in relation to the attached property after that death.
- (3) 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 intimation of applications for satisfaction orders;
and
- (b) confer power on the sheriff to dispense with or modify procedures under this Chapter.