



Moveable Transactions (Scotland) Act 2023

2023 asp 3

PART 2

SECURITY OVER MOVEABLE PROPERTY

CHAPTER 1

PLEDGE

Enforcement of pledge

PROSPECTIVE

74 Appropriation with prior agreement

- (1) A provider and a secured creditor may, before a pledge becomes enforceable by virtue of [section 64\(2\)](#), agree that the secured creditor is entitled to appropriate by virtue of [section 73\(1\)](#)—
 - (a) the encumbered property, or
 - (b) any part of that property.
- (2) Any agreement under [subsection \(1\)](#) must be in writing.
- (3) Property may only be appropriated in accordance with that agreement if it is property in relation to which the provider and the secured creditor have, in the agreement, set out a method of readily determining a reasonable market price.
- (4) Property appropriated in accordance with that agreement is appropriated only for the value, at the date of appropriation, of the property's market price as determined as mentioned in [subsection \(3\)](#).
- (5) Before exercising a right to appropriate property by virtue of [subsection \(1\)](#), the secured creditor must serve a notice on—

Status: This version of this provision is prospective.

Changes to legislation: There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Section 74. (See end of Document for details)

- (a) the provider,
 - (b) the debtor in the secured obligation (if a person other than the provider),
 - (c) the holder of any other right in security over all or part of the property, and
 - (d) any creditor who has executed diligence against all or part of the property.
- (6) But—
- (a) paragraph (c) of subsection (5) is to be disregarded if the secured creditor does not know, and cannot reasonably be expected to know, of the right in security mentioned in that paragraph, and
 - (b) paragraph (d) of that subsection is to be disregarded if the secured creditor does not know, and cannot reasonably be expected to know, of the diligence executed as mentioned in that paragraph.
- (7) A notice under subsection (5) must—
- (a) identify the property to be appropriated,
 - (b) specify the amount for the time being remaining due under the secured obligation,
 - (c) specify the amount expected to be obtained by the appropriation, and
 - (d) state that—
 - (i) the recipient (if a person other than the provider or the debtor) may give a written statement to the secured creditor objecting to the appropriation, and
 - (ii) if such a statement is received by the secured creditor within 14 days beginning with the day that the person objecting received the notice, the appropriation is not to proceed.
- (8) If, within the period specified in sub-paragraph (ii) of subsection (7)(d), the secured creditor receives a written statement as mentioned in that subsection from a recipient of a notice other than the provider or the debtor—
- (a) the appropriation is not to proceed, and
 - (b) the secured creditor must, by written statement and without delay, inform each of the other recipients of the notice that the appropriation is not proceeding.
- (9) The Scottish Ministers may by regulations modify this section so as to—
- (a) specify—
 - (i) further persons, or descriptions of persons, on whom the secured creditor must serve a notice (being persons who have statutory duties in relation to the provider’s estate),
 - (ii) cases when the requirement to serve a notice on a person specified by virtue of sub-paragraph (i) is to be disregarded,
 - (b) require a notice under subsection (5) to be in, or as nearly as may be in, such form as is for the time being prescribed (and may in consequence remove any requirements in this section as to what such a notice must contain).

Commencement Information

II S. 74 not in force at Royal Assent, see s. 121(2)

Status:

This version of this provision is prospective.

Changes to legislation:

There are currently no known outstanding effects for the Moveable Transactions (Scotland) Act 2023, Section 74.