

Changes to legislation: Abolition of Feudal Tenure etc. (Scotland) Act 2000, SCHEDULE 5 is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULE 5

(introduced by section 18(1))

FORM OF NOTICE PROSPECTIVELY NOMINATING DOMINANT TENEMENT

“NOTICE PROSPECTIVELY NOMINATING DOMINANT TENEMENT

Superior:

(see note for completion 1)

Description of land which is to be the servient tenement:

(see note for completion 2)

Description of land nominated as dominant tenement:

(see note for completion 2)

Specification of condition met:

(see note for completion 3)

Terms of real burden:

(see note for completion 4)

Any counter-obligation:

(see note for completion 4)

Title to the superiority:

(see note for completion 5)

Title to land nominated as dominant tenement:

(see note for completion 5)

Service:

(see note for completion 6)

I swear [or affirm] that the information contained in the notice is, to the best of my knowledge and belief, true.

Signature of superior:

(see note for completion 7)

Signature of notary public:

Date: .?”.

Explanatory Note

(This explanation has no legal effect)

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This notice is sent by your feudal superior, who is also a neighbour. In this notice your property (or some part of it) is referred to (prospectively) as the “servient tenement” and neighbouring property belonging to the superior is referred to (again prospectively) as the “dominant tenement”.

By this notice the feudal superior asserts that at present the use of your property is subject to certain burdens and conditions enforceable by him and claims the right to continue to enforce the burdens and conditions, not as superior but in his capacity of owner of neighbouring property. The notice, if it is registered in the Land Register or Register of Sasines under section 18 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000, will allow him and his successors, as such owners, to enforce the burdens and conditions after the feudal system is abolished (which will be shortly).

Normally, for the notice to be valid, there must, on the dominant tenement, be a permanent building which is within 100 metres of the servient tenement. That building must be in use as a place of human habitation or of human resort. However, the presence of a building is not required if the burden gives a right to enter or otherwise make use of the servient tenement, or if it gives a right of pre-emption or redemption, or if the dominant tenement comprises, and the real burden was created for the benefit of, minerals, salmon fishings or some other incorporeal property.

If you think that there is a mistake in this notice or if you wish to challenge it, you are advised to contact your solicitor or other adviser.

Notes for completion of the notice

(These notes have no legal effect)

- 1 Insert name and address of superior.
- 2 Describe the land in a way that is sufficient to enable the Keeper to identify it by reference to the Ordnance Map. Where the title to the land has been registered in the Land Register the description should refer to the title number of the land or of the larger subjects of which the land forms part. Otherwise it should normally refer to and identify a deed recorded in a specified division of the Register of Sasines.
- 3 Insert one or more of the following:

“The dominant tenement has on it a [*specify type of building*] at [*specify address of building*] which is within 100 metres of the servient tenement.”;

“The real burden comprises a right to enter, or otherwise make use of, the servient tenement.”;

“The real burden comprises a right of [*specify pre-emption or redemption (or both)*].”.

“The dominant tenement comprises, and (as is apparent from the terms of the real burden) that burden was created for the benefit of, [*specify minerals or salmon fishings or some other incorporeal property*].”.
- 4 Specify by reference to the appropriate Register the deed or deeds in which the real burden or counter-obligation was imposed. Set out the real burden or counter-obligation in full or refer to the deed in such a way as to identify the real burden or counter— obligation.
- 5 Where the title has been registered in the Land Register of Scotland and the superior is—

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- (a) registered as proprietor, specify the title number;
- (b) not registered as proprietor, specify the title number and set out the midcouples or links between the person last registered and the superior so as sufficiently to identify them.

Where the title has not been registered in the Land Register and the superior—

- (a) has a recorded title, specify by reference to the Register of Sasines the deed constituting the immediate title;
- (b) does not have a recorded title, either—
 - (i) specify by reference to the Register of Sasines the deed constituting the immediate title of the person with the last recorded title and set out the midcouples or links between that person and the superior so as sufficiently to identify them; or
 - (ii) if there is no such deed, specify the nature of the superior’s title.

- 6 Do not complete until a copy of the notice has been sent to the owner of the prospective servient tenement (except in a case where this is not reasonably practicable). Then insert whichever is applicable of the following:

“The superior has sent a copy of this notice by [*specify whether by recorded delivery or registered post or by ordinary post*] on [*date of posting*] to the owner of the prospective servient tenement at [*state address*].”; or

“It has not been reasonably practicable to send a copy of this notice to the owner of the prospective servient tenement for the following reason: [*specify the reason*].”.

- 7 The superior should not swear or affirm, or sign, until a copy of the notice has been sent (or otherwise) as mentioned in note 6. Before signing the superior should swear or affirm before a notary public (or, if the notice is being completed outwith Scotland, before a person duly authorised under the local law to administer oaths or receive affirmations) that, to the best of the superior’s knowledge and belief, all the information contained in the notice is true. The notary public should also sign. Swearing or affirming a statement which is known to be false or which is believed not to be true is a criminal offence under the False Oaths (Scotland) Act 1933. Normally the superior should swear or affirm, and sign, personally. If, however, the superior is legally disabled or incapable (for example, because of mental disorder) his legal representative should swear or affirm and sign. If the superior is not an individual (for example, if it is a company) a person entitled by law to sign formal documents on its behalf should swear or affirm and sign.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 18C(1) words repealed by [2004 asp 7 sch. 2](#)
- s. 18C(3) words repealed by [2004 asp 7 sch. 2](#)