



# Title Conditions (Scotland) Act 2003

## 2003 asp 9

### PART 1

#### REAL BURDENS: GENERAL

##### *Duration, enforceability and liability*

#### **8 Right to enforce**

- (1) A real burden is enforceable by any person who has both title and interest to enforce it.
- (2) A person has such title if an owner of the benefited property; but the following persons also have such title—
  - (a) a person who has a real right of lease or proper liferent in the benefited property (or has a pro indiviso share in such right);
  - (b) a person who—
    - (i) is the non-entitled spouse of an owner of the benefited property or of a person mentioned in paragraph (a) above; and
    - (ii) has occupancy rights in that property; and
  - (c) if the real burden was created as mentioned in subsection (3)(b) below, a person who was, at the time the cost in question was incurred—
    - (i) an owner of the benefited property; or
    - (ii) a person having such title by virtue of paragraph (a) or (b) above.
- (3) A person has such interest if—
  - (a) in the circumstances of any case, failure to comply with the real burden is resulting in, or will result in, material detriment to the value or enjoyment of the person's ownership of, or right in, the benefited property; or
  - (b) the real burden being an affirmative burden created as an obligation to defray, or contribute towards, some cost, that person seeks (and has grounds to seek) payment of, or as respects, that cost.
- (4) A person has title to enforce a real burden consisting of—
  - (a) a right of pre-emption, redemption or reversion; or
  - (b) any other type of option to acquire the burdened property,

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*Status: This is the original version (as it was originally enacted).*

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only if the owner of the benefited property.

- (5) In subsection (2)(b) above, “non-entitled spouse” and “occupancy rights” shall be construed in accordance with section 1 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59) (right of spouse without title to occupy matrimonial home).
- (6) Subsections (2) to (5) above do not apply in relation to a personal real burden.