



# Tenements (Scotland) Act 2004

## 2004 asp 11

### *Miscellaneous and general*

#### **28 Meaning of “owner”, determination of liability etc.**

- (1) In this Act, references to “owner” without further qualification are, in relation to any tenement, references to the owner of a flat in the tenement.
- (2) Subject to subsection (3) below, in this Act “owner” means, in relation to a flat in a tenement, a person who has right to the flat whether or not that person has completed title; but if, in relation to the flat (or, if the flat is held *pro indiviso*, any *pro indiviso* share in it) more than one person comes within that description of owner, then “owner” means such person as has most recently acquired such right.
- (3) Where a heritable security has been granted over a flat and the heritable creditor has entered into lawful possession, “owner” means the heritable creditor in possession of the flat.
- (4) Subject to subsection (5) below, if two or more persons own a flat in common, any reference in this Act to an owner is a reference to both or, as the case may be, all of them.
- (5) Any reference to an owner in sections 5(1) and (2), 6(1), 8(3), 9, 10, 12 to 14, 17(1), (6) and (7), 18(5) and (6), 19, 22, 23 and 24 of, and schedule 3 to, this Act shall be construed as a reference to any person who owns a flat either solely or in common with another.
- (6) Subsections (2) to (5) above apply to references in this Act to the owner of a part of a tenement as they apply to references to the owner of a flat, but as if references in them to a flat were to the part of the tenement.
- (7) Where two or more persons own a flat in common—
  - (a) they are severally liable for the performance of any obligation imposed by virtue of this Act on the owner of that flat; and
  - (b) as between (or among) themselves they are liable in the proportions in which they own the flat.