

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 4 – Land Attachment and Residual Attachment

Chapter 3 – Residual attachment

Termination, discharge etc. of residual attachment

Section 139 – Termination by payment etc.

402. This section covers the situation where the debt owed is paid or tendered after a residual attachment is created. It provides that the residual attachment will cease to have effect if the full sum recoverable by the residual attachment is either paid or tendered to the creditor, the appointed person, a judicial officer or another person authorised to receive payment on behalf of the creditor. Where a satisfaction order has been made, the residual attachment will not cease to have effect unless the sum is paid or tendered before the contract of sale is concluded (where the satisfaction order authorises sale) or the property is otherwise disposed of.

Section 140 – Recall

403. This section provides for the court's powers to recall or restrict a residual attachment.
404. Subsections (1) and (2) provide that the debtor or any other person having an interest may apply to the court for an order recalling or restricting the residual attachment. The application must be in the form prescribed in rules of court and be notified to the creditor.
405. Subsection (3) provides that the court, if satisfied that a residual attachment is invalid, has been carried out incompetently or irregularly or that it has ceased to be in force, may make an order recalling the residual attachment. Subsection (4) provides that, where the court is satisfied that significantly more property is attached than need be and it is reasonable to do so, it may make an order restricting the effect of the residual attachment to only that part of the property to which it relates.
406. Subsection (5) provides that an order for recall or restriction must be in the form prescribed by rules of court.

Section 141 – Duration of residual attachment

407. This section provides that, subject to the court extending the period under subsection (2), a residual attachment will cease to have effect at the end of 5 years beginning with the day after the day the schedule of residual attachment is served.

*These notes relate to the Bankruptcy and Diligence etc. (Scotland)
Act 2007 (asp 3) which received Royal Assent on 15 January 2007*

Subsections (2) and (3) provide that the court may extend that period on the application of the creditor and may do so on more than one occasion.

Section 142 – Effect of death of debtor

408. This section provides that where the creditor has taken steps to carry out a residual attachment but has not served a schedule of residual attachment on the debtor before the death of the debtor, no residual attachment is created and the residual attachment order will fall. Where a residual attachment is created before the death of the debtor, it will continue and the creditor will be entitled to continue the attachment against the debtor's executor or other representative. Rules of court may modify the procedures for residual attachment under this Chapter to reflect the circumstances covered by this section.