



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 4

### LAND ATTACHMENT AND RESIDUAL ATTACHMENT

#### CHAPTER 3

##### RESIDUAL ATTACHMENT

###### *Application for residual attachment order*

#### **130 Application for residual attachment order**

- (1) A creditor may apply to the court for a residual attachment order but only if—
- (a) the debt is constituted by a decree or document of debt;
  - (b) the debtor has been charged to pay the debt;
  - (c) the period for payment specified in the charge has expired without payment being made; and
  - (d) where the debtor is an individual, the creditor has, no earlier than 12 weeks before applying for the residual attachment order, provided the debtor with a debt advice and information package.
- (2) An application for a residual attachment order, must—
- (a) be in (or nearly as may be in) the form prescribed by Act of Sederunt;
  - (b) specify the property which it is sought to attach;
  - (c) state—
    - (i) how, were a satisfaction order made, the value of that property would be realised; and
    - (ii) that doing so would result in the sum mentioned in section 134(3) of this Act being paid off or reduced; and
  - (d) be intimated to—

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*Status: This is the original version (as it was originally enacted).*

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- (i) the debtor; and
  - (ii) any other person having an interest.
- (3) A person who receives intimation of the application may, before the expiry of the period of 14 days beginning with the day on which that intimation is made, lodge objections to the application.

### **131 Effect of application for residual attachment order**

- (1) Where an application for a residual attachment order is intimated to a debtor, the debtor must not, during the period mentioned in subsection (2) below, take any of the steps mentioned in subsection (3) below in relation to the property specified in the application.
- (2) The period referred to in subsection (1) above is the period—
- (a) beginning with the day on which the application is intimated to the debtor; and
  - (b) ending with the day on which the court—
    - (i) makes a residual attachment order; or
    - (ii) dismisses the application.
- (3) The steps referred to in subsection (1) above are—
- (a) transferring or otherwise disposing of the property;
  - (b) burdening the property;
  - (c) granting any licence or sub-licence in relation to the property; or
  - (d) entering into any agreement to do anything mentioned in paragraph (a), (b) or (c) above in relation to the property.
- (4) Any step mentioned in subsection (3) above which is taken in breach of subsection (1) above is void.
- (5) Breach by the debtor or any other person of subsection (1) above may be dealt with as a contempt of court.