



Home Owner and Debtor Protection (Scotland) Act 2010

2010 asp 6

PART 1

RESIDENTIAL STANDARD SECURITIES ETC.: CREDITOR'S RIGHTS ON DEFAULT

3 Court powers in action for possession of residential property

(1) In section 5 (power to eject proprietor in personal occupation) of the Heritable Securities (Scotland) Act 1894 (c. 44) (“the 1894 Act”)—

- (a) the existing provision becomes subsection (1),
- (b) after that subsection insert—

“(2) Proceedings under subsection (1) by a creditor in a security over land or a real right in land used to any extent for residential purposes are to be brought by summary application (regardless of whether they include a crave for any other remedy).

(3) Before making an application under subsection (1) in a case referred to in subsection (2), the creditor must comply with the pre-action requirements imposed by section 5B.”.

(2) After section 5 of the 1894 Act insert—

“5A Court powers on section 5 proceedings relating to residential property

(1) This section applies to an application under section 5(1) by a creditor in a security over land or a real right in land used to any extent for residential purposes.

(2) The creditor must—

- (a) serve on the proprietor a notice in conformity with Form 1 in Part 2 of the schedule to the Mortgage Rights (Scotland) Act 2001,
- (b) serve on the occupier of the security subjects a notice in conformity with Form 2 in that Part of that schedule, and

Status: This is the original version (as it was originally enacted).

- (c) give notice of the application to the local authority in whose area the security subjects are situated, unless the creditor is that local authority.
- (3) A notice under subsection (2)(a) or (b) must be sent by recorded delivery letter addressed—
 - (a) in the case of a notice under subsection (2)(a), to the proprietor at the proprietor's last known address,
 - (b) in the case of a notice under subsection (2)(b), to “The Occupier” at the security subjects.
- (4) Notice under subsection (2)(c) is to be given in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003.
- (5) The court may continue the proceedings or make any other order that it thinks fit on the application; but it may not grant the application unless it is satisfied that—
 - (a) the creditor has complied with section 5(3); and
 - (b) it is reasonable in the circumstances of the case to do so.
- (6) In considering the application in a case where the debtor appears or is represented, the court is to have regard in particular to the matters set out in subsection (7).
- (7) Those matters are—
 - (a) the nature of and reasons for the default,
 - (b) the ability of the debtor to fulfil within a reasonable time the obligations under the security in respect of which the debtor is in default,
 - (c) any action taken by the creditor to assist the debtor to fulfil those obligations,
 - (d) where appropriate, participation by the debtor in a debt payment programme approved under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002, and
 - (e) the ability of the debtor and any other person residing at the security subjects to secure reasonable alternative accommodation.
- (8) Subsections (5) and (6) do not affect—
 - (a) any power that the court may have, or
 - (b) any rights that the debtor may have,by virtue of any other enactment or rule of law.”.