



Land Registration etc. (Scotland) Act 2012

2012 asp 5

PART 9

RIGHTS OF PERSONS ACQUIRING ETC. IN GOOD FAITH

Servitudes

90 Grant of servitude by person not proprietor

- (1) This section applies where a person (“A”), who is not the proprietor of a registered plot of land but—
 - (a) is entered in the proprietorship section of the title sheet as proprietor, and
 - (b) is in possession of the land,purports to create a servitude, with the land as the burdened property.
- (2) The servitude is created provided that the conditions mentioned in subsection (3) are met.
- (3) The conditions are that—
 - (a) the land has been in the possession of A, openly, peaceably and without judicial interruption, for a continuous period of at least 1 year,
 - (b) at no time during that period did the Keeper become aware that the register was inaccurate as a result of A not being the proprietor,
 - (c) the proprietor of what is to be the benefited property is in good faith,
 - (d) at no time during the period mentioned in paragraph (a) was the title sheet subject, by virtue of section 67, to a caveat relevant to the creation of the servitude, and
 - (e) the Keeper warrants (or is to be taken to warrant) A’s title.
- (4) The date on which the servitude is created by virtue of subsection (2) is—
 - (a) where subsection (5) applies, the date of registration,
 - (b) where subsection (6) applies, the date on which the period mentioned in that subsection expires.

Status: This is the original version (as it was originally enacted).

- (5) This subsection applies where, as at the date of registration, the land has been in the possession of A, openly, peaceably and without judicial interruption, for a continuous period of at least 1 year.
- (6) This subsection applies where there is a continuous period of possession such as is mentioned in subsection (5) but that period, though it commences before registration, does not expire until a date later than the date of registration.
- (7) This section is subject to section 75 of the Title Conditions (Scotland) Act 2003 ([asp 9](#)) (creation of positive servitude by writing: deed to be registered).