

# LAND REGISTRATION ETC. (SCOTLAND) ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 9: Rights of Persons Acquiring Etc. in Good Faith**

199. This part provides for the circumstances in which the Land Register is inaccurate in law or fact, but is not to be rectified. In these cases, the Part provides for the underlying property rights to be transferred to the person in whose name title to land is currently registered. Put another way, instead of the register being changed, property rights are changed.
200. The circumstances where the Act provides for this transfer of rights are limited and are most likely to operate in the cases of error or fraudulent sale and subsequent registration. Where a property is fraudulently registered or registered in error, the true owner can seek a reversal of that registration in their favour, as long as the registered proprietors right to the property has become exempt from challenge in terms of the Prescription and Limitation (Scotland) Act 1973, or registered in favour of an innocent third party more than one year after the original registration. However, where the property has been registered in favour of such an innocent third party and the other criteria set out have been met, the registration cannot be reversed. In such cases, the original owner would be compensated by the Keeper.

#### **Ownership**

##### ***Section 86: Acquisition from disponent without valid title***

201. The effect of subsections (1) to (3) is that if the register shows someone as proprietor, but that person's title is in fact void, then when that person disposes the title to another (and that second person is duly registered as owner), if the requirements in subsection (3) (including regarding good faith and possession for one year) are met, then that second person acquires ownership. In the absence of evidence to the contrary, the awareness of the Keeper referred to in subsection (3)(b) can be deduced from the information on the register.
202. Subsections (4) to (6) provide for the date when ownership is acquired under subsection (2). It is the later of the date of registration and the expiry of the one-year period of peaceful possession.

##### ***Section 87: Acquisition from representative of disponent without valid title***

203. This section provides that section 86 also applies where the disposition in favour of a good faith acquirer is delivered by a representative of the registered proprietor (for example a trustee or executor).

## **Leases**

### ***Section 88: Acquisition from assigner without valid title***

204. This section is the equivalent section to section 86, but for assignment of leases. It applies only to cases where there exists a valid lease but the person who assigns it does not have a title to it.

### ***Section 89: Acquisition from representative of assigner without valid title***

205. This section is the equivalent section to section 87 on representatives, but for assignment of leases.

## **Servitudes**

### ***Section 90: Grant of servitude by person not proprietor***

206. This section is the equivalent section to section 86, but for servitudes. It provides that in certain cases a servitude granted by someone with a bad title is valid. Like section 86, it requires the proprietor of the benefited property to be in good faith. This section applies only to the grant of a new servitude. It does not cover the case where land is disposed and from the register it appears that there is a servitude benefiting the property (i.e. as a pertinent), but in fact the servitude is invalid. In such a case, the servitude remains invalid notwithstanding the transfer to a good faith acquirer.

## **Extinction of encumbrances etc**

### ***Section 91: Extinction of encumbrance when land disposed***

207. Subsections (1) and (2) provide that where an encumbrance (such as a standard security) has been omitted from the register and there is no relevant caveat on the title sheet, a good faith acquirer acquires the land free from that encumbrance. However, where, for example, a property is subject to a standard security and the owner forges and registers a discharge (and the standard security is deleted from the title sheet) the property is still encumbered by the security because the discharge is a forgery. Nevertheless, if in the example the owner disposed the title to another person and that person was in good faith, the security would be extinguished on the day when the second person is registered as proprietor.
208. Subsection (4) lists the types of encumbrances that are not subject to the rule in subsections (1) and (2). Subsections (1) and (2) only have effect where the Keeper should have entered a burden in the burdens section of a title sheet, but has failed to do so. Consequently, subsections (1) and (2) do not apply to any encumbrance which need not be entered in the Land Register because:
- it cannot be registered (such as in the case of a short lease);
  - it relates to an off-register event (such as a servitude acquired by prescription); or
  - it relates to an overriding interest (such as a public right of way).

### ***Section 92: Extinction of encumbrance when lease assigned***

209. This section is the equivalent of section 91, but for assignment of leases.

### ***Section 93: Extinction of floating charge when land disposed***

210. This section protects a good faith acquirer from the risk of an attached floating charge crystallising over their property where the floating charge was granted by a predecessor in title of the person who sold them the property.

## **Compensation in consequence of this Part**

### ***Section 94: Compensation for loss incurred in consequence of this Part***

211. Where this Part transfers a right to someone (an innocent third party), the original owner of the right will inevitably be deprived of the right. This section makes provision for compensation of such persons.

### ***Section 95: Quantification of compensation***

212. This section makes provision about how much compensation is payable under section 94. It is otherwise self-explanatory.