



# Conveyancing and Feudal Reform (Scotland) Act 1970

## 1970 CHAPTER 35

### PART II

#### THE STANDARD SECURITY

#### 28 Foreclosure.

- (1) Where the creditor in a standard security has exposed the security subjects to sale at a price not exceeding the amount due under the security and under any security ranking prior to, or *pari passu* with, the security, and has failed to find a purchaser, or where, having so failed, he has succeeded in selling only a part of the subjects at a price which is less than the amount due as aforesaid, he may, on the expiration of a period of two months from the date of the first exposure to sale, apply to the court for a decree of foreclosure.
- (2) In any application under the last foregoing subsection the creditor shall lodge a statement setting out the whole amount due under the security but, without prejudice to the right of the debtor or of the proprietor to challenge that statement, it shall be sufficient for the purposes of the application for the creditor to establish to the satisfaction of the court that the amount so stated is not less than the price at which the security subjects have been exposed to sale or sold, where part of the subjects has been sold as aforesaid.
- (3) Any application under subsection (1) of this section shall be served on the debtor in the standard security, the proprietor of the security subjects (if he is a person other than the debtor) and the creditor in any other heritable security affecting the security subjects as disclosed by a search of the Register of Sasines for a period of twenty years immediately preceding the last date to which the appropriate Minute Book of the said Register has been completed at the time when the application is made <sup>[<sup>F1</sup>]</sup> or by an examination of the title sheet of the security subjects in the Land Register of Scotland.]
- (4) The court may order such intimation and inquiry as it thinks fit and may in its discretion allow the debtor or the proprietor of the security subjects a period not exceeding three

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**Changes to legislation:** *Conveyancing and Feudal Reform (Scotland) Act 1970, Section 28 is up to date with all changes known to be in force on or before 04 June 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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months in which to pay the whole amount due under the security and, subject to any such allowance, may—

- (a) appoint the security subjects or the unsold part thereof to be re-exposed to sale at a price to be fixed by the court, in which event the creditor in the security may bid and purchase at the sale, or
  - (b) grant a decree of foreclosure in conformity with the provisions of the next following subsection.
- (5) A decree of foreclosure shall contain a declaration that on the extract of the decree being duly [<sup>F2</sup>registered or] recorded, [<sup>F3</sup>any right to redeem the security] has been extinguished and that the creditor has right to the security subjects or the unsold part thereof, described by means of a particular description or by reference to a description thereof as in Schedule D to the <sup>M1</sup>Conveyancing (Scotland) Act 1924 or in Schedule G to the <sup>M2</sup>Titles to Land Consolidation (Scotland) Act 1868, including a reference to any conditions or clauses affecting the subjects or the unsold part thereof [<sup>F4</sup>or in accordance with [<sup>F5</sup>the Land Registration etc. (Scotland) Act 2012 (asp 5)]] , at the price at which the said subjects were last exposed to sale under deduction of the price received for any part thereof sold, and shall also contain a warrant [<sup>F6</sup>for registering the extract of the decree in the Land Register of Scotland or] for recording the extract of the decree in the Register of Sasines.
- (6) Upon an extract of the decree of foreclosure being duly [<sup>F7</sup>registered or] recorded, the following provisions of this subsection shall have effect in relation to the security subjects to which the decree relates—
- (a) [<sup>F3</sup>any right to redeem the security] shall be extinguished, and the creditor shall have right to, and be vested in, the subjects as if he had received an irredeemable disposition thereof duly [<sup>F7</sup>registered or] recorded from the proprietor of the subjects at the date [<sup>F8</sup>of the registration or] of the recording of the extract of the decree;
  - (b) the subjects shall be disburdened of the standard security and all securities and diligences postponed thereto;
  - (c) the creditor who has obtained the decree shall have the like right as the debtor to redeem any security prior to, *opari passu*with, his own security.
- (7) Notwithstanding the due [<sup>F9</sup>registration or] recording of an extract of a decree of foreclosure, any personal obligation of the debtor under the standard security shall remain in full force and effect so far as not extinguished by the price at which the security subjects have been acquired and the price for which any part thereof has been sold.
- (8) Where the security subjects or any part thereof have been acquired by a creditor in the security by virtue of a decree of foreclosure under the provisions of this section, the title thereto of the creditor shall not be challengeable on the ground of any irregularity in the proceedings for foreclosure or on calling-up or default which preceded it; but nothing in the provisions of this subsection shall affect the competency of any claim for damages in respect of such proceedings against the creditor.

#### Textual Amendments

- F1** Words inserted by [Land Registration \(Scotland\) Act 1979 \(c. 33, SIF 31:3\)](#), **Sch. 2 para. 4(a)**
- F2** Words in s. 28(5) inserted (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), ss. 122, 123, **sch. 5 para. 17(16)(a)(i)** (with s. 121, sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F3** Words substituted by [Redemption of Standard Securities \(Scotland\) Act 1971 \(c. 45\)](#), **s. 1(f)**

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- F4** Words inserted by Land Registration (Scotland) Act 1979 (c. 33, SIF 31:3), **Sch. 2 para. 4(b)**
- F5** Words in s. 28(5) substituted (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **sch. 5 para. 17(16)(a)(ii)** (with s. 121, sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F6** Words in s. 28(5) inserted (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **sch. 5 para. 17(16)(a)(iii)** (with s. 121, sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F7** Words in s. 28(6) inserted (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **sch. 5 para. 17(16)(b)(i)** (with s. 121, sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F8** Words in s. 28(6)(a) inserted (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **sch. 5 para. 17(16)(b)(ii)** (with s. 121, sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F9** Words in s. 28(7) inserted (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **sch. 5 para. 17(16)(c)** (with s. 121, sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

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**Modifications etc. (not altering text)**

- C1** Ss. 14-30 applied (with modifications) (28.11.2004) by 2000 asp 5, **ss. 69, 77(2)(a)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

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**Marginal Citations**

- M1** 1924 c. 27.
- M2** 1868 c. 101.

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 1(2)(b)(c) inserted by [2000 asp 5 Sch. 12 para. 30\(2\)\(a\)\(iv\)](#) (This amendment has not been applied to legislation.gov.uk. Sch. 12 para. 30(2) repealed (4.4.2003) by 2003 asp 9, ss. 128, 129(5), Sch. 15 (with ss. 119, 121))
- s. 1(7) added by [2000 asp 5 Sch. 12 para. 30\(2\)\(c\)](#) (This amendment has not been applied to legislation.gov.uk. Sch. 12 para. 30(2) repealed (4.4.2003) by 2003 asp 9, ss. 128, 129(5), Sch. 15 (with ss. 119, 121))
- s. 9(2A) inserted by [2000 asp 5 s. 32](#) (This amendment has not been applied to legislation.gov.uk. S. 32 repealed (4.4.2003) by 2003 asp 9, ss. 128, 129(5), Sch. 15 (with ss. 119, 121) and word "32" in s. 77(2)(a) omitted (22.10.2003) by virtue of S.S.I. 2003/503, art. 5)
- s. 13A amendment to earlier affecting provision 2007 asp 3 s. 85 by [2012 asp 5 sch. 5 para. 52\(2\)](#)
- s. 24(1E) inserted by [2014 asp 18 sch. 5 para. 22](#)