

SCHEDULE 3

(introduced by sections 22(3) and 23(1))

SALE UNDER SECTION 22(3) OR 23(1)

Application to sheriff for power to sell

- 1 (1) Where an owner is entitled to apply—
 - (a) under section 22(3), for power to sell the site; or
 - (b) under section 23(1), for power to sell the tenement building,the owner may make a summary application to the sheriff seeking an order (referred to in this Act as a “power of sale order”) conferring such power on the owner.
- (2) The site or tenement building in relation to which an application or order is made under sub-paragraph (1) is referred to in this schedule as the “sale subjects”.
- (3) An owner making an application under sub-paragraph (1) shall give notice of it to each of the other owners of the sale subjects.
- (4) The sheriff shall, on an application under sub-paragraph (1)—
 - (a) grant the power of sale order sought unless satisfied that to do so would—
 - (i) not be in the best interests of all (or both) the owners taken as a group; or
 - (ii) be unfairly prejudicial to one or more of the owners; and
 - (b) if a power of sale order has previously been granted in respect of the same sale subjects, revoke that previous order.
- (5) A power of sale order shall contain—
 - (a) the name and address of the owner in whose favour it is granted;
 - (b) the postal address of each flat or, as the case may be, former flat comprised in the sale subjects to which the order relates; and
 - (c) a sufficient conveyancing description of each of those flats or former flats.
- (6) A description of a flat or former flat is a sufficient conveyancing description for the purposes of sub-paragraph (5)(c) if—
 - (a) where the interest of the proprietor of the land comprising the flat or former flat has been registered in the Land Register of Scotland, the description refers to the number of the title sheet of that interest; or
 - (b) in relation to any other flat or former flat, the description is by reference to a deed recorded in the Register of Sasines.
- (7) An application under sub-paragraph (1) shall state the applicant’s conclusions as to—
 - (a) which of subsections (4) and (5) of section 22 applies for the purpose of determining how the net proceeds of any sale of the sale subjects in pursuance of a power of sale order are to be shared among the owners of those subjects; and
 - (b) if subsection (5) of that section is stated as applying for that purpose—
 - (i) the floor area of each of the flats or former flats comprised in the sale subjects; and
 - (ii) the proportion of the net proceeds of sale allocated to that flat.

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

Appeal against grant or refusal of power of sale order

- 2 (1) A party may, not later than 14 days after the date of—
- (a) making of a power of sale order; or
 - (b) an interlocutor refusing an application for such an order,
- appeal to the Court of Session on a point of law.
- (2) The decision of the Court of Session on any such appeal shall be final.

Registration of power of sale order

- 3 (1) A power of sale order has no effect—
- (a) unless it is registered within the period of 14 days after the relevant day; and
 - (b) until the beginning of the forty-second day after the day on which it is so registered.
- (2) In sub-paragraph (1)(a) above, “the relevant day” means, in relation to a power of sale order—
- (a) the last day of the period of 14 days within which an appeal against the order may be lodged under paragraph 2(1) of this schedule; or
 - (b) if such an appeal is duly lodged, the day on which the appeal is abandoned or determined.

Exercise of power of sale

- 4 (1) An owner in whose favour a power of sale order is granted may exercise the power conferred by the order by private bargain or by exposure to sale.
- (2) However, in either case, the owner shall—
- (a) advertise the sale; and
 - (b) take all reasonable steps to ensure that the price at which the sale subjects are sold is the best that can reasonably be obtained.
- (3) In advertising the sale in pursuance of sub-paragraph (2)(a) above, the owner shall, in particular, ensure that there is placed and maintained on the sale subjects a conspicuous sign—
- (a) advertising the fact that the sale subjects are for sale; and
 - (b) giving the name and contact details of the owner or of any agent acting on the owner’s behalf in connection with the sale.
- (4) So far as may be necessary for the purpose of complying with sub-paragraph (3) above, the owner or any person authorised by the owner shall be entitled to enter any part of the sale subjects not owned, or not owned exclusively, by that owner.

Distribution of proceeds of sale

- 5 (1) An owner selling the sale subjects (referred to in this paragraph as the “selling owner”) shall, within seven days of completion of the sale—
- (a) calculate each owner’s share; and
 - (b) apply that share in accordance with sub-paragraph (2) below.
- (2) An owner’s share shall be applied—

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- (a) first, to repay any amounts due under any heritable security affecting that owner's flat or former flat;
 - (b) next, to defray any expenses properly incurred in complying with paragraph (a) above; and
 - (c) finally, to pay to the owner the remainder (if any) of that owner's share.
- (3) If there is more than one heritable security affecting an owner's flat or former flat, the owner's share shall be applied under paragraph (2)(a) above in relation to each security in the order in which they rank.
- (4) If any owner cannot by reasonable inquiry be identified or found, the selling owner shall consign the remainder of that owner's share in the sheriff court.
- (5) On paying to another owner the remainder of that owner's share, the selling owner shall also give to that other owner—
- (a) a written statement showing—
 - (i) the amount of that owner's share and of the remainder of it; and
 - (ii) how that share and remainder were calculated; and
 - (b) evidence of—
 - (i) the total amount of the proceeds of sale; and
 - (ii) any expenses properly incurred in connection with the sale and in complying with sub-paragraph (2)(a) above.
- (6) In this paragraph—
- “remainder”, in relation to an owner's share, means the amount of that share remaining after complying with sub-paragraph (2)(a) and (b) above;
 - “share”, in relation to an owner, means the share of the net proceeds of sale to which that owner is entitled in accordance with subsection (4) or, as the case may be, subsection (5) of section 22.

Automatic discharge of heritable securities

- 6 Where—
- (a) an owner—
 - (i) sells the sale subjects in pursuance of a power of sale order; and
 - (ii) grants a disposition of those subjects to the purchaser or the purchaser's nominee; and
 - (b) that disposition is duly registered in the Land Register of Scotland or recorded in the Register of Sasines,
- all heritable securities affecting the sale subjects or any part of them shall, by virtue of this paragraph, be to that extent discharged.