

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 4 – Land Attachment and Residual Attachment

Chapter 2 – Attachment of land

The sale

Section 116 – Proceeds of sale

341. **Section 116(1)** provides for the distribution of the proceeds of the sale where land is sold in execution of a warrant for sale. The appointed person must disburse the proceeds in the following order—
- any expenses due to the creditor under section 114(2)(a);
 - any sums due to any creditor holding a security or diligence over the land which ranks before the land attachment;
 - any sums due to—
 - the creditor who executed the land attachment; and
 - any creditor under a security or diligence which ranks equally with the land attachment;
 - any sums due to any other creditor under any security or diligence which ranks after the land attachment; and
 - any balance due to the debtor (subject, however, to section 37(8C)(b) of the 1985 Act, which requires the appointed person, where the debtor’s estate has been sequestrated, to pay over any balance due to the debtor to the trustee in sequestration).
342. The appointed person is entitled to fees and expenses for dealing with the land attachment (unless the sheriff has limited them under section 113(3)). These shall be met by the creditor. The appointed person may deduct his or her fees and expenses from the sum paid to the creditor (see subsection (2)).
343. Subsection (3) provides that, if there is a balance of the proceeds due to the debtor, the appointed person must pay that balance to the debtor or other person authorised to give a receipt for it.

*These notes relate to the Bankruptcy and Diligence etc. (Scotland)
Act 2007 (asp 3) which received Royal Assent on 15 January 2007*

344. Subsection (4) obliges a creditor who receives the sums due under a security or diligence to grant a discharge of that security or diligence.
345. Subsections (5) and (6) provide that, if the appointed person is unable to obtain a receipt or discharge relating to the distribution of the proceeds of sale from the debtor or any creditor, the appointed person may consign the amount due to the person in the sheriff court. That consignment will discharge the duty to pay the amount due and a certificate of the sheriff clerk will be evidence of the discharge.