



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 4

### LAND ATTACHMENT AND RESIDUAL ATTACHMENT

#### CHAPTER 2

##### ATTACHMENT OF LAND

###### *Foreclosure*

### 117 Foreclosure

- (1) This section applies where the appointed person—
  - (a) has exposed to sale the land specified in the warrant for sale; and
  - (b) has—
    - (i) failed to find a purchaser; or
    - (ii) succeeded in selling only part of the land, and that at a price which is less than the sum secured by the land attachment and by any security or diligence ranking prior to, or *pari passu* with, the land attachment.
- (2) The appointed person may apply, in (or as nearly as may be in) the form prescribed by Act of Sederunt, to the sheriff who granted the warrant for sale for a decree of foreclosure.
- (3) The application under subsection (2) above must be accompanied by—
  - (a) a statement setting out the whole amount secured—
    - (i) by the land attachment; and
    - (ii) by any other security or diligence ranking prior to or *pari passu* with the land attachment; and
  - (b) where part of the land has been sold, a report on that sale under section 113(1) of this Act.

*Status: This version of this cross heading contains provisions that are prospective.*

*Changes to legislation: Bankruptcy and Diligence etc. (Scotland) Act 2007, Cross Heading: Foreclosure is up to date with all changes known to be in force on or before 14 June 2020. 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*

- (4) A copy of an application under subsection (2) above must be served by <sup>F1</sup>an officer of court] on—
- (a) the debtor;
  - (b) where the debtor does not own the land, the owner;
  - (c) any occupier of the land specified in the warrant for sale;
  - (d) any creditor in a heritable security affecting the land, as disclosed in a report of a search in the appropriate property register brought down to a date no later than 3 clear days before the day on which the application is made; and
  - (e) any other person having a land attachment or other diligence over the land.
- (5) The sheriff, after affording any person on whom a copy of the application was served under subsection (4) above an opportunity to make representations, may—
- (a) grant the decree of foreclosure applied for;
  - (b) sist the application for a period not exceeding 3 months to allow the debtor to pay the sum recoverable by the land attachment; or
  - (c) appoint a valuer to fix a reserve price at which the land (or remaining part of that land) must be—
    - (i) auctioned; or
    - (ii) advertised for sale and if unsold auctioned.
- (6) The debtor may—
- (a) bid and purchase at any auction under subsection (5)(c)(i) or (ii) above; or
  - (b) purchase at the price advertised under subsection (5)(c)(ii) above.
- (7) Where an order has been made under subsection (5)(c) above and the appointed person—
- (a) produces an auctioneer's certificate that the land in question has been duly exposed to sale at the reserve price but is unsold; or
  - (b) certifies in (or as nearly as may be in) the form prescribed by Act of Sederunt that the land has been advertised at the reserve price but is unsold,
- the sheriff may, without further intimation, grant decree of foreclosure.
- (8) A decree of foreclosure granted under this section must—
- (a) be in (or as nearly as may be in) the form prescribed by Act of Sederunt;
  - (b) describe the land in relation to which it is granted; and
  - (c) contain a declaration of the price at which, on registration of an extract of the decree, the creditor is deemed to have acquired the land.
- (9) Where provision is made by virtue of this Chapter or by any other enactment permitting the application under subsection (2) above to be an electronic communication, the requirement in subsection (3) above that the application be accompanied by the statement and report mentioned in that subsection is satisfied by the provision of electronic communications.

#### Textual Amendments

- F1** Words in s. 117(4) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 25\(a\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1

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### Commencement Information

- II** S. 117 partly in force; s. 117 not in force at Royal Assent see s. 227; s. 117(2)(7)(b)(8)(a) in force for certain purposes at 1.4.2008 by [S.S.I. 2008/115](#), [art. 3\(4\)](#), [Sch. 3](#) (with [arts. 4-6, 10](#))

PROSPECTIVE

## 118 Registration of decree of foreclosure

- (1) On registration of an extract of the decree of foreclosure in the appropriate property register—
  - (a) any right to discharge the land attachment by payment is extinguished;
  - (b) the creditor has right to, and is vested in, the land as if an irredeemable disposition of the land, granted in favour of the creditor by the debtor, had been delivered to the creditor and, on the date of registration of the extract of the decree, duly registered;
  - (c) the land is disburdened of the land attachment and of any security or diligence ranking after the land attachment; and
  - (d) the creditor has the like right as the debtor to redeem or as the case may be to discharge by payment any security or diligence ranking prior to, or *pari passu* with, the land attachment.
- (2) Notwithstanding the registration of an extract of a decree of foreclosure, any personal obligation of the debtor under any security remains in full force and effect in so far as not extinguished by the price for which the creditor is deemed to have acquired the land and the price for which any part of the land has been sold.
- (3) Title acquired by virtue of a decree of foreclosure under this section is not challengeable on the ground of any irregularity in the proceedings for, or in any diligence which preceded, foreclosure.
- (4) Notwithstanding subsection (3) above, nothing in this section affects the competency of any claim for damages in respect of such proceedings or diligence as are mentioned in that subsection.

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**Changes to legislation:**

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

- [Act applied \(with modifications\) by S.I. 2018/1125 reg. 8](#)