



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 4

### LAND ATTACHMENT AND RESIDUAL ATTACHMENT

#### CHAPTER 3

##### RESIDUAL ATTACHMENT

###### *Residual attachment order*

#### **132 Residual attachment order**

- (1) At the hearing on an application under section 130(1) of this Act, the court must not make any order without first giving any person who has lodged objections under subsection (3) of that section an opportunity to be heard.
- (2) Subject to subsection (4) below, the court may, if satisfied that the application is in order, make—
  - (a) a residual attachment order; and
  - (b) any other order which the court thinks fit in consequence of the residual attachment order.
- (3) A residual attachment order must—
  - (a) specify the property to be attached;
  - (b) require the creditor to intimate the order to—
    - (i) the debtor; and
    - (ii) any other person the court specifies; and
  - (c) state on whom the schedule of residual attachment must be served.
- (4) The court must make an order refusing the application for a residual attachment order if satisfied—

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*Status: This is the original version (as it was originally enacted).*

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- (a) that the property specified in the application (or any part of it) is not capable of being attached by residual attachment; or
  - (b) that—
    - (i) were the satisfaction order proposed in the application made, it would not result in the value of that property being realised; or
    - (ii) were that order made and the value of that property realised, it would not result in the sum recoverable by the residual attachment being paid off or reduced.
- (5) Without prejudice to the generality of subsection (2)(b) above, an order under that paragraph may—
- (a) prohibit a specified person from acting so as to defeat the residual attachment in whole or in part;
  - (b) prohibit a specified person from making payments due to the debtor in respect of the property to be attached;
  - (c) appoint a judicial factor to ingather and manage that property;
  - (d) require a specified person to produce to the court documents relating to the debtor’s right to that property;
  - (e) authorise the creditor to complete title in the name of the debtor to that property; and
  - (f) authorise the creditor to take specified action to preserve the value of that property.

### **133 Schedule of residual attachment**

- (1) Where the court grants a residual attachment order, the creditor may serve a schedule of residual attachment.
- (2) A schedule of residual attachment must—
  - (a) be in (or as nearly as may be in) the form prescribed by Act of Sederunt;
  - (b) be served on—
    - (i) the debtor; and
    - (ii) any person specified in the residual attachment order; and
  - (c) specify the property which is being attached.

### **134 Creation and effect of residual attachment**

- (1) A residual attachment is, subject to section 142(1) of this Act, created over the property specified in the schedule of residual attachment (in this Chapter, the “attached property”) at the beginning of the day after the day on which that schedule is served on the debtor.
- (2) A residual attachment—
  - (a) confers on the creditor a right in security over the attached property; and
  - (b) secures the sum mentioned in subsection (3) below (in this Chapter, the “sum recoverable by the residual attachment”).
- (3) That sum is—
  - (a) the sum for the payment of which the charge was served, together with any interest accruing after such service and before the residual attachment ceases to have effect; and

- (b) all expenses which are chargeable against the debtor by virtue of the attachment.