

LAND REGISTRATION ETC. (SCOTLAND) ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9: Rights of Persons Acquiring Etc. in Good Faith

Extinction of encumbrances etc

Section 91: Extinction of encumbrance when land disposed

207. Subsections (1) and (2) provide that where an encumbrance (such as a standard security) has been omitted from the register and there is no relevant caveat on the title sheet, a good faith acquirer acquires the land free from that encumbrance. However, where, for example, a property is subject to a standard security and the owner forges and registers a discharge (and the standard security is deleted from the title sheet) the property is still encumbered by the security because the discharge is a forgery. Nevertheless, if in the example the owner disposed the title to another person and that person was in good faith, the security would be extinguished on the day when the second person is registered as proprietor.
208. Subsection (4) lists the types of encumbrances that are not subject to the rule in subsections (1) and (2). Subsections (1) and (2) only have effect where the Keeper should have entered a burden in the burdens section of a title sheet, but has failed to do so. Consequently, subsections (1) and (2) do not apply to any encumbrance which need not be entered in the Land Register because:
- it cannot be registered (such as in the case of a short lease);
 - it relates to an off-register event (such as a servitude acquired by prescription); or
 - it relates to an overriding interest (such as a public right of way).