



Land Registration etc. (Scotland) Act 2012

2012 asp 5

PART 9

RIGHTS OF PERSONS ACQUIRING ETC. IN GOOD FAITH

Ownership

86 Acquisition from disponent without valid title

- (1) This section applies where a person (“A”), who is not the proprietor of a registered plot of land but—
 - (a) is entered in the proprietorship section of the title sheet as proprietor, and
 - (b) is in possession of the land,purports to dispose the land.
- (2) The disponee (“B”) acquires ownership of the land provided that the conditions in subsection (3) are met.
- (3) The conditions are that—
 - (a) the land has been in the possession, openly, peaceably and without judicial interruption—
 - (i) of A for a continuous period of at least 1 year, or
 - (ii) of A and then of B for periods which together constitute such a period,
 - (b) at no time during that period did the Keeper become aware that the register was inaccurate as a result of A (or B) not being the proprietor,
 - (c) B is in good faith,
 - (d) the disposition would have conferred ownership on B had A been proprietor when the land was disposed,
 - (e) at no time during the period mentioned in paragraph (a)—
 - (i) was the title sheet subject, by virtue of section 67, to a caveat relevant to the acquisition by B,
 - (ii) did the title sheet contain a statement under section 30(5), and
 - (f) the Keeper warrants (or is to be taken to warrant) A’s title.
- (4) The date on which ownership is acquired by virtue of subsection (2) is—

Status: This is the original version (as it was originally enacted).

- (a) where subsection (5) applies, the date on which the disposition is registered,
 - (b) where subsection (6) applies, the date on which the period of possession mentioned in that subsection expires.
- (5) This subsection applies where, as at the date of registration, the land has been in the possession, openly, peaceably and without judicial interruption—
- (a) of A for a continuous period of at least 1 year, or
 - (b) of A and then of B for periods which together constitute such a period.
- (6) This subsection applies where there is a continuous period of possession such as is mentioned in subsection (5) but that period, though it commences before registration on the application of B, does not expire until a date later than the date of registration.

87 Acquisition from representative of disponent without valid title

- (1) Section 86 also applies where a person (“P”), who is not entered in the proprietorship section of the title sheet as proprietor but who would have power to dispose the land—
- (a) were A the proprietor, or
 - (b) (where A has died) had A been the proprietor,
- purports to dispose it.
- (2) For the purposes of section 86, possession of the plot of land by P is to be treated as if it were possession of the land by A.

Leases

88 Acquisition from assigner without valid title

- (1) This section applies where a person (“A”), who is not the tenant under a registered lease but—
- (a) is shown in the title sheet as tenant, and
 - (b) is in possession of the subjects of the lease,
- purports to assign the lease.
- (2) The assignee (“B”) acquires the lease provided that the conditions in subsection (3) are met.
- (3) The conditions are that—
- (a) the subjects of the lease have been in the possession, openly, peaceably and without judicial interruption—
 - (i) of A for a continuous period of at least 1 year, or
 - (ii) of A and then of B for periods which together constitute such a period,
 - (b) at no time during that period did the Keeper become aware that the register was inaccurate as a result of A (or B) not being the tenant,
 - (c) B is in good faith,
 - (d) the lease is extant,
 - (e) B would have acquired the lease had A been tenant when the lease was assigned,
 - (f) at no time during the period mentioned in paragraph (a) was the title sheet subject, by virtue of section 67, to a caveat relevant to the acquisition by B, and

- (g) the Keeper warrants (or is to be taken to warrant) A's title.
- (4) The date on which the lease is acquired by virtue of subsection (2) is—
 - (a) where subsection (5) applies, the date on which the deed of assignation is registered,
 - (b) where subsection (6) applies, the date on which the period of possession mentioned in that subsection expires.
- (5) This subsection applies where, as at the date of registration, the subjects of the lease have been in the possession, openly, peaceably and without judicial interruption—
 - (a) of A for a continuous period of at least 1 year, or
 - (b) of A and then of B for periods which together constitute such a period.
- (6) This subsection applies where there is a continuous period of possession such as is mentioned in subsection (5) but that period, though it commences before registration on the application of B, does not expire until a date later than the date of registration.

89 Acquisition from representative of assigner without valid title

- (1) Section 88 also applies where a person (“P”), who is not entered in the title sheet as tenant but who would have power to assign the lease—
 - (a) were A the tenant, or
 - (b) (where A has died) had A been the tenant,purports to assign it.
- (2) For the purposes of section 88, possession of the subjects of the lease by P is to be treated as if it were possession of the subjects by A.

Servitudes

90 Grant of servitude by person not proprietor

- (1) This section applies where a person (“A”), who is not the proprietor of a registered plot of land but—
 - (a) is entered in the proprietorship section of the title sheet as proprietor, and
 - (b) is in possession of the land,purports to create a servitude, with the land as the burdened property.
- (2) The servitude is created provided that the conditions mentioned in subsection (3) are met.
- (3) The conditions are that—
 - (a) the land has been in the possession of A, openly, peaceably and without judicial interruption, for a continuous period of at least 1 year,
 - (b) at no time during that period did the Keeper become aware that the register was inaccurate as a result of A not being the proprietor,
 - (c) the proprietor of what is to be the benefited property is in good faith,
 - (d) at no time during the period mentioned in paragraph (a) was the title sheet subject, by virtue of section 67, to a caveat relevant to the creation of the servitude, and
 - (e) the Keeper warrants (or is to be taken to warrant) A's title.

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

- (4) The date on which the servitude is created by virtue of subsection (2) is—
 - (a) where subsection (5) applies, the date of registration,
 - (b) where subsection (6) applies, the date on which the period mentioned in that subsection expires.
- (5) This subsection applies where, as at the date of registration, the land has been in the possession of A, openly, peaceably and without judicial interruption, for a continuous period of at least 1 year.
- (6) This subsection applies where there is a continuous period of possession such as is mentioned in subsection (5) but that period, though it commences before registration, does not expire until a date later than the date of registration.
- (7) This section is subject to section 75 of the Title Conditions (Scotland) Act 2003 (asp 9) (creation of positive servitude by writing: deed to be registered).

Extinction of encumbrances etc.

91 Extinction of encumbrance when land disposed

- (1) Where the conditions mentioned in subsection (2) are met, a person (“A”) who acquires ownership of land on registration or on a later date by virtue of section 86(4) (b)—
 - (a) takes the land free of an encumbrance which is not entered in the title sheet as at the date on which A acquires ownership of the land, and
 - (b) any such encumbrance is extinguished.
- (2) The conditions are that, as at the date on which ownership is acquired—
 - (a) A is in good faith, and
 - (b) the title sheet is not, by virtue of section 67, subject to a caveat relevant to such acquisition by A.
- (3) Subsection (1) does not apply to an heritable security which is not entered in the securities section of a shared plot title sheet by virtue of section 18(3)(b).
- (4) “Encumbrance” in subsection (1) does not include—
 - (a) a public right of way,
 - (b) a path delineated in an order under section 22 of the Land Reform (Scotland) Act 2003 (asp 2) (compulsory powers to delineate paths in land in respect of which access rights are exercisable),
 - (c) a servitude created other than under section 75(1) of the Title Conditions (Scotland) Act 2003 (asp 9),
 - (d) a lease, or
 - (e) an encumbrance the creation of which does not require registration of the constitutive deed.

92 Extinction of encumbrance when lease assigned

- (1) Where the conditions mentioned in subsection (2) are met, a person (“A”) who acquires a registered lease on registration or on a later date by virtue of section 88(4) (b)—

- (a) takes that lease free of an encumbrance—
 - (i) of a kind mentioned in subsection (4), and
 - (ii) which is not entered in the title sheet as at the date on which A acquires the registered lease, and
 - (b) any such encumbrance is extinguished.
- (2) The conditions are that, as at the date on which the lease is acquired—
- (a) A is in good faith, and
 - (b) the title sheet is not, by virtue of section 67, subject to a caveat relevant to such acquisition by A.
- (3) Subsection (1) does not apply to an heritable security which is not entered in the securities section of a shared lease title sheet by virtue of paragraph 8(b) of schedule 1.
- (4) The encumbrances are—
- (a) a heritable security over the lease,
 - (b) a title condition such as is mentioned in paragraph (d) or (e) of the definition of “title condition” in section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9).

93 Extinction of floating charge when land disposed

A person who, in good faith, acquires ownership of land from another person (“A”), takes the land free of any floating charge which was granted by a predecessor in title of A.

Compensation in consequence of this Part

94 Compensation for loss incurred in consequence of this Part

- (1) The Keeper must pay compensation for loss incurred by a person mentioned in subsection (2).
- (2) The person is one who—
- (a) is deprived of a right by virtue of this Part, or
 - (b) is the proprietor of a property burdened by a servitude created by virtue of section 90.
- (3) A claimant is not required to exhaust other remedies before making a claim to such compensation.
- (4) Payment by the Keeper under this section does not extinguish any rights which the claimant may have against another person in respect of the loss compensated.
- (5) But it is a condition of any such payment that the claimant assigns any such rights to the Keeper.
- (6) The Keeper has no liability to pay compensation—
- (a) in so far as the claimant’s loss could have been avoided by the claimant taking certain measures which it would have been reasonable for the claimant to take,
 - (b) in so far as the claimant’s loss is too remote, or
 - (c) for non-patrimonial loss.

95 Quantification of compensation

- (1) Compensation payable by virtue of section 94(1)—
 - (a) is, in so far as it is not compensation mentioned in paragraph (b), to be quantified as at the date on which the claimant lost the right or, as the case may be, on which the servitude was created, and
 - (b) is to include—
 - (i) reimbursement of reasonable extra-judicial legal expenses, and
 - (ii) compensation for any other consequential loss.
- (2) Interest on a sum so payable runs from the date mentioned in subsection (3) until the sum in question is paid.
- (3) The date is—
 - (a) where the sum is payable other than by virtue of subsection (1)(b), the date mentioned in subsection (1)(a),
 - (b) where the sum is payable by virtue of subsection (1)(b)(i), the date on which the claimant paid the sum in question, and
 - (c) where the sum is payable by virtue of subsection (1)(b)(ii), the date on which the loss was sustained.
- (4) The Scottish Ministers may by regulations make provision as to the rate of interest payable by virtue of subsection (2).