



Long Leases (Scotland) Act 2012

2012 asp 9

PART 2

CONVERSION OF CERTAIN LEASEHOLD CONDITIONS TO REAL BURDENS

Personal real burdens

23 Conversion to personal pre-emption or redemption burden

- (1) Without prejudice to section 14, the person entitled to enforce a qualifying condition mentioned in subsection (2) (whether as landlord or otherwise) may, before the appointed day, prospectively convert that qualifying condition into a personal pre-emption burden or (as the case may be) into a personal redemption burden by executing and registering a notice.
- (2) The qualifying condition referred to in subsection (1) is a condition comprising—
 - (a) a right of pre-emption, or
 - (b) a right of redemption.
- (3) The notice referred to in subsection (1) must—
 - (a) be in the prescribed form,
 - (b) set out the title to enforce the qualifying condition of the person executing and registering the notice,
 - (c) identify the qualifying land (or any part of such land),
 - (d) set out the terms of the qualifying condition, and
 - (e) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the person executing and registering the notice.
- (4) For the purposes of subsection (1)—
 - (a) a notice is registered only when registered against the land identified in pursuance of subsection (3)(c), and
 - (b) the notice may be registered against the title of the owner of the land or of the tenant under the qualifying lease.

Status: This is the original version (as it was originally enacted).

- (5) Before submitting any notice for registration under this section, the person entitled to enforce the qualifying condition must swear or affirm before a notary public that to the best of the knowledge and belief of that person all the information contained in the notice is true.
- (6) For the purposes of subsection (5), if the person entitled to enforce the qualifying condition is—
- (a) an individual unable by reason of legal disability, or incapacity, to swear or affirm as mentioned in that subsection, then a legal representative of that person may swear or affirm, or
 - (b) not an individual, then any person authorised to sign documents on its behalf may swear or affirm,
- and any reference in that subsection to the person entitled to enforce the qualifying condition is to be construed accordingly.
- (7) If subsections (1) to (6) are complied with and immediately before the appointed day the qualifying condition is still enforceable by the person who executed and registered the notice under subsection (1) (or that person’s successor) then, on that day—
- (a) the qualifying condition is converted into a real burden in favour of that person, to be known as a “personal pre-emption burden” or (as the case may be) as a “personal redemption burden”, and
 - (b) the land identified in pursuance of subsection (3)(c) becomes the burdened property.
- (8) The right to a personal pre-emption burden or personal redemption burden may be assigned or otherwise transferred to any person.
- (9) An assignation or transfer under subsection (8) takes effect on registration.
- (10) Where the holder of a personal pre-emption burden or personal redemption burden does not have a completed title—
- (a) title may be completed by the holder registering a notice of title, or
 - (b) without completing title, the holder may grant a deed—
 - (i) assigning the right to the burden, or
 - (ii) discharging, in whole or in part, the burden.
- (11) The holder must, in a deed granted under subsection (10)(b), deduce title from the person who appears in the Register of Sasines as having the last recorded title to the burden in question unless the deed is one to which section 101 of the Land Registration etc. (Scotland) Act 2012 (asp 5) (circumstances where unnecessary to deduce title) applies.
- (12) This section is subject to sections 36 and 75.