



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 8

ADMINISTRATION OF ESTATE BY TRUSTEE

Debtor's home

112 Debtor's family home

- (1) This section applies where a debtor's sequestrated estate includes any right or interest in the debtor's family home.
- (2) At the end of 3 years beginning with the date of sequestration, the right or interest—
 - (a) ceases to form part of the debtor's sequestrated estate, and
 - (b) is reinvested in the debtor (without disposition, conveyance, assignation or other transfer).
- (3) Subsection (2) does not apply if—
 - (a) during the 3 years mentioned in subsection (2), the trustee in the sequestration—
 - (i) disposes of or otherwise realises the right or interest,
 - (ii) concludes missives for sale of the right or interest,
 - (iii) sends a memorandum to the Keeper of the Register of Inhibitions under section 26(6),
 - (iv) completes title in the Land Register of Scotland, or as the case may be in the Register of Sasines, in relation to the right or interest,
 - (v) commences proceedings to obtain the authority of the sheriff under section 113(1)(b) to sell or dispose of the right or interest,
 - (vi) commences proceedings in an action for division and sale of the family home,
 - (vii) commences proceedings in an action for the purpose of obtaining vacant possession of the family home,
 - (viii) enters with the debtor into an agreement such as is mentioned in subsection (4), or

Status: This is the original version (as it was originally enacted).

- (ix) commences an action under section 98 in respect of the right or interest, or
- (b) the trustee in the sequestration—
 - (i) does not, at any time during the 3 years mentioned in subsection (2), know about the facts giving rise to a right of action under section 98, but
 - (ii) commences an action under that section reasonably soon after becoming aware of those facts.
- (4) The agreement referred to in subsection (3)(a)(viii) is an agreement that the debtor is to incur a specified liability to the debtor’s estate (with or without interest from the date of the agreement) in consideration of which the right or interest is to—
 - (a) cease to form part of the debtor’s sequestrated estate, and
 - (b) be reinvested in the debtor (without disposition, conveyance, assignation or other transfer).
- (5) If the debtor does not inform the trustee or AiB of the right or interest within 3 months beginning with the date of sequestration then the 3 years mentioned in subsection (2) is to be taken—
 - (a) not to begin with the date of sequestration, but
 - (b) to begin instead with the date on which the trustee becomes aware of the right or interest.
- (6) The sheriff may, on the trustee’s application, substitute for the 3 years mentioned in subsection (2) a longer period—
 - (a) in prescribed circumstances, and
 - (b) in such other circumstances as the sheriff thinks appropriate.
- (7) The Scottish Ministers may, by regulations—
 - (a) make provision for this section to have effect with the substitution, in such circumstances as may be specified in the regulations, of a shorter period for the 3 years mentioned in subsection (2),
 - (b) prescribe circumstances in which this section does not apply,
 - (c) prescribe circumstances in which a sheriff may disapply this section,
 - (d) make provision requiring the trustee to give notice that this section applies or does not apply,
 - (e) make provision about compensation,
 - (f) make such provision as they consider necessary or expedient in consequence of regulations made under paragraphs (a) to (e), or
 - (g) modify sub-paragraphs (i) to (viii) of subsection (3)(a) so as to—
 - (i) add or remove a matter, or
 - (ii) vary a matter,referred to in that subsection.
- (8) In this section, “family home” has the same meaning as in section 113.