Home Owner and Debtor Protection (Scotland) Act 2010

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PART 2

SEQUESTRATION AND TRUST DEEDS

9 Certificate for sequestration

(1) In section 5 (sequestration of estate) of the Bankruptcy (Scotland) Act 1985 (c. 66) ("the 1985 Act")—

(a) in subsection (2)(a), for "either subsection (2A) or" substitute "subsection",

(b) subsection (2A) is repealed,

(c) in subsection (2B)(c), after sub-paragraph (ia) insert—

"(ib) has, within the prescribed period, been granted a certificate for sequestration of the debtor's estate in accordance with section 5B of this Act,", and

(d) after subsection (2E) insert—

"(2F) In subsection (2B)(c)(ib) above "the prescribed period" means such period, ending immediately before the debtor application is made, as may be prescribed under section 5B(5)(c) of this Act.".

(2) After section 5A of the 1985 Act insert—

"**5B Certificate for sequestration**

(1) A certificate for sequestration of a debtor's estate is a certificate granted by an authorised person certifying that the debtor is unable to pay debts as they become due.

(2) A certificate may be granted only on the application of the debtor.

(3) An authorised person must grant a certificate if, and only if, the debtor can demonstrate that the debtor is unable to pay debts as they become due.

(4) In this section "authorised person" means a person falling within a class prescribed under subsection (5)(a).

(5) The Scottish Ministers may by regulations—

(a) prescribe classes of persons authorised to grant a certificate under this section;

(b) make provision about certification by an authorised person, including—

(i) the form and manner in which a certification must be made;

(ii) the fee, if any, which an authorised person is entitled to charge for or in connection with granting a certificate;

(c) prescribe a period for the purpose of section 5(2B)(c)(ib) of this Act;

(d) make different provision for different cases or classes of case.".

(3) In section 12 (when sequestration is awarded) of the 1985 Act, in subsection (1)(b), for "either subsection (2A) or", substitute "subsection".