



Matrimonial Homes (Family Protection) (Scotland) Act 1981

1981 CHAPTER 59

Occupancy rights in relation to dealings with third parties

8 Interests of heritable creditors.

- (1) The rights of a third party with an interest in the matrimonial home as a creditor under a secured loan in relation to the non-performance of any obligation under the loan shall not be prejudiced by reason only of the occupancy rights of the non-entitled spouse; but where a non-entitled spouse has or obtains occupation of a matrimonial home and—
- (a) the entitled spouse is not in occupation; and
 - (b) there is a third party with such an interest in the matrimonial home,
- the court may, on the application of the third party, make an order requiring the non-entitled spouse to make any payment due by the entitled spouse in respect of the loan.
- (2) This section shall not apply [^{F1}to secured loans in respect of which the security was granted prior to the commencement of section 13 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985] unless the third party in granting the secured loan acted in good faith and . . . ^{F2} there was produced to the third party by the entitled spouse—
- (a) [^{F3}a written declaration signed] by the entitled spouse declaring that there is no non-entitled spouse; or
 - (b) a renunciation of occupancy rights or consent to the taking of the loan which bears to have been properly made or given by the non-entitled spouse.
- [^{F4}(2A) This section shall not apply to secured loans in respect of which the security was granted after the commencement of section 13 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 unless the third party in granting the secured loan acted in good faith and . . . ^{F5} there was produced to the third party by the grantor—
- (a) [^{F6}a written declaration signed] by the grantor declaring that the security subjects are not [^{F7}or were not at the time of the granting of the security] a matrimonial home in relation to which a spouse of the grantor has [^{F8}or had] occupancy rights; or

Changes to legislation: Matrimonial Homes (Family Protection) (Scotland) Act 1981, Section 8 is up to date with all changes known to be in force on or before 20 September 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (b) a renunciation of occupancy rights or consent to the granting of the security which bears to have been properly made or given by the non-entitled spouse.

(2B) for the purposes of subsections (2) and (2A) above, the time of granting a security, in the case of a heritable security, is the date of delivery of the deed creating the security.]

Textual Amendments

- F1** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 49:6\)](#), **ss. 13(7)**, 60(6)
- F2** Words repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 76:2, 68A:2\)](#), s. 74, Sch. 8 para. 31(2)(a), **Sch. 9**
- F3** Words in s. 8(2)(a) substituted (30.6.2006) by [Family Law \(Scotland\) Act 2006 \(Consequential Modifications\) Order 2006 \(S.S.I. 2006/384\)](#), arts. 1, **5**
- F4** S. 8(2A)(2B) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 49:6\)](#), **ss. 13(8)**, 60(6)
- F5** Words repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 76:2, 68A:2\)](#), s. 74, Sch. 8 para. 31(2)(b)(i), **Sch. 9**
- F6** Words in s. 8(2A)(a) substituted (30.6.2006) by [Family Law \(Scotland\) Act 2006 \(Consequential Modifications\) Order 2006 \(S.S.I. 2006/384\)](#), arts. 1, **5**
- F7** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 76:2, 68A:2\)](#), s. 74, **Sch. 8 para. 31(2)(ii)**
- F8** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 76:2, 68A:2\)](#), s. 74, **Sch. 8 para. 31(2)(iii)**

Modifications etc. (not altering text)

- C1** S. 8(2)(2A) modified (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), **ss. 14(2)(a)**, 21(2); S.S.I. 2003/384, art. 2(a)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 2(8A) inserted by [2023 asp 3 s. 56\(2\)](#)
- s. 3(9) inserted by [2023 asp 3 s. 56\(4\)](#)
- s. 8(2C) inserted by [2023 asp 3 s. 56\(7\)](#)