

---

STATUTORY INSTRUMENTS

---

**2009 No. 729**

**The Title Conditions (Scotland) Act 2003  
(Development Management Scheme) Order 2009**

**PART 4**

**Rights of creditors**

**Rights of creditors**

**12.**—(1) Where—

- (a) a debt due by the association satisfies the conditions mentioned in article 13; or
- (b) the association is being, or has been, wound up,

any creditor of the association shall be entitled to recover a proportion of the debt from the owner of each of the units (or, as the case may be, from the person who was at the commencement of the winding up the owner of a unit) in accordance with the provisions of paragraphs (2) to (4).

(2) The owner of each unit is, subject to paragraph (4), liable to the creditor for the proportion of the debt attributable to the unit in accordance with paragraph (3).

(3) The proportion of the debt attributable to each unit is—

- (a) where service charge is payable by the owner of the unit in accordance with the Development Management Scheme, the share of the debt equal to the proportion of service charge which would have been attributable to the unit had the debt been due as service charge; or
- (b) if there is no service charge payable, an equal share of the debt.

(4) Where all or part of the proportion of the debt attributable to a unit (“a non paying unit”) cannot be recovered (for example, because the estate of the owner of the non paying unit has been sequestrated or cannot by reasonable inquiry be identified or found) then the proportion of the debt recoverable by the creditor from the other units shall be increased by an amount equal to an equal share (as among such other units) of the proportion of the debt which cannot be recovered from the owner of the non paying unit.

(5) If an owner of a unit makes a payment to a creditor in accordance with paragraph (4) that owner may recover an amount equal to the amount paid under paragraph (4) from the owner of the non paying unit.

(6) If two or more persons own a unit in common then, unless the Development Management Scheme otherwise provides—

- (a) they are severally liable in respect of the proportion of the debt; and
- (b) as between (or among) themselves, they are liable in the proportions in which they own the unit.

**Conditions referred to in article 12**

**13.** The conditions referred to in article 12(1) are that—

(a) the debt is constituted by—

(i) decree; or

(ii) a document which has been registered for execution in the Books of Council and Session or, as the case may be, in the appropriate sheriff court books kept for any sheriffdom; and

(b) either—

(i) the creditor has executed diligence but has not recovered the debt in full; or

(ii) it does not appear that the association has any assets which reasonably could be recovered by diligence.