
STATUTORY INSTRUMENTS

2009 No. 729

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

PART 6

General

Liability of successor for service charge

16.—(1) Where a person who becomes, or is to become, an owner of a unit in the development obtains a certificate signed by the manager stating that as at the date on which it is signed no service charge is outstanding as respects the unit or, as the case may be, that any service charge due does not exceed an amount specified in the certificate, then, apart from a service charge no greater than the amount so specified, that person shall not be liable for any service charge which was outstanding on that date.

(2) The manager must, on the request of the person mentioned in paragraph (1), prepare and sign a certificate required for the purposes of that paragraph and provide it to that person.

Continued application of the rules following disapplication of the Scheme

17. Rules 6 and 17 and any other rule of the Development Management Scheme in so far as applicable as respects the winding up of the association, shall continue to have effect notwithstanding the disapplication of the Scheme to the development.

The expression “owner”

18.—(1) Subject to paragraph (2), “owner”, in relation to any unit, means a person who has right to the unit whether or not that person has completed title; but if, in relation to the unit (or, if the unit is held pro indiviso, any pro indiviso share in the unit) more than one person comes within that description of owner, then “owner”—

- (a) for the purposes of article 7(1), means any person having such right; and
- (b) for any other purpose, means such person as has most recently acquired such right.

(2) Where a heritable creditor is in lawful possession of security subjects which comprise the unit, then “owner”—

- (a) for the purposes of article 7(1) includes, in addition to any such person as is mentioned in paragraph (1)(a), that heritable creditor; and
- (b) for any other purposes means the heritable creditor.

Sending

19.—(1) Where a provision of this Order requires that a thing be sent—

- (a) to a person it shall suffice, for the purposes of that provision, that the thing be sent to an agent of the person;
 - (b) to a member and that member cannot by reasonable inquiry be identified or found, it shall suffice, for the purposes of that provision, that the thing be sent to the member's unit addressed to "The Owner" (or using some other such expression, as for example "The Proprietor").
- (2) Except in paragraph (3), any reference in this Order to a thing being sent is to be construed as a reference to its being—
- (a) posted;
 - (b) delivered; or
 - (c) transmitted by electronic means.
- (3) For the purposes of any provision of this Order, a thing posted is to be taken to be sent on the day of posting; and a thing transmitted by electronic means, to be sent on the day of transmission.

Scheme property

20.—(1) Subject to paragraphs (2) and (3) "scheme property" means the property specified or described as such in the Development Management Scheme.

- (2) Where the development is, or includes, a tenement "scheme property" includes—
- (a) any part of a tenement that is the common property of the owners of two or more units;
 - (b) with the exceptions mentioned in paragraph (3), the following parts of a tenement building (so far as not scheme property by virtue of paragraph (a))—
 - (i) the ground on which it is built;
 - (ii) its foundations;
 - (iii) its external walls;
 - (iv) its roof (including any rafter or other structure supporting the roof);
 - (v) if it is separated from another building by a gable wall, the part of the gable wall that is part of the tenement building; and
 - (vi) any wall (not being one falling within the preceding sub paragraphs), beam or column that is load bearing.
- (2) The following parts of a tenement building are the exceptions referred to in paragraph (2)(b)—
- (a) any extension which forms part of only one unit;
 - (b) any—
 - (i) door;
 - (ii) window;
 - (iii) skylight;
 - (iv) vent; or
 - (v) other opening; and
 - (c) any chimney stack or chimney flue.

Tenements – emergency work, redistribution of costs

21.—(1) Where the development is, or includes, a tenement, rule 14 of Schedule 1 to this Order applies and is to be treated as forming a rule of the Development Management Scheme as applied to that development to the extent that there is no rule in the Development Management Scheme as

applied to that development making provision for a member to instruct or carry out any emergency work as defined in that rule.

(2) Where the development is, or includes, a tenement, rule 19.4 of Schedule 1 to this Order applies and is to be treated as forming a rule of the Development Management Scheme as applied to that development to the extent that there is no rule in the Development Management Scheme as applied to that development making provision as to the liability of the members in the circumstances covered by the provisions of that rule.