

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 11: Savings, Transitional and General

Section 123: The expression ‘owner’

502. This section defines ‘owner’. The first half of *subsection (1)* sets out the general rule. An owner is a person who ‘has right’ to property (a term familiar from sections 3 and 4 of the Conveyancing (Scotland) Act 1924). A person ‘has right’ if he is grantee of a delivered conveyance (or equivalent). Registration is not required.
503. More than one person might be owner within this definition. If ownership is held concurrently, as with *pro indiviso* owners, this presents no particular difficulty. But the position is, or may be, different, with consecutive owners. The second half of subsection (1) deals with this problem. If two or more people acquiring rights consecutively are capable of falling within the definition, the ‘owner’ is to be the last of them (paragraph (b)) — except for the purposes of the provisions listed in paragraph (a) relating to the creation or discharge of burdens.
504. *Subsection (2)* introduces a special rule where a heritable creditor is in possession of the property. A heritable creditor in possession is to be the owner in substitution for the debtor except when burdens are being created, varied or discharged, where the heritable creditor is treated as one of the owners.
505. The effect of paragraph (a) of *subsection (3)* is to exclude heritable creditors in possession from section 60(1) (which is concerned with deduction of title).