

TENEMENTS (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Miscellaneous and General

Schedule 3 – Sale under Section 22(3) Or 23(1)

179. This schedule provides a procedure for applications to the sheriff court for power to sell the site of a demolished tenement building or an abandoned tenement.
180. Under paragraph 1, an owner may make a summary application to the sheriff seeking a power of sale order. The applicant must give notice of it to each of the other owners of the sale subjects. The sheriff shall grant the power unless he or she is satisfied that it would not be in the best interests of the owners as a group or would be unfairly prejudicial to one or more owners. Any previous power of sale order would be revoked on the grant of a new power of sale order. Paragraph 1 also sets out the detailed information which must be contained in an application. Paragraph 2 allows for appeals against either the grant or refusal of a power of sale order to the Court of Session on a point of law.
181. Paragraph 3 provides for the registration of power of sale orders in the property registers. Paragraph 4 contains rules about marketing in order to obtain the best price that can reasonably be obtained. Paragraph 5 requires the owners selling the sale subjects to pay the other owners their share of the proceeds and sets out rules for the calculation and payment of those shares. The sum payable to each owner will normally be an equal share of the gross proceeds of the sale less an equal share of the expenses incurred by the seller. An owner will receive the share less the cost of discharging any security the owner may have outstanding over his former flat. If another owner is not traceable, then the funds will be lodged with the sheriff court.
182. Paragraph 6 makes it clear that where the sale subjects have been sold under a power of sale order then all heritable securities affecting the sale subjects or any part of them shall be discharged.