



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 11

### MAILLS AND DUTIES, SEQUESTRATION FOR RENT AND LANDLORD'S HYPOTHEC

#### *Landlord's hypothec and sequestration for rent*

#### **208 Abolition of sequestration for rent and restriction of landlord's hypothec**

- (1) The diligence of sequestration for rent is abolished and any enactment or rule of law enabling an action of sequestration for rent to be raised ceases to have effect.
- (2) Notwithstanding that abolition, the landlord's hypothec—
  - (a) continues, subject to subsections (3) to (9) below, as a right in security over corporeal moveable property kept in or on the subjects let; and—
  - (b) ranks accordingly in any—
    - (i) sequestration;
    - (ii) insolvency proceedings; or
    - (iii) other process in which there is ranking,in respect of that property.
- (3) The landlord's hypothec no longer arises in relation to property which is kept—
  - (a) in a dwellinghouse;
  - (b) on agricultural land; or
  - (c) on a croft.
- (4) It no longer arises in relation to property which is owned by a person other than the tenant.
- (5) Property which is acquired by a person from the tenant—
  - (a) in good faith; or

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*Status: This is the original version (as it was originally enacted).*

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- (b) where the property is acquired after an interdict prohibiting the tenant from disposing of or removing items secured by the hypothec has been granted in favour the landlord, in good faith and for value,  
ceases to be subject to the hypothec upon acquisition by the person.
- (6) Subsection (5)(b) above does not affect the tenant's liability for breach of the interdict.
- (7) Where property is owned in common by the tenant and a third party, any right of hypothec arises only to the extent of the tenant's interest in that property.
- (8) The landlord's hypothec—
  - (a) is security for rent due and unpaid only; and
  - (b) subsists for so long as that rent remains unpaid.
- (9) Any enactment or rule of law relating to the landlord's hypothec ceases to have effect in so far as it is inconsistent with subsections (2) to (8) above.
- (10) Subsections (1) to (3), (8) and (9) above do not affect an action of sequestration for rent brought before this section comes into force.
- (11) Subsection (3) above does not affect a landlord's right of hypothec which arose before and subsists on the coming into force of this section.
- (12) In subsection (2) above, "insolvency proceedings" means—
  - (a) winding up;
  - (b) receivership;
  - (c) administration; and
  - (d) proceedings in relation to a company voluntary arrangement,  
within the meaning of the Insolvency Act 1986 (c. 45).
- (13) In subsection (3) above—
  - "agricultural land" has the same meaning as in section 1(2) of the Agricultural Holdings (Scotland) Act 1991 (c. 55);
  - "croft" has the same meaning as in section 3(1) of the Crofters (Scotland) Act 1993 (c. 44); and
  - "dwellinghouse" includes—
    - (a) a mobile home or other place used as a dwelling; and
    - (b) any other structure or building used in connection with the dwellinghouse.