



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 4

### LAND ATTACHMENT AND RESIDUAL ATTACHMENT

#### CHAPTER 2

##### ATTACHMENT OF LAND

###### *Foreclosure*

#### 117 Foreclosure

- (1) This section applies where the appointed person—
  - (a) has exposed to sale the land specified in the warrant for sale; and
  - (b) has—
    - (i) failed to find a purchaser; or
    - (ii) succeeded in selling only part of the land, and that at a price which is less than the sum secured by the land attachment and by any security or diligence ranking prior to, or *pari passu* with, the land attachment.
- (2) The appointed person may apply, in (or as nearly as may be in) the form prescribed by Act of Sederunt, to the sheriff who granted the warrant for sale for a decree of foreclosure.
- (3) The application under subsection (2) above must be accompanied by—
  - (a) a statement setting out the whole amount secured—
    - (i) by the land attachment; and
    - (ii) by any other security or diligence ranking prior to or *pari passu* with the land attachment; and
  - (b) where part of the land has been sold, a report on that sale under section 113(1) of this Act.

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*Status: This is the original version (as it was originally enacted).*

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- (4) A copy of an application under subsection (2) above must be served by a judicial officer on—
- (a) the debtor;
  - (b) where the debtor does not own the land, the owner;
  - (c) any occupier of the land specified in the warrant for sale;
  - (d) any creditor in a heritable security affecting the land, as disclosed in a report of a search in the appropriate property register brought down to a date no later than 3 clear days before the day on which the application is made; and
  - (e) any other person having a land attachment or other diligence over the land.
- (5) The sheriff, after affording any person on whom a copy of the application was served under subsection (4) above an opportunity to make representations, may—
- (a) grant the decree of foreclosure applied for;
  - (b) sist the application for a period not exceeding 3 months to allow the debtor to pay the sum recoverable by the land attachment; or
  - (c) appoint a valuer to fix a reserve price at which the land (or remaining part of that land) must be—
    - (i) auctioned; or
    - (ii) advertised for sale and if unsold auctioned.
- (6) The debtor may—
- (a) bid and purchase at any auction under subsection (5)(c)(i) or (ii) above; or
  - (b) purchase at the price advertised under subsection (5)(c)(ii) above.
- (7) Where an order has been made under subsection (5)(c) above and the appointed person—
- (a) produces an auctioneer’s certificate that the land in question has been duly exposed to sale at the reserve price but is unsold; or
  - (b) certifies in (or as nearly as may be in) the form prescribed by Act of Sederunt that the land has been advertised at the reserve price but is unsold,
- the sheriff may, without further intimation, grant decree of foreclosure.
- (8) A decree of foreclosure granted under this section must—
- (a) be in (or as nearly as may be in) the form prescribed by Act of Sederunt;
  - (b) describe the land in relation to which it is granted; and
  - (c) contain a declaration of the price at which, on registration of an extract of the decree, the creditor is deemed to have acquired the land.
- (9) Where provision is made by virtue of this Chapter or by any other enactment permitting the application under subsection (2) above to be an electronic communication, the requirement in subsection (3) above that the application be accompanied by the statement and report mentioned in that subsection is satisfied by the provision of electronic communications.