



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 5

#### VESTING ETC.

##### *Vesting*

#### **78 Vesting of estate at date of sequestration**

- (1) The whole estate of the debtor vests for the benefit of the creditors in the trustee in the sequestration, by virtue of the trustee's appointment, as at the date of sequestration.
- (2) But subsection (1) is subject to section 88.
- (3) It is not competent for—
  - (a) the trustee, or
  - (b) any person deriving title from the trustee,to complete title, before the expiry of the period mentioned in subsection (4), to any heritable property in Scotland vested in the trustee by virtue of the trustee's appointment.
- (4) The period is 28 days (or such other period as may be prescribed) beginning with the day on which the certified copy of—
  - (a) the order of the sheriff granting warrant is recorded under subsection (1)(a) of section 26 in the Register of Inhibitions, or
  - (b) the determination of AiB awarding sequestration is recorded under subsection (2) of that section in that register.
- (5) The exercise by the trustee of any power conferred on the trustee by this Act, in respect of any heritable estate vested in the trustee by virtue of that person's appointment, is not challengeable on the ground of a prior inhibition.
- (6) Where the debtor has an uncompleted title to any heritable estate in Scotland, the trustee may complete title to that estate either in the trustee's own name or in the name of the debtor.

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**Changes to legislation:** Bankruptcy (Scotland) Act 2016, Section 78 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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- (7) But completion of title in the name of the debtor does not validate by accretion any unperfected right in favour of a person other than the trustee.
- (8) Moveable property in respect of which, but for this subsection—
- (a) delivery or possession, or
  - (b) intimation of assignation,
- would be required in order to complete title vests in the trustee, by virtue of the trustee's appointment, as if at the date of sequestration (as the case may be) the trustee had taken delivery or possession of the property or had made intimation of its assignation to the trustee.
- (9) Any non-vested contingent interest which the debtor has vests in the trustee as if an assignation of that interest had been executed by the debtor (and intimation of assignation made) at the date of sequestration.
- (10) Any non-vested contingent interest vested in the trustee by virtue of subsection (9) is, where it remains so vested as at the date which is 4 years after the date of sequestration, re-invested in the debtor as if an assignation of that interest had been executed by the trustee (and intimation of assignation made) at that date.
- (11) A person claiming a right to any estate claimed by the trustee may apply to the sheriff for the estate to be excluded from such vesting, a copy of the application being served on the trustee.
- (12) The sheriff must grant the application if satisfied that the estate should not be so vested.
- (13) Where any successor of a deceased debtor whose estate has been sequestrated has made up title to, or is in possession of, any part of that estate, the sheriff may on the application of the trustee order the successor to convey such estate to the trustee.

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**Commencement Information**

**II** S. 78 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 78(2)(a) words in s. 78(2) renumbered as s. 78(2)(a) by [2019 asp 4 s. 7\(2\)\(a\)](#)
- s. 78(2)(b) and word inserted by [2019 asp 4 s. 7\(2\)\(b\)](#)