



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 4

### LAND ATTACHMENT AND RESIDUAL ATTACHMENT

#### CHAPTER 2

##### ATTACHMENT OF LAND

###### *Preparations for sale of attached land*

#### **102 Warrant for sale of attached land owned in common**

- (1) This section applies where attached land specified in an application under section 92(1) of this Act is a pro indiviso share owned in common by the debtor and a third party.
- (2) Subject to subsection (3) below, the sheriff may, under section 97(2) of this Act, make an order granting a warrant for sale of the land specified in the application.
- (3) The sheriff must specify in the order whether the warrant—
  - (a) authorises—
    - (i) division of the land owned in common; and
    - (ii) sale of the part, specified in the warrant, which, after such division, would belong to the debtor as sole owner (in this section, the “debtor’s part”); or
  - (b) sale of the land owned in common and, subject to subsection (5) below, division of the proceeds.
- (4) Where the warrant authorises division of the land owned in common—
  - (a) with effect from the day on which the order granting the warrant is made—
    - (i) the debtor’s part is subject to the land attachment; and
    - (ii) the remaining land is disburdened of the land attachment; and

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*Status: This is the original version (as it was originally enacted).*

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- (b) this Chapter applies as if the warrant for sale granted were a warrant for sale of the debtor's part only.
- (5) Where the warrant authorises sale of the land owned in common and division of the proceeds, the appointed person must—
- (a) subject to the rights of any creditor of the third party holding a security over the third party's pro indiviso share of the land, pay to the third party the share of the proceeds of sale due to that person; and
  - (b) deal, under section 116 of this Act, with the share of the proceeds that is attributable to the debtor's share in the land as if those proceeds were proceeds from the sale of land owned by the debtor as sole owner.
- (6) Where land to which this section applies is divided and sold, or sold, in pursuance of a warrant for sale, the third party who, immediately before that warrant is granted, owned the land in common with the debtor may purchase the debtor's part or, as the case may be, the land.
- (7) Where the third party purchases land which is sold under a warrant authorising sale and division of the proceeds—
- (a) the third party need pay to the appointed person only the share of the price attributable to the debtor's share in the land; and
  - (b) subsection (5)(a) above does not apply.