



# Bankruptcy (Scotland) Act 1985 (repealed)

## 1985 CHAPTER 66

### *Administration of estate by permanent trustee*

VALID FROM 01/04/2008

#### **[<sup>F1</sup>39A Debtor's home ceasing to form part of sequestrated estate**

- (1) This section applies where a debtor's sequestrated estate includes any right or interest in the debtor's family home.
- (2) At the end of the period of 3 years beginning with the date of sequestration the right or interest mentioned in subsection (1) above shall—
  - (a) cease to form part of the debtor's sequestrated estate; and
  - (b) be reinvested in the debtor (without disposition, conveyance, assignation or other transfer).
- (3) Subsection (2) above shall not apply if, during the period mentioned in that subsection—
  - (a) the trustee disposes of or otherwise realises the right or interest mentioned in subsection (1) above;
  - (b) the trustee concludes missives for sale of the right or interest;
  - (c) the trustee sends a memorandum to the keeper of the register of inhibitions under section 14(4) of this Act;
  - (d) the trustee registers in the Land Register of Scotland or, as the case may be, records in the Register of Sasines a notice of title in relation to the right or interest mentioned in subsection (1) above;
  - (e) the trustee commences proceedings—
    - (i) to obtain the authority of the sheriff under section 40(1)(b) of this Act to sell or dispose of the right or interest;
    - (ii) in an action for division and sale of the family home; or

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- (iii) in an action for the purpose of obtaining vacant possession of the family home;
- (f) the trustee and the debtor enter into an agreement such as is mentioned in subsection (5) below;
- [<sup>F2</sup>(g) the trustee has commenced an action under section 34 of this Act in respect of any right or interest mentioned in sub-section (1) above or the trustee has not known about the facts giving rise to a right of action under section 34 of this Act, provided the trustee commences such an action reasonably soon after the trustee becomes aware of such right.]
- (4) The Scottish Ministers may, by regulations, modify paragraphs (a) to (f) of subsection (3) above so as to—
- (a) add or remove a matter; or
  - (b) vary any such matter,
- referred to in that subsection.
- (5) The agreement referred to in subsection (3)(f) above is an agreement that the debtor shall incur a specified liability to his estate (with or without interest from the date of the agreement) in consideration of which the right or interest mentioned in subsection (1) above shall—
- (a) cease to form part of the debtor's sequestrated estate; and
  - (b) be reinvested in the debtor (without disposition, conveyance, assignation or other transfer).
- (6) If the debtor does not inform the trustee or the Accountant in Bankruptcy of his right or interest in the family home before the end of the period of 3 months beginning with the date of sequestration, the period of 3 years mentioned in subsection (2) above—
- (a) shall not begin with the date of sequestration; but
  - (b) shall begin with the date on which the trustee or the Accountant in Bankruptcy becomes aware of the debtor's right or interest.
- (7) The sheriff may, on the application of the trustee, substitute for the period of 3 years mentioned in subsection (2) above a longer period—
- (a) in prescribed circumstances; and
  - (b) in such other circumstances as the sheriff thinks appropriate.
- (8) The Scottish Ministers may, by regulations—
- (a) make provision for this section to have effect with the substitution, in such circumstances as the regulations may prescribe, of a shorter period for the period of 3 years mentioned in subsection (2) above;
  - (b) prescribe circumstances in which this section does not apply;
  - (c) prescribe circumstances in which a sheriff may disapply this section;
  - (d) make provision requiring the trustee to give notice that this section applies or does not apply;
  - (e) make provision about compensation;
  - (f) make such provision as they consider necessary or expedient in consequence of regulations made under paragraphs (a) to (e) above.
- (9) In this section, “family home” has the same meaning as in section 40 of this Act.]

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#### Textual Amendments

- F1** S. 39A inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss. 19(2), 227(3)** (with s. 223); S.S.I. 2008/115, **art. 3(1)(a)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F2** S. 39A(3)(g) inserted (1.4.2008) by The Bankruptcy (Scotland) Act 1985 (Low Income, Low Asset Debtors etc.) Regulations 2008 (S.S.I. 2008/81), **reg. 4**

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