



Bankruptcy (Scotland) Act 1985

1985 CHAPTER 66

Administration of estate by permanent trustee

40 Power of permanent trustee in relation to the debtor's family home

- (1) Before the permanent trustee sells or disposes of any right or interest in the debtor's family home he shall—
 - (a) obtain the relevant consent; or
 - (b) where he is unable to do so, obtain the authority of the court in accordance with subsection (2) below.
- (2) Where the permanent trustee requires to obtain the authority of the court in terms of subsection (1)(b) above, the court, after having regard to all the circumstances of the case, including—
 - (a) the needs and financial resources of the debtor's spouse or former spouse;
 - (b) the needs and financial resources of any child of the family;
 - (c) the interests of the creditors ;
 - (d) the length of the period during which (whether before or after the relevant date) the family home was used as a residence by any of the persons referred to in paragraph (a) or (b) above, may refuse to grant the application or may postpone the granting of the application for such period (not exceeding twelve months) as it may consider reasonable in the circumstances or may grant the application subject to such conditions as it may prescribe.
- (3) Subsection (2) above shall apply—
 - (a) to an action for division and sale of the debtor's family home; or
 - (b) to an action for the purpose of obtaining vacant possession of the debtor's family home,
brought by the permanent trustee as it applies to an application under subsection (1)(b) above and, for the purposes of this subsection, any reference in the said subsection (2) to that granting of the application shall be construed as a reference to the granting of decree in the action.
- (4) In this section—

Status: This is the original version (as it was originally enacted).

- (a) " family home " means any property in which, at the relevant date, the debtor had (whether alone or in common with any other person) a right or interest, being property which was occupied at that date as a residence by the debtor and his spouse or by the debtor's spouse or former spouse (in any case with or without a child of the family) or by the debtor with a child of the family;
- (b) " child of the family " includes any child or grandchild of either the debtor or his spouse or former spouse, and any person who has been brought up or accepted by either the debtor or his spouse or former spouse as if he or she were a child of the debtor, spouse or former spouse whatever the age of such a child, grandchild or person may be;
- (c) " relevant consent" means in relation to the sale or disposal of any right or interest in a family home—
 - (i) in a case where the family home is occupied by the debtor's spouse or former spouse, the consent of the spouse, or, as the case may be, the former spouse, whether or not the family home is also occupied by the debtor;
 - (ii) where sub-paragraph (i) above does not apply, in a case where the family home is occupied by the debtor with a child of the family, the consent of the debtor; and
- (d) " relevant date " means the day immediately preceding the date of sequestration.