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# Recent Developments in the Enforcement of Heritable Securities

August 2017

# New Court Procedure for Heritable Security Actions?

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- Residential Actions
- Scottish Civil Courts Review
- Courts Reform (Scotland) Act 2014 s.72(3)(e)
- S.5(2A) of the Heritable Securities (Scotland) Act 1894
- S.24(1E) of the Conveyancing and Feudal Reform (Scotland) Act 1970
- Simple Procedure Rules

## New Court Procedure for Heritable Security Actions? (2)

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- Simple Procedure (Special Claims) Rules
- What is Recovery of Possession?
- No plans for the introduction of Simple Procedure
- Will residential actions continue as Summary Applications?
- Scottish Civil Justice Council First Report
- Commercial Actions – Schedule 5 to the 2014 Act

## Evidence (All Actions)

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- McLeod v Prestige Finance [2016] CSOH 69
- “No relaxation of the ordinary rules of evidence”
- No principal or certified copy calling-up notice
- No witnesses
- General principle: the law of evidence applies fully
- Specific: lodge the calling-up notice
- Appeal decision: [2016] CSIH 87

## Calling-up Notices (All Actions)

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- Error in the Notice or Related Documents
- Outlook Finance v Lindsay 2016 Hous LR 75
- Notice had wording missing from description but did not invalidate the notice
- Notice is a document capable of rectification under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985
- Separate process required

## Calling-up Notices (2) (All Actions)

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- Service of Notices
- Main v Mortgage Express 2016 SAC Civil 16
- Stirling v Landmark Mortgages 2016 CSIH 89
- Sending = Service

## Title to Sue (All Actions)

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- Assignations
- “to the extent of £     being the amount now due”
- One Savings Bank v Burns 2017 SC BAN 20
- Shear v Clipper Holdings, 26 May 2017, Outer House, Lord Bannatyne
- Balance of Convenience

# Pre-Action Requirements (Residential Actions)

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- Clear information: Outlook Finance v Lindsay
- Timing of Steps: NRAM plc v Savage, 25 April 2015, Glasgow Sheriff Court, Sheriff Anwar
- Number of Steps: Lancashire Mortgage Corporation v Plowright, 7 July 2015, Greenock Sheriff Court, Sheriff Mercer
- Steps to Sell: Swift Advances plc v Martin 2015 CSIH 65
- When Default Occurs
  - Millar, Pervez, Dickson
  - Main v Mortgage Express 2016 SAC Civil 16



# Land Used to Any Extent for Residential Purposes

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- S.20(2A) of the 1970 Act
- Literal v Purposive Interpretation
- Accord v Edwards & Northern Rock v Fowlie
- Westfoot Investments v European Property Holdings  
2015 SLT (Sh Ct) 201
- Royal Bank of Scotland v Mirza 2017 SLT (Sh Ct) 105
- “were the subjects used, to any extent, for residential purposes?”
- Temporary absence
- Does the occupation have to be by the debtor or grantor?

# Must the Holder also be the Creditor? (All Actions)

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- 3D Garages v Prolatis Company 2017 SLT (Sh Ct) 9

# Human Rights & Standard Securities (Residential Actions)

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- Aziz v Catalunyacaixa, CJEU, C415/11, 14/3/13
- Article 8
- McDonald v McDonald
- Nolan and Collins v Patullo 2017 SAC Civ 25
- River Clyde Homes v Woods 2015 Hous L R 33

# When is it Reasonable to Grant Decree?

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- S.24(7) of the 1970 Act
- Swift Advances v Martin 2015 CSIH 65

## Securities and Sequestrations (All Actions)

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- Glasgow City Council v Chaudhry 2015 SLT (Sh Ct) 107
- Chiswell v Chiswell 2016 CSOH 45
- Chalmers v Machin 2017 SC GLA 29

# Recall of Decree (Residential Actions)

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- S.24D of the 1970 Act
- Literal v Purposive Interpretation
- Leeds Building Society v H, Sheriff Principal of South Strathclyde, Dumfries and Galloway at Hamilton, 3 March 2016

# Appeals

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- The importance of considering all factors
- S.24(7) of the 1970 Act
- Swift Advances v Martin
- Bank of Scotland v Gallacher and Mortgages 1 Ltd v Chaudhary
- Frequently overlooked
- Glasgow Housing Association Ltd v Harasimowicz  
2015 Hous L R 77

# Is it Competent to Eject a Corporate Debtor?

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- Westfoot Investments v European Property Holdings  
2015 SLT (Sh Ct) 201
- S.5(1) of the 1894 Act



# Issues on Sale

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- Duty to Advertise and Obtain the Best Price
- S.25 of the 1970 Act
- Peters v Belhaven Finance 2016 SLT (Sh Ct) 156
- Sale following departure from statutory procedure
- Aronson v Keeper of the Registers of Scotland 2015 SLT 102
- Royal Bank of Scotland v Wilson 2010 UKSC 50

# Compensation Claims against Creditors

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- RBS v Wilson, again
- GE Money Secured Loans v MacBride 2016 GWD 31-548
- Maher & Cusine “The Law and Practice of Delict”