



Matrimonial Homes (Family Protection) (Scotland) Act 1981.

Checklist of evidence required.

1. Is the property a factory, field, shop or other premises used exclusively for commercial purposes?

No evidence required.

2. Is the property owned by

(a) two or more people?

No evidence required.

(b) One or more trustees of a Trust Estate?

No evidence required.

(c) A firm or public body?

No evidence required.

3. Is the property owned by one person?

EVIDENCE REQUIRED:

Deed of consent by non entitled spouse

OR

Consent *in gremio* of the deed by non entitled spouse

OR

Renunciation by non entitled spouse

OR

Affidavit by entitled spouse.

4. Is the sale by an executor or executors and

(a) there is more than one beneficiary?

No evidence required.

(b) Is there only one beneficiary?

EVIDENCE REQUIRED:

Affidavit by the beneficiary as entitled spouse or consent or renunciation by spouse of the beneficiary as in (3) above.

5. Is the sale by a lender under the Power of Sale?

EVIDENCE REQUIRED:

Consent to the Security by spouse of the granter of the Security (either *in gremio* or in a separate deed)

OR

Renunciation by spouse

OR

Affidavit by granter.

N.B. For securities granted before 1 January 1991, the evidence must have been produced to the creditor at or before the granting of the Security; For securities granted on or after 1 January 1991, the above documents must have been produced to the creditor at any time.

6. Has the sole proprietor granted a Power of Attorney?

(a) Is the granter capax?

EVIDENCE REQUIRED:

An affidavit by the Granter.

(b) Is the granter physically incapax but mentally capax?

EVIDENCE REQUIRED:

An affidavit executed in terms of Section 9 of the Requirements of Writing (Scotland) Act.

(c) Is the person suffering from mental incapacity?

EVIDENCE REQUIRED:

The Keeper may be prepared to exercise discretion on evidence produced but must be satisfied that there is good reason the evidence cannot be obtained and that there is no risk of the seller being married. See Registration of Title Practice Book 6.42.

7. Has the non-entitled spouse granted Power of Attorney which includes a specific provision to grant evidence in terms of the Act?

(a) Is the granter capax?

EVIDENCE REQUIRED:

An affidavit by the Granter

OR

Consent/Renunciation by Attorney in terms of the Power of Attorney.

(b) Is the granter physically incapax but mentally capax?

EVIDENCE REQUIRED:

Consent or Renunciation executed in terms of Section 9 of the Requirements of Writing (Scotland) Act

OR

Consent/Renunciation by Attorney in terms of the Power of Attorney.

(c) Is the granter mentally incapax?

EVIDENCE REQUIRED:

(1) If the Power of Attorney was signed before 2 April 2001.

EVIDENCE REQUIRED:

Consent or Renunciation in terms of the Power of Attorney.

(2) If the Power of Attorney was signed on or after 2 April 2001, the Attorney ceases to have authority to Act, and either (a) the Power of Attorney must be registered with the Public Guardian before granting Consent/Renunciation in terms of the Power of Attorney or (b) a guardianship or Intervention Order must be obtained in terms of the Adults with Incapacity (Scotland) Act 2000.

8. Is there a Guardianship or Intervention Order in terms of the Adults with Incapacity (Scotland) Act 2000?

No evidence required.

9. Is the sale by a Trustee in Sequestration?

No evidence required in terms of the Matrimonial Homes (Scotland) Act 1981 but evidence in terms of Section 40 of the Bankruptcy (Scotland) Act 1985 should be produced if the property is a family home in terms of that Act.

10. Affidavits sworn outwith Scotland

Where the Affidavit/Renunciation is signed in England subscription in front of a Solicitor or Commissioner of Oaths is acceptable.

An Affidavit/Renunciation which is sworn or affirmed abroad must have annexed to it one of the following;

(1) If the country is a party to the Hague Convention for the Abolition of Legalisation, an Apostille confirming the authority of the Notary;

(2) If the country is not a party to the Hague Convention the deed must be presented to a British Consular official for legalisation to confirm the authority of the Notary; or a British Consular Official acting in his official capacity in that country and authorised under Section 6 of the Commissioners for Oaths Act 1889 or a Scottish Notary in any country can swear the Affidavit/Renunciation.

Most countries are party to the Hague Convention. If the Affidavit/Renunciation or Apostille is in a foreign language, this must be translated.

Further information:

Registers of Scotland Executive Agency
Meadowbank House
153 London Road, Edinburgh EH8 7AU
LP 54, EDINBURGH
DX 555400, EDINBURGH 15

Tel: 0131 659 6111

Fax: 0131 479 3688

Email: keeper@ros.gov.uk

