

Registers Update - Notices of Potential Liability for Costs

REGISTERS OF SCOTLAND
Executive Agency



Information about Scotland's land & property

The Tenements (Scotland) Act 2004 ('the 2004 Act') came into force on 28 November 2004.

UPDATE: 14

The Act introduces a new notice that is capable of being recorded in the General Register of Sasines or registered in the Land Register of Scotland. This is the 'notice of potential liability for costs' in respect of a tenement flat.

The 2004 Act also amends the Title Conditions (Scotland) Act 2003 ('the 2003 Act'), to introduce a second form of notice of potential liability for costs which can be registered against the title to a burdened property. This Update sets out the registration requirements and procedures for both types of notice.

Introduction

Section 12 of the 2004 Act provides that the new owner of a tenement flat will only be liable for costs relating to maintenance or work (other than local authority work) carried out before the date on which he or she acquired right to the flat where a notice of potential liability for costs has been registered at least 14 days before that date. The 2004 Act also amends section 10 of the 2003 Act to insert an equivalent provision in relation to the liabilities of incoming owners of burdened properties in respect of the costs of work or maintenance carried out under affirmative burdens prior to the acquisition date.

Form of Notices

Notices of potential liability for costs must follow, as near as may be, the statutory forms. The form of the tenement flat notice is given in Schedule 2 to the 2004 Act as amended by the Tenements (Scotland) Act 2004 (Notice of Potential Liability for Costs) Amendment Order 2004. The amendment adds the underlined words to the preamble of the notice, which now reads: -

'This notice gives details of certain maintenance or work carried out or to be carried out in relation to the flat specified in the notice. The effect of the notice is that a person may, on becoming owner of the flat, be liable by virtue of section 12(3) of the Tenements (Scotland) Act 2004 (asp 11) for any outstanding costs relating to the maintenance or work.'

The form of the burdened property notice is given in a new Schedule 1A to the 2003 Act, which has been inserted by the 2004 Act. Both statutory forms include notes for completion.

Who may register a notice?

The tenement flat notice may only be given by or on behalf of (1) the owner of the particular flat, (2) the owner of another flat in that tenement or (3) any manager of the tenement. The burdened property notice may only be given by or on behalf of (1) the burdened proprietor, (2) a benefited proprietor or (3) a manager. In each case the Keeper will wish assurance that the application is made by or on behalf of an eligible party. It is suggested that the most convenient way of giving this is to include the information within the 'person giving notice' section of the notice. This is discussed further below. If confirmation of eligibility is not given within the notice itself, the Keeper's staff will contact the applicant's agent for assurance that the particular party is entitled to registration. If such assurance is not forthcoming registration may be refused.



Registration against several properties

A single notice may be registered against several flats within the one tenement, or against several burdened properties, so long as the notice is given in respect of the same work or maintenance for each property. However if there are any differences in the work or maintenance from one property to another, separate notices will be needed.





Completing a notice - registration requirements

The tenement flat or burdened property to which the notice relates must be adequately described. A postal address must be given unless the subjects have no address. A property description is also necessary. For a registered flat or burdened property the title number must be given. In the case of a flat or property with a Sasine title, the description must be sufficient and the statutory notes for completion of notices indicate that a description by reference should normally be used.

As well as the name of the person applying for registration, the address of that person or their agent's name and address must be given. This section of the notice can also be used to confirm that the party is entitled to apply for registration. For example a notice might be completed '*Kathleen Jones, 142 Easter Road, Edinburgh. The applicant is proprietor of another flat in the tenement.*'

Notices can be signed by or on behalf of the party applying for registration. In both Land and Sasine Registers notices of potential liability for costs must be executed with self-proving status. To comply with the Requirements of Writing (Scotland) Act 1995, the name and address of the witness must be given on the notice. Both the 2003 and 2004 Acts require the date of signing to be given.

Registration applications and fees

Notices of potential liability for costs are only registered against the title of the subject property or flat. They are not dual registered against the title to the benefited property or other flats in the tenement. In the Land Register, application should be made on Form 2 with Form 4 in duplicate. Where the subject property or flat has a Sasine title the statutory Sasine Application Form must be used. Notices of potential liability for costs are outwith the scope of stamp duty land tax and no SDLT certification is required. In all cases the registration fee is the miscellaneous event fee, which is currently £25. A single fee of £25 is payable even if the notice relates to more than one flat or burdened property.

In Land Register cases, the Land and Charge Certificates do not need to be sent with the application for registration.

These will not usually be available to the party seeking registration and the Keeper will, for the purposes of Rule 18 of the Land Registration (Scotland) Rules 1980, consider this to be good cause for not producing the Certificates of Title.

Approach to and result of registration

In the Sasine Register, notices of potential liability for costs are recorded in the same way as any other writ. An entry is made on the Computerised Search Sheet for the subject flat or burdened property, allowing notices to be disclosed on subsequent searches and first registration reports. In the Land Register notices are registered in the burdens (D) section of title sheets. Where a notice is registered after the date to which the Land Certificate was last updated, it will be disclosed on Form 12 and 13 reports.

Notices expire three years after registration but can be renewed by registering again before the end of that period.

Registration does not confirm or enhance the accuracy of the information given in notices of potential liability for costs. Both the 2003 and 2004 Acts specifically provide that the Keeper is not required to investigate or determine whether the information contained in any notice is accurate. In addition a new paragraph (q) has been added to section 12(3) of the Land Registration (Scotland) Act 1979 to confirm that there is no entitlement to indemnity for loss arising in consequence of any inaccuracy in any information contained in a notice of potential liability for costs.

Further Information

All previous Registers Updates are available on our website www.ros.gov.uk/updates. Our Pre-Registration Enquiries Section will be pleased to offer registration guidance to solicitors on specific matters of concern in connection with an application for registration affected by the issues raised in this update. The service is free of charge.

Pre-Registration Enquiries at:
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