



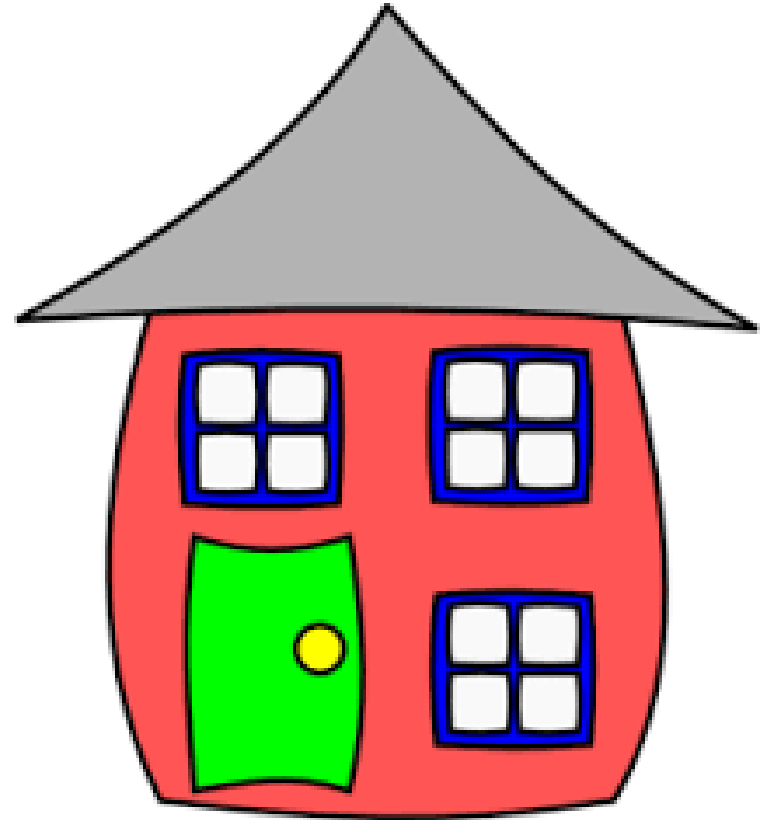
Scottish Law Commission
promoting law reform

Heritable Securities: Non-monetary securities and sub-securities

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SLC Project on Heritable Securities

- Major review project running from 2018-2025
- Conveyancing and Feudal Reform (S) Act 1970
- DP1: pre-default
- DP2: default and post-default
- DP3: non-monetary securities and sub-securities
- Single Report and draft Bill due 2025



Discussion Paper 3

- How to deal with non-monetary securities in future
- A suggested scheme for protecting obligations to transfer land
- Other potential schemes for protecting obligations to transfer land
- Standard securities over standard securities: should they continue to be competent?
- Assignment in security of a standard security



Security in respect of non-monetary obligations

- Scotland an outlier in its approach to security for non-monetary obligations
- Key issue is whether a financial remedy meets the needs of the creditor
- In future legislation:
 - Security only for monetary obligations (which could be eg damages)?
 - Or security for non-monetary obligations, but with legislation clarifying that only financial remedies are available?



“Conditional advance notices”



- A scheme to protect obligations to transfer land based on the advance notice system
- Conditional advance notice identifies a conditional obligation to grant a deed
- Entered on register by intended granter
- Protection against voluntary competing deeds during the protected period
 - But perhaps not against involuntary competing deeds?
- Long (extendable) protected period
- Notice assignable
- Notice can be deleted or discharged

Conditional advance notices

- What about tenant purchase options?
- Alternative approaches to protecting obligations to transfer land:
 - Bespoke remedies within the law of standard securities
 - A new form of personal real burden
 - Self-inhibition





Sub-securities

- B holds a claim to repayment against A, and a standard security in A's house.
- B borrows money from C, and offers his secured claim against A as collateral for that loan.
- C takes an assignation in security of B's claim against A, and a standard security over B's standard security in A's house.
- Purpose of a right in security is the power to realise funds from the security subjects
 - funds can be realised from a claim to repayment
 - but funds cannot be realised from a standard security independent of the claim it secures

Reform options

- Standard securities over standard securities will no longer be competent
- Is any provision for taking security over a right in security needed?
 - Where a claim is assigned, the assignee has a right to acquire any related security
 - Same rule applies whether the claim is assigned outright or for the purposes of security
 - Does it make sense to describe the standard security as being assigned “for the purposes of security”?





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Consultation on Discussion Paper 3 open
until 29th September 2023

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