DEEDS OF REAL BURDENS

Guidance Notes

Introduction

Section 4 of the Title Conditions (Scotland) Act 2003 (the "Act") allows real burdens to be created in any document capable of registration in the property registers, not just a disposition or deed of conditions.

The Deeds of Real Burdens (Unilateral and Reciprocal) have been drafted to allow the creation of real burdens outwith the terms of a disposition or deed of conditions, in each case assuming that there will only two properties involved.

The Deed of Real Burdens (Unilateral) has been drafted to be used where burdens are being imposed on one property in favour of the other.

The Deed of Real Burdens (Reciprocal) has been drafted to be used where each property will have burdens imposed upon it in favour of the other property.

1 **Definitions**

The Deed is structured to allow the terms of the real burden to be set out either within the Deed itself or within the schedule to the Deed depending upon the number and complexity of the burdens.

The Deed of Real Burdens will need to be registered simultaneously against both the benefited and burdened property (Section 120 of the Act) for the real burden to be effective and both properties must be defined using proper conveyancing descriptions.

2 **Consent**

The consent of the holder of a heritable security over a property to be burdened will need to be procured.

3 **No Lands Tribunal Application**

An application can be made to the Lands Tribunal for Scotland to have a real burden varied or discharged as soon as the deed creating the real burden is registered unless the wording in this clause is included. This clause prevents any application being made to the Lands Tribunal for the period specified which can be up to a maximum of 5 years (see section 92 of the Act).

4 **Effective Date**

The Deed of Real Burdens assumes that the effective date of the real burden will be the date of registration of the constitutive deed in the property register. It is competent to postpone the effective date to some other date (see Section 4 of the Act). If the effect of the real burden has been postponed, the provision on application to the Lands Tribunal for Scotland may need to be adjusted accordingly depending upon the requirements of the transaction.

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