

2010 No. 264

HOUSING

**The Lay Representation in Proceedings relating to Residential
Property (Scotland) Order 2010**

<i>Made</i> - - - -	<i>22nd June 2010</i>
<i>Laid before the Scottish Parliament</i>	<i>22nd June 2010</i>
<i>Coming into force</i> - -	<i>3rd October 2010</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by section 5F(3) and (4) of the Heritable Securities (Scotland) Act 1894(a), section 24E(3) and (4) of the Conveyancing and Feudal Reform (Scotland) Act 1970(b) and all other powers enabling them to do so.

In accordance with section 5F(5) of the Heritable Securities (Scotland) Act 1894 and section 24E(5) of the Conveyancing and Feudal Reform (Scotland) Act 1970 they have consulted the Lord President of the Court of Session.

Citation, commencement and interpretation

1. This Order may be cited as the Lay Representation in Proceedings relating to Residential Property (Scotland) Order 2010 and comes into force on 3rd October 2010.

2. In this Order—

“the 1894 Act” means the Heritable Securities (Scotland) Act 1894;

“the 1970 Act” means the Conveyancing and Feudal Reform (Scotland) Act 1970; and

“approving organisation” means a person or body prescribed, or of a description prescribed, in article 3.

Persons or bodies prescribed for the purpose of approving lay representatives

3. For the purposes of section 5F(3) of the 1894 Act and section 24E(3) of the 1970 Act, the persons or bodies prescribed, or of a prescribed description, are—

(a) those entered on the register of advice organisations established and maintained by the Scottish Legal Aid Board under section 12A of the Legal Aid (Scotland) Act 1986(c);

(a) 1894 c.44. Section 5F was inserted by section 7(2) of the Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6) (“the 2010 Act”).

(b) 1970 c.35. Section 24E was inserted by section 7(1) of the 2010 Act.

(c) 1986 c.47. Section 12A was inserted by section 67(6) of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5).

- (b) those accredited at Type III level against the Scottish National Standards for Information and Advice Providers^(a) in the area of competence of mortgages/secured loans;
- (c) councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994^(b); and
- (d) citizens advice bureaux entered in the register of member bureaux maintained by the Scottish Association of Citizens Advice Bureaux – Citizens Advice Scotland^(c).

Procedure for approval of lay representatives

4. The procedure set out in articles 5 to 7 must be followed in any application by an individual (“the applicant”) for approval as a lay representative.

5.—(1) An individual seeking to be approved must make an application to an approving organisation.

(2) An approved lay representative or an individual who has made an application for approval to an approving organisation which has not yet been determined may not apply to any other approving organisation for approval.

6.—(1) The approving organisation’s consideration of an application for approval must have regard to the interests of persons who might seek to be represented by an approved lay representative and must involve an assessment by the approving organisation of the applicant’s—

- (a) knowledge and understanding of—
 - (i) Scottish legislation and common law in so far as they relate to housing and repossession; and
 - (ii) court procedures and rules, in particular those relating to summary applications in the Sheriff Court;
- (b) competence at constructing and stating a case both orally and in writing; and
- (c) advocacy skills, in particular in support and representation.

(2) The approving organisation must obtain an undertaking that the applicant, if approved as a lay representative, will—

- (a) not act as a lay representative in any situation where this would place the applicant in a situation of conflict of interest; and
- (b) respect client confidentiality.

7. As part of the approval process the approving organisation may provide the applicant with, or make available, training to assist the applicant to achieve a satisfactory level of knowledge, understanding, competence and skill in the matters referred to in article 6(1).

Manner of approval of lay representatives

8. When approving an individual to act as an approved lay representative the approving organisation must specify the sheriff court districts in which it expects that individual to act.

Procedure for withdrawal of approval of lay representatives

9. An approving organisation may withdraw any approval it has granted by notice to the approved lay representative.

(a) Described in the Scottish Government Manual “Scottish National Standards for Information and Advice Providers: A Quality Assurance Framework 2009”, published in Edinburgh, September 2009 (ISBN 978-0-7559-8143-4). The housing specific competences are contained in section 2 of the Manual.

(b) 1994 c.39.

(c) Scottish charity number SC016637; Scottish company number SC089892. It maintains the register of member bureaux in accordance with the provisions of Article 3 of its Articles of Association.

10. The procedure approved for withdrawal of approval must involve an evaluation by the approving organisation of the approved lay representative's performance, in particular whether the approved lay representative—

- (a) no longer satisfies the criteria set out in article 6(1);
- (b) is performing inadequately and the approving organisation considers that the approved lay representative's performance could not be sufficiently improved by additional support or training; or
- (c) has acted dishonestly, in breach of client confidentiality, or in a situation of conflict of interest.

(2) Where an approved lay representative has been provided with additional support or training as referred to in article 13 and following a further evaluation the approving organisation considers that the approved lay representative cannot perform adequately, the approving organisation must notify the approved lay representative that the approval is withdrawn.

11.—(1) An approval of an approved lay representative is deemed to be withdrawn if the organisation which granted the approval ceases to be an approving organisation.

(2) The organisation must notify the individual of that withdrawal.

Circumstances in which an approved lay representative may not act

12. An approved lay representative may not represent any debtor or entitled resident other than in proceedings where the debtor or entitled resident is a client of an approving organisation.

13. Where an approved lay representative is performing inadequately as referred to in article 10(1)(b) and the approving organisation decides—

- (a) not to withdraw approval; and
- (b) instead to provide additional support or training to improve the performance of that lay representative,

the approved lay representative may not represent any debtor or entitled resident until the approving organisation is satisfied that the approved lay representative can perform adequately.

Requirement to provide information about approvals and withdrawals of approval

14. Approving organisations must provide the Scottish Ministers with information about approvals and withdrawals of approval by them when required by the Scottish Ministers.

15. For the purposes of article 14 the information which may be required may include any or all of the following information about approvals and withdrawals of approval—

- (a) the total number of individuals approved by that approving organisation;
- (b) the number of individuals approved by that approving organisation over a specified period of time;
- (c) the sheriff court districts in which approved lay representatives are expected to act;
- (d) for each sheriff court district referred to in paragraph (c), the number of approvals involved;
- (e) details of any training provided or made available to applicants under article 7;
- (f) the total number of withdrawals of approval by that approving organisation;

- (g) the number of withdrawals of approval by that approving organisation over a specified period of time; and
- (h) the reasons for withdrawals of approval.

St Andrew's House,
Edinburgh
22nd June 2010

ALEX NEIL
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This Note does not form part of the Order)

This Order makes provision about approved lay representatives for the purposes of section 5F of the Heritable Securities (Scotland) Act 1894 and section 24E of the Conveyancing and Feudal Reform (Scotland) Act 1970, as introduced by section 7 of the Home Owner and Debtor Protection (Scotland) Act 2010.

Article 3 prescribes organisations which may approve individuals as lay representatives (“approving organisations”). It prescribes certain of these organisations by description, so that any person or body meeting that description is entitled to approve lay representatives.

Articles 4 to 6 set out the procedure which must be followed in order for an applicant to be approved as a lay representative. Article 7 provides that approving organisations may provide or make available training to applicants as part of the approval process. Article 8 provides that an approving organisation’s approval of a lay representative must specify the Sheriff Court districts within which the lay representative is expected to act.

Articles 9 to 13 set out procedures for withdrawal of approval and prescribe circumstances in which an approved lay representative may not represent a debtor or entitled resident.

Article 14 makes provision requiring information to be provided to the Scottish Ministers from approving organisations. Article 15 sets out the information that this may include.

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