

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION
NOT FOR PUBLICATION OR BROADCAST
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REPORT ON SHARP v THOMSON

Recommendations for improved transactional security for buyers

Buyers of flats, houses and land would have their protection against the danger of a corporate seller's insolvency improved under draft legislation published today.

The Scottish Law Commission's recommendations to Scottish Ministers arising out of the *Sharp v Thomson* case are published today. Under existing law an innocent buyer can, in some circumstances, lose the property if a corporate seller becomes insolvent in the course of a sale. To reduce that risk, and thus enhance transactional security, the Commission recommends:

- Tougher rules to ensure that buyers can readily find out whether winding-up proceedings against a corporate seller are in hand.
- Tougher rules about future floating charges to ensure that they cannot attach to the property without the attachment having been publicly registered. This is the "no attachment without registration" principle.
- Abolition of an antiquated rule that allows a liquidator of an insolvent corporate seller to out-manoeuvre a buyer by means of an immediate "completion of title".

Professor Gretton, the lead Commissioner in this project, commented:

"The law's now fairly good at protecting a buyer against the risk that an individual seller might be insolvent. It's less good where the seller's a company. And yet nowadays companies are often involved in conveyancing transactions. It's time the law recognised that fact, which is why we're making these recommendations today to the Scottish Government."

Two proposals that were in the Commission's original Discussion Paper are not among the recommendations published today. One was to legislate about the doctrine of "purchaser's beneficial interest", a doctrine that had the potential to destabilise much of Scots property law. As a result of the recent case of *Burnett's Trustee v Grainger*, that danger has receded, and the Commission concludes that legislation on this point is not now required. The other is the fourth proposal in the Discussion Paper, which has already been taken forward by section 17 of the Bankruptcy and Diligence etc. (Scotland) Act 2007. That section enhances a buyer's protection against the insolvency of a non-corporate seller.

NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Hon Lord Drummond Young, a Court of Session judge. The other Commissioners are Professor George L Gretton, Professor Gerard Maher QC, Professor Joseph M Thomson and Colin J Tyre QC. The Chief Executive is Michael Lugton.
2. Further information can be obtained by contacting John Dods, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, email: info@scotlawcom.gov.uk).
3. The paper may also be viewed on our website at www.scotlawcom.gov.uk or purchased from TSO Scotland Bookshop.