



# Scottish Law Commission

*promoting law reform*

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ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION  
NOT FOR PUBLICATION OR BROADCAST  
BEFORE 0001 HOURS ON 18 JUNE 2019

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## MAJOR REVIEW OF MORTGAGE LAW DISCUSSION PAPER ON HERITABLE SECURITIES: PRE-DEFAULT

The Scottish Law Commission today publishes a Discussion Paper seeking views on proposals for the reform of securities granted over land and buildings in Scotland.

The use of property to secure debt is of crucial importance to the economy and to citizens. It allows businesses to grow. It allows people to buy their homes.

Mortgages are big business: 127,306 transactions were registered in Scotland in 2017/2018.

It is essential therefore that the law is kept up to date. Over 50 years have passed since the last major review of the law on security over land, which led to the introduction of the “standard security” by the Conveyancing and Feudal Reform (Scotland) Act 1970. Many changes in society and in technology have occurred in that period.

The basic structure is fit for purpose, but much needs to be improved. For example, court decisions show that key rules are unclear and there are too many compulsory forms of document, which are difficult to use.

The Discussion Paper considers creation, variation, transfer and discharge of standard securities, as well as which types of obligation can be secured. A second Discussion Paper on enforcement is scheduled for 2020. Consumer credit and regulatory issues are outwith the scope of the project.

We set out over 60 proposals and questions, including that:

- The law on security over land is consolidated,
- The compulsory forms of document are abolished,

- The “standard conditions”, which govern every standard security, in their current form are abolished,
- People who lease mortgaged properties should be clear about their rights and responsibilities, and
- A sunset rule under which very old securities are automatically extinguished after a certain period of time should be considered.

The Commission is very keen to hear from everyone with an interest. Comments can be made until 30 September 2019, and will help shape the recommendations to be made in our final Report.

Dr Andrew Steven, the lead Commissioner, said:

“Mortgages are hugely important. They make it possible for people to buy homes and for businesses to grow. Too much of the law is old or unduly complex, leading to uncertainty. This Discussion Paper is an important step towards ensuring that the law is fit for the needs of today’s Scotland.”

## **BACKGROUND NOTES FOR EDITORS**

1. The Scottish Law Commission is an independent public body set up in 1965 to advise the Government on law reform. We recommend changes that will improve, simplify and update the law of Scotland.
2. The Discussion Paper will be available on our website at <https://www.scotlawcom.gov.uk> as early as possible on 18 June 2019.
3. A short summary will be published with the Discussion Paper, and is available in advance on request.
4. “Heritable property” in Scotland includes land and buildings. “Heritable security” is the legal term for a mortgage (the term used in English law). Since 1970 the only permissible form of heritable security has been the “standard security”.
5. The Heritable Securities project examines property rights and issues around enforcement. It will not examine issues relating to mortgage lending i.e. the fairness or otherwise of the secured loan and interest on it or the regulation of mortgage providers.
6. This is the first of two consultations. We expect to publish a second discussion paper on enforcement (post-default) late next year.
7. Further background information can be obtained from the project manager Andy Crawley (Tel: 0131 668 2131; email [info@scotlawcom.gsi.gov.uk](mailto:info@scotlawcom.gsi.gov.uk)).