**Standard Security**

**The document**

In Scotland, the only fixed charge available over heritable property is the standard security (the document most people refer to us the mortgage over their property). (This form of charge is governed by the Conveyancing and Feudal Reform (Scotland) Act 1970.)

A standard security may be granted over heritable property owned by the debtor or held by the debtor under a lease which is for a term of 20 years of more. (In Scotland fewer properties are held under long leases than in England. The maximum duration for a long lease in Scotland is now 175 years.)

A standard security operates to create a security interest over the owner’s, or tenant’s, interest in the property. The debt secured by a standard security may be any obligation due or which may become due to repay money or an obligation “ad factum praestandum” (to perform a particular task).

**Registration and Ranking of Standard Securities**

A standard security must be registered in the property registers (Register of Sasines or the Land Register of Scotland.) If a company grants a standard security it must also be registered in the Register of Charges at Companies House within 21 days of creation (date of registration in the property registers).

Generally, a standard security will rank ahead of other charges (and any standard securities registered subsequently). It is possible for creditors to enter into a ranking agreement to determine the ranking position of the standard security/securities and other charges, eg floating charges.

**Enforcement of Standard Securities**

A creditor is entitled to exercise any of the rights conferred on it under the standard security as considered appropriate when the debtor is in default. The rights available are, *inter alia,* to carry out necessary repairs, enter into possession and recover rents, sell the security subjects and apply to the court for a decree of foreclosure.

The creditor must take some preliminary steps prior to exercising such rights:

1. a creditor may serve a calling up notice demanding payment of the whole outstanding loan, including interest and expenses. Calling up notices are generally served when the debtor is in arrears of mortgage payments but the creditor could choose to serve it at any point if the terms of the security allow. If the debtor fails to repay the loan the creditor may exercise any of the powers conferred by the standard security.
2. if a debtor is in default in respect of any of other provisions of the standard security apart from the monetary arrears, and the default can be remedied, the creditor may serve a notice of default calling on the debtor to remedy the default. The debtor is generally given one month to comply with the default notice.
3. Finally, section 24 of the 1970 Act permits a creditor to raise court proceedings against a debtor without first serving a calling up notice or a notice of default. This procedure is not widely used since it gives the debtor no advance notice of the action. When the debtor receives notice of the court action he will be given 21 days to notify the court as to whether it intends to defend the action. If there is no defence, decree will be obtained and the creditor can proceed to exercise the powers under the standard security.

In practice, after expiry of the period of notice in either a calling up notice or a notice of default, a creditor will proceed to obtain an order from the court granting warrant to exercise all rights open to them, including the right to enter into possession of the security and to eject the debtor and any other occupier.