

# **ORKNEY FAMILY HISTORY SOCIETY**

## **GLOSSARY OF SOME COMMON SCOTTISH LEGAL TERMS**

### **Articles of Roup**

Conditions of sale by public auction

### **Assignment**

Formal deed or writ transferring a right from one party to another

### **Bond and Disposition in Security**

Formal deed or writ securing a loan over real (heritable) property, combining a personal bond by the borrower with a disposition over the lands on which the sum was secured, used before Standard Securities were introduced in the 1970s

### **Books of Council and Session**

A popular title for the Registers of Deeds and Probative Writs, kept by the Keeper of the Registers of Scotland. According to the directions contained within the deeds, they may be registered for preservation or for preservation and execution.

### **Caution (pronounced “kayshun”)**

Another word for Security, in older deeds sometimes named a Bond of Caution

### **Charter**

A formal deed or writ used in the nineteenth century to create a new feu. See also Feu Disposition.

### **Clare Constat (often Writ of Clare Constat)**

The name of a deed by which a superior intimated that someone was heir to heritable property and which ordered the giving of sasine to the heir. No longer in use.

### **Contract of Excambion**

Formal deed or writ relating to an agreement to exchange one piece of land for another

### **Conveyance / Disposition**

Formal deed or writ disposing ownership or “title” of property from one person to another. Ownership does not pass until the Disposition has been registered in the appropriate Register (of Sasines or the Land Register of Scotland)

**Discharge**

Formal deed or writ ending an obligation to repay a debt under a Standard Security held over heritable property.

**Dispone**

To grant or transfer ownership of property from one person to another

**Disposition**

Formal deed or writ disposing ownership or "title" of property from one person to another. Ownership does not pass until the Disposition has been registered in the appropriate Register (of Sasines or the Land Register of Scotland).

**Encumbrance**

Debt secured over land

**Entry**

Taking entry to land i.e. possession through right acquired by purchase or lease; or taking entry as an heir or successor to land, including in the past as a new vassal with his or her superior

**Executor**

Person appointed to administer the estate of a deceased person

**Factor**

Person managing property on behalf of owner. Sometimes also a person who holds, buys or sells goods on commission for another person.

**Fee**

The fiar enjoys full rights over a property, including at the end of a liferent. The rights of the property enjoyed by a fiar are known as the fee.

**Feu**

The holding of land in a feudal manner. This meant that the vassal (purchaser) held land from a superior (landowner) on terms such as a requirement to build on the land or keep the land in a certain manner and to pay rent or feuduty. The vassal was the owner in the usual sense, provided s/he kept to the obligations of the feu. The land held in this manner was called the feu. See also Superior and Vassal.

## **Feu Disposition**

In the nineteenth century, charters were often used to create new feus, while dispositions were used to carry existing feus forward to new proprietors. Sometimes, however, a form of disposition was also used to create new feus and these were known as Feu Dispositions

## **Feu Duty**

Perpetual ground rent due by a feuar to a superior, abolished in 2000.

## **Fiar**

The person entitled to the fee of land or securities which may be liferented to another

## **Heritable Estate / Property**

Meaning property in the form of land or buildings – “real” and immovable. Rights connected with heritable property such as servitudes or debts secured over land are also heritable.

## **Instrument of Sasine**

Formal document providing evidence of the giving of possession of heritable property. No longer in use.

## **Joint and Several Obligation**

An obligation resting upon more than one person in which each obligant is liable for performance jointly or collectively with the others but also severally or individually. The creditor in such an obligation may sue all, or alternatively any one, of his debtors.

## **Land Register of Scotland**

A public register of interests in land in Scotland, under the management and control of the Keeper of the Registers of Scotland, replacing the recording of deeds in the Register of Sasines.

## **Liferent**

The right to enjoy the use or benefit of a property (land or buildings) for the lifetime of the beneficiary or some other specified period. Thereafter the property passes to the fiar.

## **Minute of Waiver**

A formal deed or writ varying the terms on which land or buildings may be used by the owner. Land and buildings may be subject to burdens, restricting the use to which they may be put. The owner may ask those with the interest to enforce the burden to grant a waiver altering the terms of the burden, removing the restriction on the use of the land or buildings

## **Moveable Estate / Property**

Personal estate – all property which is not heritable e.g. animals, clothing, household items, furniture.

## **Notarial Instrument**

As a formal writ, a form of completion to title to heritable property, now replaced by the Notice of Title. Also a document prepared by a Notary detailing matters which have been agreed in his/her presence.

## **Notary Public**

An official before whom affidavits and other documents may be sworn (usually nowadays a lawyer or solicitor).

## **Notice of Title**

A formal deed or writ prepared by a solicitor or notary narrating the manner by which a person has a right to ownership of heritable property and completing his/her title to the property by recording in the Register of Sasines or registering in the Land Register.

## **Pro indiviso**

Where property is owned by several persons in common, although they need not have equal shares in it. For example, 3 people could own the property, one having a 50% pro indiviso share, and each of the other 2 people owning 25% pro indiviso share each.

## **Quarter Days**

Candlemas, Lammas, Martinmas and Whitsunday. See also Term Days.

## **Register of Inhibitions and Adjudications**

The Register of Notices of actions against persons which mean that they cannot transfer heritable property to the detriment of a creditor

## **Register of Sasines**

The Register of Titles to land and heritable property in Scotland. The General Register of Sasines has been maintained since 1672. Counties and royal burghs also had their own Particular Registers of Sasines, until these were closed down at various time during the twentieth century and all titles to land were required to be recorded in the General Register.

## **Roup**

Public auction

## **Sasine**

A document evidencing transfer or grant of possession of land, now conferred by registration of title.

## **Search for Incumbrances (or Encumbrances)**

A search conducted in the property and personal registers to check the validity of a person's title to property, to check whether there are any securities or other charges against the property and whether there may be any personal charges against the persons granting any deeds preventing or inhibiting them from granting such deeds. See also Register of Sasines, Land Register and Register of Inhibitions and Adjudications.

## **Standard Security**

Formal deed or writ securing a loan over real (heritable) property introduced in the 1970s.

## **Superior**

The grantor of a feudal right. See Feu.

## **Teinds**

Tithes – the tenth part of the annual produce of land out of which a minister's wage was originally payable

## **Tenement**

Land – built upon or not. Also a building containing separate dwellings (flats).

## **Term Days**

Dates at which rent or interest are payable. Commonly Whitsunday (15 May) and Martinmas (11 November). Also Candlemas (2 February) and Lammas (1 August). All of these dates are now changed to the 28<sup>th</sup> day of the month, unless the relevant document specifically provides otherwise.

## **Trust Disposition and Settlement**

A formal deed or writ enabling someone to dispose of their whole property, both heritable and moveable e.g. in the event of death.

## **Udal**

Land held under a remnant of Norse law in Orkney and Shetland. It is a form of allodial (non-feudal) tenure i.e. there are no feudal aspects of Scottish landownership, no formal superiority and the holder did not require to have sasine or a charter to the lands, but only to have evidence of his undisturbed occupation. Such lands were held direct from the Crown for a payment called "skat". See Feu for comparison.

## **Vassal**

See Feu

## **Vest (Seised)**

Having ownership of real estate by virtue of a title recorded in the appropriate Register (of Sasines or the Land Register of Scotland)

## **Writs**

Any document of legal significance, including documents of title

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