

# *Gebbie & Wilson Newsletter*

MAY 2009

## **DILIGENCE CHANGES**

New provisions relating to the creation, termination, registration and legal effect of inhibitions and other forms of diligence came into force on 22<sup>nd</sup> April 2009 bringing inhibition within the province of the Sheriff Court, thus streamlining and reducing the expense of the Inhibition process. The new provisions are contained in Part 5 of the Bankruptcy and Diligence etc (Scotland) Act 2007.

Inhibition is a 'freezing' diligence and prevents a person from disposing of, or granting security over, their interest in heritable property to the prejudice of creditors.

Key changes which part 5 introduce are:-

- Creditors will no longer be required to obtain 'letters of inhibition' from the Court of Session in order to inhibit in execution of a sheriff court judgement. Warrant to inhibit will be automatically contained in a sheriff court extract decree.
- Where the debtor is an individual, the schedule of inhibition served in execution of an inhibition must be accompanied by a Debt Advice and Information Package (DAIP). Failure to provide the DAIP will render the inhibition incompetent.
- An inhibition is registered only by registering a copy of the schedule of inhibition served by an officer of the Sheriff Court or the Court of Session and the certificate of execution of inhibition in the Register of Inhibitions. These are in the forms prescribed by the Diligence (Scotland) Regulations 2009 (SSI 2009/68).
- Inhibition no longer confers any preference in sequestration, insolvency proceedings or other processes in which there is ranking.
- An inhibition is no longer terminated by payment of the debt alone. It will cease to have effect when the debt is paid plus any interest, expenses and the expenses of discharging the inhibition.

**If you would like to discuss any of the above please contact our Court Department**