

TRANSFER OF TENANCIES

Agricultural Tenancies
Limited Duration Tenancy

TRANSFER BY ASSIGNATION

A tenant may assign a Limited Duration Tenancy provided that he has first obtained the consent of the landlord. The tenant must first serve on the landlord a formal written notice of intention to assign on the landlord.

On receipt of such notice the landlord has three choices –

- he can consent to the assignation
- he can withhold consent to the proposed assignation
- he can give notice of his intention to acquire the tenant's interest under the lease.

If he wishes to withhold consent then this can only be on reasonable grounds and on the basis that he is not satisfied as to the tenant's financial resources or his level of skill or experience. If the landlord is to acquire the tenant's interest then this must be on terms which are no less favourable to the tenant than any reasonable terms on which the proposed assignation was to have been made.

TRANSFER BY BEQUEST IN WILL

A tenant can bequeath his tenancy to his son-in-law or daughter-in-law or any one of the persons who would, or would in any circumstances have been, entitled to succeed to his estate under the laws of succession applicable where there is no will.

For the bequest to be successful, the legatee must intimate his acceptance to the landlord, in writing, within 21 days of the death of the tenant unless there is an unavoidable cause preventing him from doing so. Provided that the landlord does not object, the legatee will become the tenant with effect from the date of death of the previous tenant. The landlord may, however, decide to object. To be successful, an objection must be on reasonable grounds and will relate to one of three matters pertaining to the legatee –

- his agricultural knowledge and skill
- his financial resources in relation to the farm
- his personal character and repute.

The success or otherwise of the objection will be determined by the Scottish Land Court on the application of the legatee.

TRANSFER ON DEATH WITHOUT BEQUEST

The tenant's executors must first confirm (obtain probate) to the tenant's interest in the tenancy. The executors then have one year from either the date of death of the tenant or the date on which the Scottish Land Court declares a bequest null and void, to transfer the lease to one of the class of eligible acquirers. An acquirer must be one of the persons who would be entitled to succeed to the tenant's estate under the laws of succession applicable where there is no will *or any other person*.

In determining to whom the tenancy should be transferred or whether to terminate the tenancy the executors must apply the test of "what is in the best interest of the deceased's estate?"

The acquirer must intimate to the landlord the transfer to the acquirer within 21 days of the date of transfer unless an unavoidable cause prevents him from doing so. The landlord then has one month to object and, after the expiry of a further month, can apply to the Scottish Land Court for an order terminating the tenancy. To be successful, an objection must be on reasonable grounds and will relate to one of three matters pertaining to the acquirer –

- his agricultural knowledge and skill
- his financial resources in relation to the farm
- his personal character and repute.

If the objection is rejected, then the Scottish Land Court will make an order refusing the application and the acquirer will become the tenant as if the objection had never been made. If the objection is upheld, the Scottish Land Court will make an order terminating the lease.

It should be noted that when, in the absence of an effective bequest, the executors have sought to transfer the lease to a person who is *not* entitled to succeed to the deceased's estate under the laws of succession applicable where there is no will, the landlord may pre-emptively acquire the tenant's interest in the lease.

It is recommended that specialist advice should be obtained if any of these circumstances apply.

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