

TRANSFER OF TENANCIES

Agricultural Tenancies
Short Limited Duration Tenancy

TRANSFER BY ASSIGNATION

A Short Limited Duration Tenancy cannot be assigned by the tenant.

TRANSFER BY BEQUEST IN WILL

A tenant can bequeath a Short Limited Duration Tenancy to his son-in-law or daughter-in-law or any one of the persons who would be 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 by formal written notice to the landlord 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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