

TENANTS RIGHT TO BUY

Agricultural Tenancies
1991 Act Tenancy

THE RIGHT TO BUY

The tenant's right to buy was introduced by the Agricultural Holdings (Scotland) Act 2003 ("the Act"). It is a "pre-emptive" right to buy and not an "absolute" right to buy. This means that the tenant can only exercise his right to buy when the owner proposes to sell the tenanted land.

In order that the tenant should be able exercise the right he must first register an interest in acquiring the land comprised in his lease. The interest requires to be registered in the Register of Community Interests in Land which is maintained by the Registers of Scotland. There is a specific form which must be completed and submitted to the register to achieve this. If the tenant does not acquire the land within five years of the date of the initial registration then a re-registration is required to keep the interest alive.

An owner of tenanted land (or a creditor in a standard security with a right to sell the land) where an interest has been registered is obliged to notify the tenant if he proposes to transfer the land to another person. This triggers the right to buy process.

There are a number of exempt transfers which do not require the tenant to be notified. These include transfers –

- for nil consideration (otherwise than for value)
- in implement of a court order (excluding creditors in a standard security or actions of division and sale)
- between spouses as part of an arrangement where they have ceased living together
- of croft land to the crofter tenanting it
- between companies in the same group
- to a statutory undertaker who is carrying on the undertaking
- in compulsory purchase situations
- in implementation of the Community Right to Buy or Crofting Community Right to Buy provisions under the Land Reform (Scotland) Act 2003

- implementing missives for sale or an option which existed before the tenant's interest was registered
- conveying a house to person who has purchased it by virtue of the tenant's right to buy contained in the Housing (Scotland) Act 1987 or where the consent of the Scottish Ministers would be required in terms of that Act
- where under the Housing (Scotland) Act 2001 a registered social landlord exercises his right to dispose of land
- where the land is vested in a person in consequence of sequestration, bankruptcy, winding up or incapacity or the appointment of a judicial factor
- on the assumption or resignation or death of one or more of the partners in a partnership
- on the assumption or resignation or death of one or more of the trustees of a trust

The Act contains anti-avoidance provision to discourage artificial schemes designed to defeat the tenant's right to buy.

EXERCISING THE RIGHT TO BUY

On the receipt by the tenant of the owner's notice of proposed transfer the tenant must notify the landlord within 28 days of his intention to buy the land.

The tenant must then submit an offer to purchase either at a price which is agreed with the owner or as determined in accordance with the valuation provisions [see "Deciding the Price" below], or as subsequently determined on appeal.

The entry date must be a date not later than 6 months from the date when the tenant gave notice. This can be extended where the price is the subject of an appeal to a date not later than 2 months after the determination of the appeal or its abandonment.

The Act allows the owner recourse to the Scottish Land Court in the event that the missives are not concluded within the time limits set for the date of entry. The Court can then either direct the tenant to conclude missives or direct either party to incorporate into the missives an appropriate term or condition to enable missives to be concluded.

If the tenant fails to comply with a Land Court order or the matter becomes unreasonably protracted the right to buy is extinguished.

If the owner transfers the land (other than one of the exempt transfers) without serving the relevant notice on the tenant, then the tenant has the right to buy the land from the person to whom the land is transferred.

The Act also provides that the tenant has a right to buy where the owner takes any action with a view to the transfer of the land or any part of it. Such action is deemed to have been taken where –

- the land is advertised or exposed for sale, or
- the owner (or creditor) enters into negotiations with another person with a view to the transfer of the land, or
- the owner (or creditor) proceeds further with a proposed transfer of land which was initiated prior to the date on which the tenant registered an interest.

DECIDING THE PRICE

In the first instance it is open to the parties to agree a price between them. If a price cannot be agreed there is provision for a valuer (or alternatively two valuers with an oversman) to be appointed by the parties or, failing agreement, by the Scottish Land Court.

The valuer is to assess the value of the land on a willing seller/willing purchaser basis where the buyer is a sitting tenant. He must also take into account a number of other factors which include the known existence of a special purchaser and when vacant possession would otherwise have been expected.

It is also noteworthy that where the farm being sold forms part of a larger estate the price must take account of the diminution in value of the remainder of the estate arising from the separate sale of the farm.

The seller and the tenant are to be invited by the valuer to make written representations in respect of the valuation of the land and, if part of an estate, the valuation of the estate.

The valuer must issue in writing, within 6 weeks of being appointed, the price he has decided upon and how this was calculated. The parties then have 21 days to lodge an appeal with the Lands Tribunal, if they so wish, whose decision is final.

NOTE: The tenant's right to buy does NOT apply to tenants under Grazing or Mowing Tenancies, Short Limited Duration Tenancies or Limited Duration Tenancies.

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