

# Intestate Succession



**CROFTING COMMISSION  
COIMISEAN NA CROITEARACHD**

## What happens if someone dies without making a Will?

Where a crofter dies without leaving a will or a bequest in a will has become null and void and/or was not effected, the executor of the deceased crofter must take the following steps within 24 months, otherwise the tenancy will be at risk:

1. Obtain confirmation from the Sheriff court to the deceased's crofter's estate, including his or her crofting estate (and including any croft tenancies, grazing rights/ shares and any apportionments). All these items should be detailed in the inventory to the confirmation
2. Transfer the tenancy of the croft\* (including any grazing rights or shares); and
3. Give notice of that transfer (including details of who it is transferred to) to the landlord of the croft, who shall accept the person as the tenant. At the same time, the Executor must also send a copy of the notice to the Commission.

*\*The case of McGrath –v– Nelson (2010 CSOH 149) established that one way in which to transfer a tenancy was for the confirmed Executor to use a docket endorsed on the Confirmation.*

Notwithstanding the court's comments in the above case, it would appear that there are various modes of transfer of a croft tenancy in intestacy, it must always however be a transfer from the confirmed executor to the person entitled to succeed in terms of the law of intestate succession. It is for executors and their agents to satisfy themselves as to the competency of the mode of transfer by an executor of a croft tenancy or any crofting interest in terms of the guidance set out in *Pattinson v Matheson* [2022] CSIH. The Commission has no jurisdiction to determine the competency of the mode of transfer by an executor. Its role is limited to noting any changes in its Register of Crofts.

The Commission on being copied into a notice of transfer notification will enter the transferee as the new tenant in the Register of Crofts unless the Commission is aware, for instance, that the landlord has already served a notice terminating the tenancy or has become aware for instance that the relevant crofting interest has not been listed in the inventory.

**Executors are recommended to obtain independent legal advice to ensure that all the crofting interests of the deceased crofter, including grazings shares, are competently transferred to the new tenant(s).**

Notification Forms can be found on our website [www.crofting.scotland.gov.uk](http://www.crofting.scotland.gov.uk) or by contacting our office.

Separately, executors are reminded that serving a notice transferring a croft tenancy induces registration in the Crofting Register maintained by Registers of Scotland.

## More Information

More information is available on the Crofting Commission website.

You can call us on  
**01463 663439**  
or email on

**[info@crofting.gov.scot](mailto:info@crofting.gov.scot)**

