

# Succession

## Leantainneachd

**T**here are two forms of succession - Testate and Intestate.

- **Testate Succession** is the term used when a crofter makes a Will and names the person(s) they wish to leave the tenancy of the croft and/or grazing shares to. The person(s) nominated by the crofter is called the 'legatee(s)' and they are said to have been 'bequeathed' the tenancy of the croft.
- **Intestate Succession** is the term that describes succession to the deceased's estate in the absence of a Will or a Will that cannot be given effect to. This is a complicated area of law and you should seek independent legal advice from a solicitor in cases of intestate succession.

We strongly advise all crofters to make provision during their lifetime for the succession to the tenancy of the croft. They should arrange for a solicitor to draw up their Will.

### What should you do if you are left (bequeathed) a croft tenancy?

- You should decide if you want to accept the bequest.
- If you do accept the bequest then you, or the Executor of the late crofter, must give Notice to the landlord(s) of the croft, within 12 months from the date of the crofter's death, that you accept the bequest and you must also send a copy of that Notice to us. Notification Forms can be found on our website [www.crofting.scotland.gov.uk](http://www.crofting.scotland.gov.uk) or by contacting our office.
- If it is not already registered you will be required to register the croft, or the transfer of the tenancy, with the Keeper of the Registers of Scotland. Please check the Rules and Procedures on our website for further information.  
Details can also be found on [www.ros.gov.uk/services/registration/crofting-register](http://www.ros.gov.uk/services/registration/crofting-register)

### What happens if the croft is left to more than one person?

- If the tenancy has been left to more than one person, then the Executor must apply to us to divide the croft into separate units so each person can succeed to their part of the croft (*see our Factsheet on Division*). If we do not consent to the Division, the bequest of the croft will fall into intestacy.
- Each person must give Notice to the landlord(s), within 12 months from the date of the crofter's death, that they accept the bequest and also send a copy of that Notice to us.

### What happens if I don't want to accept the bequest to the croft tenancy?

If you do not accept the bequest, the succession to the croft would be dealt with under the rules of Intestate Succession.



## Gheibhear tuilleadh foisrachaidh mu Leantainneachd air ar làrach-lìn

[www. Coimisean na Croitearachd](http://www.Coimisean na Croitearachd)

You can find more information on succession on our website:

[www.crofting.scotland.gov.uk](http://www.crofting.scotland.gov.uk)

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

Where a crofter dies without leaving a Will or, if a Will was made but the bequest became null and void or otherwise was not effected, the Executor of the deceased crofter must take the following steps within **24 months** of the relevant date\*:

1. Obtain Confirmation from the Sheriff Court to the Estate of the deceased crofter. The croft tenancy and any grazing rights or shares must be detailed on 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.
- An application for the Commission's consent is no longer required in order to transfer a croft tenancy on intestacy.
  - Notification Forms can be found on our website [www.crofting.scotland.gov.uk](http://www.crofting.scotland.gov.uk) or by contacting our office.
  - The Executor will be required to register the croft, or the transfer of the tenancy, with the Keeper of the Registers of Scotland. They should therefore also send us the appropriate Registers of Scotland application and fee. Details can be found on [www.ros.gov.uk/services/registration/crofting-register](http://www.ros.gov.uk/services/registration/crofting-register)

\* Please check the Rules and Procedures on our website regarding the relevant date.

\*\* 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. Executors are urged to take independent legal advice on the question of how to transfer the tenancy and whether the case of *McGrath –v– Nelson* is applicable in their particular circumstances.

### What happens if the timescales for notifying the landlord and Commission are not met following the death of the crofter?

- If the bequest of a croft tenancy is not notified within 12 months from the date of the crofter's death, then the succession to the croft will have to be dealt with under the rules of Intestate Succession.
- If the timescales for Intestate Succession are not adhered to, then the tenancy of the croft will be at risk and the landlord or Executor could give notice terminating the tenancy in accordance with section 16(3)(b) of the Succession (Scotland) Act 1964. Alternatively, the Commission could take steps to terminate the tenancy and declare the croft vacant in terms of sections 11(4) - 11(8) of the Crofters (Scotland) Act 1993.