

Bequest of Croft Tenancy

LAW

(Crofters (Scotland) Act 1993 – Section 10)

A crofter may by Will or other testamentary writing:

- A** Bequeath the tenancy of the whole croft to any one natural person¹
- B** Bequeath the tenancy of the croft to two or more natural persons

¹ A firm, partnership or company is not a natural person and therefore cannot be the tenant of a croft (section 10(1)(a) of the Crofters (Scotland) Act 1993).

PROCEDURE

A BEQUEST TO ONE NATURAL PERSON

(1) A person to whom the tenancy of a croft is bequeathed “the legatee” must, if he accepts the bequest:

(i) give notice of the bequest to the landlord¹; and

(ii) send a copy of the notice to the Commission,

within 12 months of the death of the crofter. Alternatively, the notice of the bequest may be given by the executor of the deceased crofter within the same 12 month timescale.

(2) In the case of an **unregistered croft**, the copy notice to the Commission of the acceptance of the bequest should, ideally, be accompanied by an application to the Keeper of the Registers of Scotland to register the croft.²

The legatee will come into the place of the deceased crofter (as from the date of death of that crofter) on the date of registration of the croft.

In the case of a **registered croft**, the copy notice to the Commission of the acceptance of the bequest should be accompanied by an application to the Keeper of the Register of Scotland to register the acceptance of the bequest.³

The legatee will come into the place of the deceased crofter (as from the date of death of that crofter) on the date of registration of the notice of the acceptance of the bequest.

¹ The Commission has prepared a template notice for ease of notification purposes available to download from our website. It is not, however, compulsory to use this form for notification purposes.

² Failure to submit a registration application with the notice does not invalidate a timeous bequest. However, the bequest will not take effect until either the croft (where the bequest relates to an unregistered croft) or the bequest (where it relates to a registered croft) has been registered with the Registers of Scotland.

³ Failure to submit a registration application with the notice does not invalidate a timeous bequest. However, the bequest will not take effect until either the croft (where the bequest relates to an unregistered croft) or the bequest (where it relates to a registered croft) has been registered with the Registers of Scotland

In either case the Commission will not be in a position to update the Register of Crofts to show the legatee has come into place of the deceased crofter, until the relevant registration application is made to the Keeper of the Registers of Scotland.

- (3) A bequest is null and void if no notice is given by the legatee (or the executor) to the landlord and no copy is sent to the Commission within the 12 month period.

Where a bequest is null and void, the succession to the tenancy falls to be dealt with under the intestate succession provisions¹.

BEQUEST TO TWO OR MORE NATURAL PERSONS

- (4) A crofter may bequeath the tenancy of a croft to two or more natural persons provided that:

- (i) each person would come into the place of the deceased crofter in relation to the tenancy of part of the croft; and
- (ii) no part of the croft would be untenanted were all the bequests accepted.

- (5) The person to whom the tenancy of part of a croft is bequeathed “the legatee” must if he accepts the bequest:

- (i) give notice of the bequest to the landlord; and
- (ii) send a copy of the notice to the Commission

within 12 months of the death of the crofter. Alternatively, the notice of the bequest may be given by the executor of the deceased crofter within the same 12-month timescale.

¹ For further information refer to separate Law, Policy and Rules of Procedure on *Intestacy*

In addition, the deceased crofter's executor **must** apply to the Commission for consent to divide the croft.¹

- (6) Where the Commission gives consent to the division of the croft under section 9 of the Crofters (Scotland) Act 1993, each legatee comes into the place of the deceased crofter in relation to that legatee's new croft (as from the date of death of the crofter).

In the case of a **first registered croft**, on the date the Keeper of the Registers of Scotland receives notification from **the Commission** of its consent to divide the croft.

In the case of a **registered croft** (other than a first registered croft), the date the Keeper of the Registers of Scotland registers the division following receipt of the application by **the executor** to register the division.

- (7) The bequest is null and void if:

(i) In the case of an **unregistered** croft, the Commission do not give consent to the division of the croft.

(ii) In the case of a **registered croft** –

(a) the Commission do not give consent to the division of the croft under section 9, or

(b) such consent is given but an application for the registration of the division of the croft is not made by the executor of the deceased crofter.

Where a bequest is null and void, the succession to the tenancy falls to be dealt with under the intestate succession provisions.²

¹ For further information refer to separate Rules of Procedure on *Division of a tenanted croft by an executor*

² For further information refer to separate Rules of Procedure on *Intestacy*

N.B. Subsection 10(6) of the Crofters (Scotland) Act 1993 states that "...any question arising with respect to the validity and effect of the bequest shall be determined by any court having jurisdiction to determine the validity and effect of the whole testamentary writings of the deceased crofter."

Once the Commission is made aware of competing claims to the tenancy of a croft arising from different interpretations of a Will, then the succession becomes a matter to be either determined through Court Order or by agreement of the parties.