

Ken MacDonald & Co

Lawyers and Estate Agents

Crofting

Crofting is a system of land holding unique to the Highlands and Islands of Scotland. The Western Isles fall within two crofting counties, namely the County of Inverness and the County of Ross and Cromarty.

A croft is a piece of ground held in tenancy by a croft tenant from an estate or land owner. The Tenancy contains statutory conditions and a nominal rent. Only one individual can be a tenant at any one time and there is no written lease. A croft can contain a dwelling house and other buildings but there is usually no title deed. Some tenants have bought their croft and in doing so obtained title but this is the exception rather than the rule. It is more common for a title to be granted over a part of the croft, normally a quarter acre in size, and involves the removal of that area from crofting tenure. A mortgage cannot be granted over a croft. A tenancy can be left to a family member in a will or passed on to another individual.

Assignment is the term used to describe the process involved in permanently transferring the tenancy of a croft from one person to another. A croft can be transferred to a blood relative or advertised on the open market and transferred to a non blood relative. Both processes are subject to the approval of the Crofters Commission in Inverness and involve the completion and submission of applications.

De-crofting and resumption are the two terms used to describe the two processes that exist to remove an area of ground from crofting tenure. One involves the Crofters Commission and the other the Scottish Land Court. Where a title is being obtained or where one already exists then either a de-crofting direction or resumption order should exist or be obtained. They are evidence that the ground has been removed from crofting tenure and are a vital part of a title. Failure to obtain either will result in significant difficulties at a later date.

The granting of title will involve the estate or landowner and their solicitor. Payment will be due to them for the purchase price, administration fee and their solicitor's fee and outlays. Many estates require missives i.e. a contract entered into, some require a standard security to be granted in their favour, some that a claw back be contained within the title, some will de-croft or resume the ground for you, others will not, some will not instruct the searches and reports that should be instructed as part of a normal conveyance. No one should therefore enter into such a process unrepresented.

Disputes over any area of crofting tenure are usually dealt with by the Scottish Land Court who has jurisdiction in this area.

Within the Western Isles traditions and procedures have evolved locally over the years in many of these areas. Ken MacDonald has over forty years experience practicing within the heart of this field. Therefore whether it be de-crofting, assignments or any other aspect of crofting tenure we at Ken MacDonald & Co should be able to assist and advise you.

Local solutions to local problems...

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