

Update: 12 November 2012 Passing control of the family farm



Fleming Muntz
Solicitors



Summary

Increasingly, farming families are becoming involved in litigation after the death of a loved one.

Careful succession planning can minimise conflict and ensure a smooth transition of farming assets to the next generation.

Current trends

In past years, there was often a tacit understanding that the “farming child” would inherit farming assets. Non-farming children received benefits in the form of “off-farm” assets, although these were often of much less value than the family farm.

Siblings mostly recognised the “right” of the farming child to receive the fruits of his or her years of labour.

That harmonious outcome is less likely these days, with family conflict arising regularly in the course of administering the estate of a deceased farming parent.

Fixing it *now*

We are finding that many farming children are anxious to ensure that farming succession is achieved without family conflict, and are asking that a transfer of farming assets occur during the lives of parents, rather than on the death of the survivor of them.

By removing farming assets from the estate “pool” much of the reason for litigation is removed – put simply, there is less likely to be a fight if there is nothing to fight over.

Problems

Early succession planning brings with it a raft of problems, not the least of which are:

- The prospect of loss of the farm (divorce of farming child).
- Capital gains tax arising from the “disposal”.
- Insecurity of farming parents – retirement income and provision of a home for life.

Reducing the risk

Open dialogue and transparency in the succession planning process is preferable to a “wall of silence” when family members will often fill the information vacuum with incorrect assumptions and conclusions. Most parents want to ensure:

- Harmony amongst their children
- Continued profitability of the farm
- Avoidance of litigation

To achieve this, careful planning is needed.

How can Fleming Muntz help?

Fleming Muntz have experienced estate planning lawyers who are skilled in the provision of advice on farming succession and the preparation of appropriate plans to minimise conflict and ensure outcomes. Please contact us if we can be of assistance.

Important fine print

This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.

We resent unwanted email as much as anyone – if you would prefer not to receive any further updates, please telephone us on (02) 6021 2222 or email to enquiries@flemingmuntz.com.au

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