

Update: 25 August 2011 Family Provision – a new threat to farming succession?



Fleming Muntz
Solicitors



Summary

Historically, there has been an acceptance by farming families that a farming child or children should inherit the "lion's share" of a rural estate, even if only modest assets went to non-farming children.

There is a sense of unease amongst many farming families that non-farming children are prepared to challenge the rights of their farming siblings to fully inherit.

A Typical Example

- Farming parents had five children, two leaving school early to help on the farm, with the others making their way in the world.
- Years of drought, and the problems of farming, meant very little spare cash was available to provide for the parents' retirement, or to invest in off-farm assets.
- When there was a cash surplus in a particularly good year, it coincided with the neighbour's property coming up for sale – it was an opportunity too good to miss!
- As the parents entered their dotage, the now ageing farming sons had an expectation of some reward for their lifetime of effort.

The potential outcome?

On the death of mum and dad, their estate fell into two areas:-

- Farming assets (land, livestock, plant and equipment etc), which they wished go to their farming sons; and
- A small bank account and a handful of shares, totalling less than \$20,000, to provide for non-farming children.

So what happened?

There is an acceptance by the non-farming children that their farming siblings *should* inherit *something* for their life on the farm, but those same children balked when virtually all of the estate was being inherited by those siblings. To add insult to injury, funeral and estate legal costs had to be paid out of estate residue, reducing to almost nothing the potential inheritance for the three non-farming children.

The result?

Two things are likely to happen in this example:-

- The non-farming children will, if the farming siblings are lucky, do nothing but are likely to harbour a longstanding resentment at how they were treated; or
- The non-farming children will launch a family provision claim which will almost certainly be successful, resulting in a cash settlement (which will have to be borrowed by the farming children, and encumber the farming enterprise for years to come), and the action will probably cause the permanent breakdown of their family relationship.

What can be done?

There *are* solutions that ensure a fair division of assets, in a manner that will minimise the potential for family conflict.

Careful planning is essential, with a recognition of the present and future needs of *all* family members. An excellent strategy is to plan for retirement, accumulating off-farm assets (for the non-farming children) but it needs a decade or more of planning.

Importantly, the strategy should be transparent to all family members, to minimise uncertainty and family division.

How can Fleming Muntz help?

Fleming Muntz has experienced Estate Planning lawyers who are skilled in the provision of advice on life and death planning for the farming community.

Our lawyers are happy to conduct workshops or information sessions for the clients of professional advisers.

Please contact us if we can be of assistance to you.

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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