

## ● Estate Planning & the Family Farm

### ● Generational change...

Estate planning for those with a family farm can be quite difficult when the estate assets are not to be shared equally between children. In many cases the Willmaker wants to leave the farm to one child so often a key issue to address is how do they provide for the remaining child or children if there are not enough other assets.

This can be problematic because not only do most clients want to be fair to all of their children, but the possibility of an estate challenge by a disaffected beneficiary also needs to be addressed. Compounding this, farming clients are also often concerned about how to manage any loans secured by the farm or equipment as well as any loans that may be sitting in a family trust.

Some people will have been concerned about some of these issues for a long period of time but it often becomes one of those problems that are so hard to deal



with that they are often deferred - sometimes until it's too late. Fortunately there are solutions to these problems - it's a matter of working out the best combination of them to suit the individual. This edition of the Irongroup Review considers some of the options available.

### ● Possible options ● Non-farm related assets

A share portfolio or investment property can sometimes provide an obvious solution. However if the clients don't have these available, other alternatives need to be considered.

### ● Is there a separate 'farming' ● property available?

Can the farm be easily split up? Are there separate properties that will enable different individuals to generate enough income or perhaps a smaller property with a house on it that one child can live in?

### ● Create an asset: Insurance

If there are no other assets available, insurance policies may be an option to create an estate asset which can then be left to the child or children not inheriting the farm. If the policy is set up to be left to an individual, ideally it will be self-owned with the estate nominated as beneficiary. The Will must be written to ensure the policy proceeds are directed to the

intended beneficiaries and, importantly, if the Will contains discretionary testamentary trusts, those beneficiaries will have access to benefits including asset protection as well as the tax benefits arising from distributing any income earned amongst their family.

Alternatively the policy could be taken out under Superannuation but it is important the client understands that if it is directed to an older adult child it will attract 30% tax and any income earned in the future that is distributed to children under 18 will attract penalty tax rates. It will also not be protected from bankruptcy.

### ● Loans payable over time by the main ● beneficiary

In addition to, or instead of, insurance (which may be too expensive for some clients), another option may be for the Willmaker to have their Will drafted so that the beneficiary of the family farm is required to pay their sibling/s a sum of money over time as 'compensation'.

The terms would need to be set to an affordable level and could for example, be based on the income in excess of requirements that the 'farm beneficiary' will receive each year from the farm. Another way to consider this is to ask what

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additional income the beneficiary will receive once they own the farm. This may be what the Willmaker was receiving while alive.

If for example, the Willmaker wants their 'farm beneficiary' to pay \$500,000 over time to their 'non-farming' sibling, the amount available each year would determine the terms. If \$50,000 was available as excess each year the Will would direct that it be paid down over 10 years either for example, at a benchmark interest rate or nil interest - a matter for the client.

A Will should always be written with an eye to the possibility that the beneficiary may no longer be alive when the Willmaker passes away. In this case we would suggest the client have their Will drafted such that if the 'farm beneficiary' has pre-deceased the Willmaker and the farm is to pass to their children, that the same loan requirements would attach to the inheritance.

- **Other Issues**
- **Family Trust considerations**

Farming clients often have Family Trusts established and as such it becomes important to ensure the appointor role is transferred via the Will. The Trust Deed must be checked to ensure this can happen otherwise it can be amended.

- **Loan accounts**

There can often be two types of loan accounts that need to be addressed.

- 1. Loan Accounts in Family Trusts.**

Loan accounts may have built up over time in the books of the entity that owns the farm. These are often

in a family trust and represent distributions made to beneficiaries where the money has not actually been paid.

When the Willmaker dies and passes on the appointor role, the trust will still owe the funds. If this includes amounts owed to the Willmaker, they can choose to give the executor the ability to forgive those debts. The Will should be drafted so that it is an option for the executor and not a direction as it may be more appropriate to call in the debt from the family trust and put it in the estate so it can be distributed to a beneficiary in a testamentary trust.

Loans may also be owed to those beneficiaries who may be a child or children who have not inherited the farm. They have a right to call in that debt which could create problems for the inheriting beneficiary. This can be addressed in the Will such that any amount being left to that 'non-farming beneficiary' is reduced by the debt amount. The 'farm beneficiary' who has been given the appointor role is then left that same amount with which they can pay down the debt.

- 2. Loan accounts: Banks, Finance Companies etc**

There may also be debt owed to external third parties which is secured by the farm or equipment. If Willmakers are concerned about 'passing on' this debt, insurance can again be used to eliminate or reduce it.

Note that if this is done it would be prudent to have the bank take a charge over the insurance proceeds to ensure they were used to pay down debt in the event of

insolvency or bankruptcy on behalf of the Willmaker.

- **Any other Issues?**

You may have other queries or requirements not addressed here. Our Wills are always tailored to the client - simply outline the issue and the goal you are trying to achieve and we will work with your Adviser to develop a solution that suits.

- **Do you need help planning your estate?**

We would be pleased to discuss your particular estate planning requirements with you.

Importantly, because we have experience in this field, our lawyers will be able to advise you on the solutions that would best suit your circumstances. Estate Planning meetings with our rural clients are usually conducted via phone conference so you don't need to go anywhere. It's that easy!

Please call us on 03 86321 9000 to make a time for an initial discussion with a lawyer. They will be able to give you an idea of what is involved and an estimate of the costs.

We look forward to hearing from you.