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Blog: Things you need to know about Farming & Agricultural divorce

Farming families need to think about their divorce settlement in a very different way when it is the farm that is at stake rather than simply the family home.

Farms are very specialised businesses and it is important to have the right quality of legal advice. This will save you time and money in the long term.

This is because:

- Farms are income light and capital heavy – the value of the land and property can be substantial compared with the income from them.
- Farms are often inherited, prior to a marriage, making them non-matrimonial assets that will not be subject to the sharing principle (i.e. will not usually be divided equally) which can be very relevant to the case
- There is often wider ownership amongst brothers/sisters/parents or wider members of the family, so extracting capital is more difficult.
- There is often a lack of liquidity, so raising cash to buy alternative houses can be difficult.
- The ownership can be complicated by farming tenancies, corporate ownership and/or trust ownership.

Q. What should I do first?

A: First pull together all the information you have relevant to the farm, details of who owns which plot of land and details of all mortgages/other liabilities. The more you can do to research the precise details of who owns what, and how much it is worth, the better. If you have valuations already – for mortgage purposes, for example – include those if they have been undertaken recently. This will give you an estimate as to what the land and the properties might be worth.

Q: Will my farm have to be valued?

A: Usually yes. Both parties would jointly instruct an agricultural chartered surveyor to value the land, live and dead stock. There may be other benefits that need to be valued such as sporting or mineral rights, planning consent and any development potential e.g. for a wind farm.

Q. What about my will? My spouse is a named beneficiary.

A. Consider making a holding will during divorce proceedings, especially if third parties are involved and assets are held as “joint tenants” i.e. where the interest of one party passes to the other automatically on death. If you have named your spouse as a beneficiary or executor in your will, these provisions cease to have effect on divorce.

Q. Is there any alternative to going to court?

A. In some cases it may be relevant to involve the court in achieving resolution of the case if, for example, voluntary negotiations have proved unsuccessful and/or the matter may benefit from having the support of a court timetable. However, if the parties to the divorce seek an amicable resolution and discussions can be held in a civil manner, then another option is Alternative Dispute Resolution (ADR), such as mediation, or arbitration. ADR is widely recognised as being more beneficial to safeguarding the future of a working family farm so that the division of assets does not financially damage the business.

Q: Will the farm have to be sold?

A. It is not common for the court to order the sale of an entire farm. The court will consider if part can be sold off without affecting the viability of the farming business to meet the other party’s needs. Their approach, especially where there are children, is to ensure that the housing and financial needs, both of the partner who is leaving and the children, are met, rather than seeking to resolve matters by simply providing a percentage share of the capital. When the Courts are dealing with a Divorce involving a Farm each case is individual and the Courts do recognise this important factor.

Raising capital from the farm to fund a divorce settlement needs to be carefully handled, taking into account any potential for development, tax issues and the viability of the farm post-settlement. This might mean having to negotiate extended borrowings, with a structured payment of the settlement by instalments over a number of years, in order to maintain the farm’s viability.

Q: I’m getting married next year, how can I protect the farm in the event of a divorce?

A. You could enter into a Pre-Nuptial Agreement and reaffirm those agreed provisions within a Post-Nuptial Agreement following marriage. While Nuptial Agreements are not, presently, legally binding in the UK, Case Law does illustrate the Courts are giving weight to these agreements on divorce. Provided the agreement is entered into freely by the parties, both have had the opportunity of having legal advice, and the agreement represents fair terms with each party having made full and clear disclosure of their financial circumstances.

Q: I’ve been farming for more than 30 years, so will my wife automatically get half of all of the assets?

A. Not necessarily. In a House of Lords case namely, *White and Carter*, which was a landmark decision in 2000, the parties had been married for over 30 years. Both came from farming backgrounds. A year before the marriage broke down Mr White acquired a farm by way of inheritance. Their combined wealth at the time of the High Court hearing was £4.5m.

The court felt that the wife's needs were met and the existence of the inherited property was a good factor to justify departure from equality, even in the case of a long marriage and business partnership. As a result the wife was awarded less than half.

This landmark decision is therefore relevant in highlighting that each case is individual and specialist advice should therefore be obtained, particularly, in farming cases, as Divorce does not automatically result in a 50/50 division of assets.

Q: My spouse is issuing proceedings so what do I need to do now?

A. You need advice from a specialist matrimonial solicitor who understands farming and agricultural divorce. This is very specialised area and it can be complex. With expert advice and support, as well as a sensible approach adopted, at the outset, the farm can be preserved so it can be passed on to the next and future generations of your family.

How can our agricultural divorce solicitors help you?

We can guide you through the process of divorce and make sure that the outcome is one that is not only fair to you and your spouse, but looks after your farm or agricultural business.

Our team of specialists can assist you on a wide variety of family and personal matters including:

- Divorce/civil partnerships
- Dividing assets in divorce
- Financial claims/Variations of Settlement
- Separation or Cohabitation Agreements
- Pre Nuptial/Post Nuptial Agreements
- Child arrangement orders
- Wills and wealth planning
- Elderly care & mental capacity
- Property
- Dispute resolution

For more advice, or to request a free half-hour consultation, please call Lisa Cogger at Bowcock & Pursaill today on 01538 399199 or email lc@bowcockpursaill.co.uk