



Farm Finance



Battle lines: Mediation seldom works and the warring parties in a marriage breakdown usually end up going down the legal route

Marriage breakdown does not have to lead to the breakup of the family farm

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Back in 1995 prior to the divorce referendum I wrote an article for this paper on the likely impact of the proposed divorce legislation on farm families.

I recall my concluding remarks suggested that Ireland needed divorce legislation about as badly as it needed beef and butter imports.

Well, the truth is we still don't need beef and butter imports but I have to confess that I have changed my mind on the divorce question.

Back in the day we were happy to pretend that broken marriages didn't really exist or, if they did, they could be patched up.

My experience in dealing with clients in such unfortunate situations in the intervening years has taught me that divorce can be a welcome release from misery and conflict affording a second chance at achieving a happy and peaceful existence.

This is the first of two articles in which I will deal with the practical farming issues that the respective legal teams and ultimately the courts will need to be aware of in arriving at a fair and equitable division of net assets.

While a mediated settlement is always the desired and cheapest option, the reality is that mediation

seldom works and the warring parties end up going down the legal route. In some, but not all, cases both spouses will retain the services of an agricultural expert to draw up a report that will outline in detail all the relevant facts that will support either party's entitlement to fair play.

Where the case ends up in court the expert will outline the content of the report to the judge.

In order to avoid complicating the subject I will deal with a typical situation where the husband is the sole owner of the farm and his spouse does not own assets of consequence. In this instance I will assume that it is the wife who has initiated proceedings so she is called the 'applicant'.

The husband is then referred to as the 'respondent'. In this week's article I will outline the aspects that should be highlighted from the respondent's perspective. My next article in two weeks' time will deal with how the applicant should best present their case.

THE EXPERT'S REPORT

The main thrust of the report is to inform the court of the various issues and consequences that could flow from a sale of land or a change of farming system or the imposition of a substantial debt on the farm.

While the report will obviously be defensive, it will also put forward realistic suggestions as to how the financial demands might be met.

The judge will not be an agricultural expert and matters such as Basic Payment, stocking rates or Gross Margins may mean very little

to him or her. So, any solid suggestions that the agricultural expert may make will be carefully considered by the judge and may influence his or her judgement.

Where there is the scope to do so, the judge will always try to keep the farm business in tact so that both parties will still have a livelihood after separation.

LAND DIVISION ISSUES

A judgement that decrees a sale or transfer of land is, in my experience, the exception rather than the rule.

Many judges will be very slow to order the carving up a family farm and frequently will make a financial provision in his/her judgement that leaves the decision in the hands of the land-owning spouse as to how they will find the money.

The expert's report will be crucial in this regard as it will offer a number of suggestions as to how a financial lump sum might be funded thereby making the judge aware that a sale of land is not the only available option.

The report will also highlight any farm structure or access issues that may render a sale difficult, impractical or downright impossible.

In some instances, the farm may have little or no road frontage and

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disposing of a portion of land may not be possible.

In other cases, disposing of a part of the farm may leave the remaining part with limited access that could cause problems with neighbours in the future or could significantly devalue the remaining part.

Having to dispose of a part of the grazing platform in the case of a dairy farm may render that enterprise non or marginally viable whereas the enterprise may have been capable of servicing a loan that could have met the family law bill in the first place.

Where all issues of this nature are clearly explained to the court, it may result in a more sensible and practical outcome.

BASIC PAYMENT CONSIDERATIONS

It is a fact, as evidenced by the Teagasc National Farm Survey, that the Basic Payment represents 100% of farm profit on a large proportion of non-dairy farms.

This means that any reduction in the farm size may have a detrimental effect on farm income and the extent of such a reduction will need to be explained to the court.

The court will need to be made aware of all possible consequences that may flow from the various remedies being put forward by the applicant and as I stated earlier, the judge is not an agricultural expert and could not be expected to be aware of such consequences.

TAX CONSEQUENCES

Disposing of farm assets to meet a

family law bill does not attract any special tax concessions. Assets such as land, stock or co-op shares may all have tax implications and the likely extent of the liability will need to be made clear to the court. For example, the court should be made aware of the likely tax cost of disposing of say, 20 acres of land or €100k worth of co-op shares. Making the judge aware of these facts will assist in insuring that his eventual judgement is fully informed.

SUCCESSION ASPECTS

It is important that the court is made fully aware of the likely farm succession plan, particularly if a son or daughter is currently at home on the farm and intends to remain there. Details should be provided on that person's circumstances and their dependence on the farm and the farm's dependence on them.

Unfortunately, family members caught up in such situations can be victims of the collateral damage but a judge will take account of all of the facts available to him or her in arriving at a judgement and the fact that there is a successor in situ may be taken into account.

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