



Farm Finance

How to secure your fair share of the farm's 'pot' after marriage breakdown

Advice
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Two weeks ago I wrote about the issues the main asset-owning spouse should consider when faced with a family law case. In my experience over the past 30 years, in virtually all such cases, one side wanted to part with as little as possible while the other side wanted to extract as much as possible.

That explains why mediation rarely works. That said, many family law disputes are settled out of court, but often on the steps of the court after considerable legal costs have been incurred. Professional mediation could offer a far less costly and equally effective resolution.

The legislation governing judicial separation and divorce requires a fair and equitable division of assets. While there may be circumstances that will result in an equal split, this is seldom the case and typically the non-asset-owning spouse will end up with less than 50pc of the pot.

The courts will consider many aspects such as financial need, accommodation needs, spouse's health status, spouse's contribution, duration of the marriage, how the assets were acquired, and succession.

CONTRIBUTION

In many instances the wife will have made a significant contribution to the farm business in terms of physical involvement, administration or direct financial input.

This should all be set out in as much detail as possible. A spouse who assisted in building up the farm will have a stronger claim than one who made little contribution.

FARM ASSETS

The wife's agricultural expert will generally visit the farm and report on all valuations of land, stock and machinery which will have been furnished by the husband's legal team.

The expert may also have received a copy of the husband's agricultural expert's report and will check that the information is accurate.

The condition of the various assets will be noted. It is easier for a judge to arrive at a decision to order the sale or transfer of land in a situation where it is shown that the farm was being poorly managed.

The subject of splitting the farm will be addressed in terms of highlighting the positives associated with a division, such as little impact on access or farm profitability.

FUNDING THE FAMILY LAW BILL

An appraisal will need to be done to establish what the farm is capable of in terms of creating funds to meet an impending separation or divorce bill.

Typically, such funding will be met by borrowing or asset disposal. The husband may argue that the farm is not capable of supporting any additional debt, but the wife's expert will offer an opinion.

This will be achieved by an appraisal of the farm accounts over a number of years, which typically will yield a number of possible recommendations such as:

- A sale or transfer of land is the only realistic option
- Borrowing to a certain limit is an option
- A sale of other assets such as surplus stock is an option
- A sale of co-op or Plc shares

In cases where a sale of land appears to be the only realistic way of raising money and where management performance is not good, it may be helpful to show the court that a reduction in land area will not necessarily impact negatively on profits.

In many instances this may require a disposal of stock, which may help the situation.

Alternatively, it may be possible to show that the level of profitability is such that borrowing is a viable option and will not damage the after-tax profit significantly, particularly in cases where there is scope to increase production.

CHANGE OF FARMING SYSTEM

There will be many situations where the existing farm enterprise mix is simply non-profitable and alternatives such as forestry or leasing out land may provide a greater income.

Making such a recommendation could allow for the provision of maintenance or could enable some land to be disposed of without affecting the net farm income.

Judges will always be interested in learning of realistic solutions that will not impact unduly on the farm's existing earning capacity.

SUMMARY

I have outlined some of the typical aspects contained in an agricultural expert's family law report being prepared for the non asset owning spouse.

However, every case is different and there will be many issues that I haven't touched on.

The important message is that facing into family law proceedings without the input of an agricultural expert would be very unwise.

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