Business Clinic

Whether it's a legal, tax, insurance, management or land issue, *Farmers Weekly*'s experts can help

Is it possible to challenge an executor's decision?

Q My father-in-law passed away about 18 months ago. His material property was left in a discretionary trust, to be overseen by executors – one a land/estate agent also with family connections and my father-in-law's solicitor. One of the property items is a bungalow which, according to the will, must be offered to my sister-in-law at market value.

The market value has been decided by the executor involved in the estate agency, rather than, as the beneficiaries had requested, an average value from three independent estate agencies.

I would like to know if the executors are legally allowed to take this stance, rather than taking note of the beneficiaries' wishes. Can I/my wife challenge the decision?

INGRAM IMAGE

Trustees have to follow the terms of the trust document, but a possible conflict of interest might put them in breach of their duties

Robert James
Solicitor
Thrings

A The starting point in considering a situation such as yours is the terms of the trust document, which sets out the respective powers and duties and is supplemented by legislation.

Without sight of the document itself, it is difficult to advise on specifics, but I set out some general advice below, which you should be able to apply to your situation.

In basic terms, the trustees can act only within the terms of the trust document.

What I would not expect to see is the trust being very prescriptive in how they are supposed to achieve a particular outcome. In this case, the duty is to offer the property to your sister-in-law.

This then feeds into the question of whether the beneficiaries can dictate how a trustee is to do something. The short answer is no.

As long as the trustees act within the scope of their duties, how they do so is a matter for them. One particular source of concern is the trustee has appointed their own business to determine the market valuation.

My concern is the agent may be in breach of their trustee duties, given the clear conflict of interest with their own private interests as an estate agent providing a valuation service, particularly if their business has gained financially from providing that service.

From your question, I infer the source of the complaint is that the valuation methodology adopted is favourable to your sister-in-law (the executor has valued it on the low side).

If so, you may be looking at a breach of trust on the basis of failing to act impartially between the beneficiaries.

This is particularly prevalent where a trustee's decision may benefit one class of beneficiary over another.

That does not translate to a strict requirement to treat all the beneficiaries equally, but rather imposes a duty on the trustees to balance the interests of all beneficiaries.

A route to challenge would involve a breach of trust claim, where you would be asking the court to declare the decision made by the trustees void or to seek compensation for any loss suffered by the breach.

Alternatively, a disappointed beneficiary may have grounds to bring a claim under a different basis, which may include the Inheritance (Provision for Family and Dependants) Act 1975 or the doctrine of proprietary estoppel, both of which I have previously covered in this column.

DO YOU HAVE A QUESTION FOR THE PANEL?

Outline the issue in no more than 350 words and *Farmers Weekly* will put your question to a member of the panel. Please give as much information as possible.

Send your enquiry to Business Clinic, *Farmers Weekly*, RBI, Quadrant House, The Quadrant, Sutton, Surrey SM2 5AS and include a telephone number. You can also email your question to **fwibusinessclinic@rbi.co.uk**

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Carter Jonas

How likely is inheritance tax reform?

Q My parents keep avoiding the question of passing the farm on to me. They make comments about me getting it when they die, but I worry about paying taxes on it, or them leaving it to my brother, who has done nothing to help build up our farming enterprise. Is it likely that inheritance tax rules will change, as some people seem to be saying?

Nicholas Smith
Partner
Duncan & Toplis

A The question of succession is a tricky one for any family business, but this is especially so in farming, as there is often so much value tied up in land and buildings.

Generally speaking, it is usually better for the individuals who run a business to also own it. However, there are other considerations, including the one you have alluded to: how parents might feel about treating their children fairly, if not equally.

You don't mention whether your farm has any diversification aspects which might mean that not all of the business would attract full relief from inheritance tax (IHT) either through agricultural property relief, or business property relief.

Let's assume it's all farming and/or trading activities and that your parents are still involved in the business, which would mean that those reliefs should be available in full.

Potential future changes

There can be complications with farmhouses, but on the whole it is unlikely there will be any IHT to pay when your parents pass away.

That's the IHT position under the current legislation. What you have probably heard about is that the Office for Tax Simplification has been looking at the operation of IHT for the past 18 months or so and continues to do so.

Earlier this month, it made some further recommendations and none of them would appear to suggest that the IHT reliefs I referred to should be removed.

Indeed, there is a recommendation that farmhouses should not be at risk when elderly owners need to go into care or hospital for long spells.

Planning for succession

In summary, IHT is unlikely to be a worry for you, but succession planning is something that all businesses should consider and prepare for.

It is a tricky subject to broach, and one where independent advice can help.

If, for example, your parents are no longer involved in the day-to-day decision-making of the business, they might also consider not being involved as owners.

They can gift assets to you (and your brother) now, with business asset holdover making it possible to avoid a charge to capital gains tax.

Ultimately, this should make their estates easier to deal with, but it is a difficult conversation to open.

Advice on RHI and the planning permission regulations

Q I have recently been audited by the Ofgem Renewable Heat Incentive team, who confirmed I need planning permission for my RHI-accredited biomass boiler, which provides heat across the farm. Planning permission was not a requirement on the non-domestic RHI Accreditation Portal, and now my payments have been suspended until I can provide evidence. Please advise what I should do.

Clare Davey
Associate
Carter Jonas

A Sadly, your situation is not uncommon. Many in the farming community have been affected and it has caused widespread concern.

Our energy team has had queries from those in a similar position. Clients have had their Renewable Heat Incentive (RHI) payments suspended as they are unable to provide evidence of planning permission for their biomass boiler.

The issue has arisen following the publication last year of updated non-domestic RHI guidance from Ofgem. While technically planning permission has always been a requirement for RHI accreditation, Ofgem has not until recently asked to see evidence of a decision notice.

Following the new guidance, it is now standard practice for Ofgem to seek confirmation of the planning permission decision notice as part of its regular auditing process.

As a consequence, Ofgem has identified numerous sites that had previously been granted accreditation without planning permission in place.

Payments suspended

Payments are being suspended and farmers are being asked to apply for retrospective planning permission, with payments being restored only once planning permission is obtained and evidence of it provided.

It is worth noting that some installations may be exempt from these requirements under permitted development rights, but the onus will be on the farmer to provide evidence that permission wasn't/isn't required.

TIM SCRIVENER

If installations are exempt under PDR, evidence will have to be supplied

To this end, relevant supporting documentation may have to be submitted, such as a Certificate of Lawful Development, which demonstrates full planning permission is not required.

Owners of schemes that fall outside the exemptions will need to apply to their local authority for retrospective planning permission.

Determination periods are traditionally eight to 12 weeks, depending on the scale of the development, but the whole process is likely to take between three and six months.

Subsequently, you will either be granted retrospective planning permission, or your application will be refused.

In the worst-case scenario, you may be issued with an enforcement notice demanding that you reverse the changes that have been made.

No further payments on the scheme would be made and Ofgem could even request that those made to date are reimbursed.

Any plant owner who is unsure whether planning is required is advised to seek specialist advice before auditing, allowing enough time to make the necessary checks and any subsequent application before payments are suspended.