

How to conclude farm sale following death without will

Q Farmers A, B and C are three brothers in a farming partnership, with the land held as a partnership property. Farmer A dies without making a will. His widow is dealing with probate, and is warned by the partnership accountant that she must sort his estate correctly.

Widow A's solicitor tells brothers B and C that she has inherited A's share in the partnership and his role as a partner. B and C accept this in good faith. When farmer B dies some 20 years later, it is decided to sell the farm. The solicitors dealing with the sale find that the estate was not correctly sorted and Farmer A's two sons, who aren't part of the partnership, have an equitable interest under the intestacy rules of 1999, of which they have not been made aware.

There is a very keen buyer - what should happen to make sure the sale can go ahead and all parties are protected?



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A There are two issues here. First, establishing and protecting the beneficial interests in the farm - in other words, who is entitled to the value - and secondly, the mechanics of the sale.

One informs the other, as the buyers will want to be certain they are purchasing from the right people and they are not at risk of a beneficial owner (who may not be one of the contracting parties to the sale) later claiming the sale was not validly carried out.

The beneficial owners (assuming they all agree to the sale) will want to ensure the sale can proceed and that they receive their respective share of the sale proceeds.

The beneficial ownership seems to have been investigated within the facts presented in the question, but for example, let's assume the beneficial owners are C, A's widow and two sons, and B's beneficiaries. Let's also assume the legal title to the farm is currently held solely by C following A and B's deaths.

To sell the farm, therefore, at least one more "trustee" (or legal owner) will have to be appointed with C to "overreach" the beneficial interests in the farm of C, A's widow and sons, and B's beneficiaries.



INGRAM IMAGE

The trustees will be the people who sign the contract and title transfer documentation. This means the purchaser can buy from the sellers without the risk of a beneficial owner, who is not on the legal documentation, claiming the sale was invalidly carried out.

If the legal title to the farm is unregistered at the point of sale, it would probably be advisable to register it with the Land Registry and enter a "sole proprietorship restriction" on the legal title.

This puts a third party on notice that there are other beneficial interests involved beyond who is signing the legal documentation and any purchase must be from two legal owners or trustees.

If it is already registered in the names of A,

B and C, it would be advisable to remove A and B from the title and enter a sole proprietorship restriction. Alternatively, a second (and possibly third) legal owner or trustee can be appointed within the title transfer documentation on sale.

On completion of the sale, the trustees can then account to all those with beneficial interests in the sale proceeds of the farm, once agreed.

In the circumstances, it might be sensible for a representative of A and B's families to be appointed as second and third trustees, together with C, as part of the sale process, so each branch of the family can be represented in the sale, oversee the process and the subsequent distribution of the sale proceeds. ■

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