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Your guide to succession planning for farmers.

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Your guide to Succession planning for farmers.

In farming, perhaps more commonly than in other sectors, the future of a business is often about keeping it in the family. Sound succession planning is essential to secure the legal and financial security of your business and family, and to protect your assets.

Here are our five steps for successful succession planning in rural family businesses:

1. Start thinking and talking about succession early

Succession planning is not something you should only think about as you come close to retirement. Even if the conversation is difficult, it's best to start talking to your family as soon as possible to find out their views on what should happen in the future.

For example, some children or family members may see a future in the business from the beginning of their working lives, some may want to go out into the wider world first but plan to return, and others may take their own path and have no interest at all in working in the business.

Finding out their views and goals early - and accepting that these may change in time - will help you plan for the future and can avoid dispute about intentions and promises. In particular, ensure the decisions arising from these conversations are legally documented to avoid costly and emotionally difficult disputes. These can include scenarios where a family member feels they were led to believe they would inherit land or assets but this did not happen - a complex and evolving area of law known as proprietary estoppel.

2. Be comprehensive about what your succession plan covers

Farming businesses are usually complicated, with many moving parts. It's important that your succession plan is clear and covers in detail what is covered and how each family member should be involved. For example, in a food producing business you may establish that one family member wishes to be responsible for land and livestock management, while another is more inclined to get involved in marketing and retail.

A good succession plan will leave no doubt about how the assets of the farm are owned, and by whom, the roles and responsibilities of each family member, and who occupies particular areas of land. It can also set long term goals for the business – for example, whether some or all family members wish to eventually sell, or if their intention is to pass the business down to the next generation.

3. Seek advice on Inheritance Tax and Capital Gains Tax

Tax law is highly complex and subject to constant change and scrutiny and can be the biggest headache for those inheriting a farm business. It's important to seek legal advice from a specialist to avoid potentially costly issues further down the line.

The two main taxes that should be considered in succession planning are:

- **Inheritance Tax:** Agricultural businesses can receive relief on agricultural and business property to reduce or even eliminate inheritance tax on assets. However, the entitlement varies greatly depending on each farm's circumstances – an expert will be able to help you claim the relief to which you are entitled.
- **Capital Gains Tax:** When land and assets are handed down to a successor, this can trigger a capital gains tax bill. When land that qualifies for inheritance tax agricultural property relief is passed on, there may be an opportunity to 'hold over' the gain arising from the gift, so the recipient is not liable for capital gains tax. Again, this is a complex area of law with many potential pitfalls, so tread carefully and seek specialist advice.

4. Ensure wills and agreements are in place

Family units are ever changing – and when you are creating a succession you will need to consider that there may be marriages, divorces and unforeseen deaths in the future. To ensure your farming business is passed on in line with your intentions, the business arrangements should be carefully and clearly documented by way of company articles, a shareholder agreement or a partnership agreement.

Anyone involved should also have a will that takes into account the business arrangements. You may also need to outline expectations for stepchildren, and what provisions you will make for family members who should inherit but do not wish to be involved with the business. Pre-nuptial agreements can also help protect the family business in the event of divorce.

5. Prepare your family for the handover

With the fundamentals in place, you now must take the practical steps towards the day when you eventually hand over your land and business. This can be a slow process – for large and complex businesses a succession plan can take 20 years or more to see through. Crucially, you will want to equip your successors with the knowledge, skills and industry awareness they will need so you can hand over with confidence.

You will then be able to plan a phased 'stepping back' to mentor the new generation in the responsibilities that come in running the business, without stifling or interfering with their ambitions. This can be difficult to navigate in a family environment – so again, independent advice or a professional outsider can help to facilitate this.

Would you like to know more?

The Things teams of agriculture, private client, family law and tax planning specialists provide a comprehensive suite of legal services to support farms and family businesses. Contact: Mike Westbrook, Partner