PRACTICAL STEPS FOR KEEPING YOUR FARM IN THE FAMILY
Maintaining a family farm business for the next generation will continue to remain a challenge to the agricultural community. An increase in divorces, challenging market conditions and a rise in the value of estates are all playing their part and make getting the process right more important than ever.
Planning for the farm business

Farm business planning is intricate and complex. Greater variety among family structures – including second marriages – is increasing the number of potential beneficiaries to individual estates, complicated further by the diversity of agricultural businesses. Not only that, but a rise in the value of the estates at stake is increasing the likelihood of bequests being disputed.

In practical terms, farming estates can throw up a number of difficulties. Estates are often asset rich and cash poor, and development opportunities increase the value even further. Due to the lack of liquidity, cash sums to settle disputes about inheritance are often unavailable. For most, estate planning is to ensure that the farming business is preserved for the next generation, but this isn’t always easily achieved.

Due to this particular set of circumstances, agricultural business planning can cause expensive and hostile family conflicts. When planning for the future, striking the right balance between preserving the future of the farm and making appropriate provision for other family members can be difficult, particularly when there are individuals who are not involved in the day-to-day farming business.

Here are some top tips on how to plan for your family’s future:
Your will

Your will should be clear and unambiguous.

In the face of complex agricultural structures and relationships, the best place to start is to prepare a robust will.

Instructing a professional to draft your will is money well spent, even if you feel your estate is relatively straightforward. Not only will this make sure that your wishes are properly written and executed, it will also ensure your tax position is fully considered too. Getting the will wrong can be a costly mistake.

Homemade wills have become more popular in recent years but without a level of professional input, the risk of error increases and could cost you a great deal more in the long run – in emotional, as well as financial terms.

Plan early

Your plans for inheritance by your family should be thought about from an early age. The process is as much about wealth protection as it is about looking after the interests of your beneficiaries such as spouses, children, or other loved ones. It is important that you understand that a will doesn’t just deal with the transfer of your assets, wills can also set out who would be responsible for your children in the event of your passing.

Your will also needs to be reviewed and updated on an ongoing basis but by getting a framework in place for passing on assets and capital, the process becomes much easier to manage.

Writing a valid will

Undue influence is a serious issue and one that could invalidate the terms of your will, particularly if you’ve been influenced by those likely to benefit from it.

There are some simple steps that can be taken to reduce the likelihood of a challenge – and the easiest one is to ensure that professional advice is taken. A clear record of the instructions that were given, the reasons for them, seeing an adviser on your own, together with clear and impartial advice can all be extremely useful in seeing off a potential challenge.

Mental capacity may also be brought into question and it is important that you, or the person making the will, has the mental capacity to do so. If there is any doubt, then the best route is to organise for an assessment by a doctor.

Some family members assume, or have a legitimate expectation about their future inheritance, or in some cases, promises or assurances may have been made, either inadvertently or not, about what is going to happen to a particular asset or share of the wealth. In some cases, this can impact on the ability of an individual to leave the assets to whom they wish so it is best to discuss this with a professional first.
Inheritance rules

There are clearly defined inheritance rules for people who do not make a will, although these are often not fit for purpose.

Spouses receive the first £250,000 of the estate, with everything else being divided equally between the children and the spouse.

The myth of the common-law husband/wife remains exactly that – a myth! Cohabitees therefore do not have automatic rights. Couples especially should remember this and get a will drawn up, rather than assuming that partners will automatically inherit.

The application of the intestacy rules can often prove to be fairly crude, as they simply operate by reference to the financial value of the estate, rather than by reference to individual assets. You can therefore end up with split assets, which can cause complications, often resulting in those assets having to be sold. This can be particularly difficult in the context of a farming business, therefore serious thought needs to be given to considering which beneficiaries should inherit which asset, and ensuring that those wishes are set out in a valid will.

Communication is key

Sitting down with family members and other beneficiaries to inform them of how your estate is intended to be split can help avoid misinterpretation and misunderstanding further down the line. Often disputes arise when a will contains something unexpected and openly communicating wishes before the time comes can go some way to mitigating against this.

The close physical proximity of many farming families can heighten the tension that surrounds these situations. The importance of discussing the future plans of a farm with family members and the reasoning behind them cannot be underestimated. Promises are often made – the typical “one day, this will all be yours” – which ultimately cannot be delivered upon and this can lead to expensive litigation.

When to update your will

Regularly reviewing and updating your will should happen at least every five years or after a significant life event, for example, the birth of a child or the addition of a new business stream.

Naturally, assets and investments can go up or down in value (or are sold), and if this is not considered when a will is drafted, the original intentions can be defeated. One option is to pool assets and divide the overall value between beneficiaries in percentage shares. This can however result in assets having to be sold, if agreement can’t be reached between the beneficiaries.
Choosing an executor

Deciding who is responsible for dealing with your estate is a role that falls to an executor. Choosing, or being an executor, is not without its challenges.

Being an executor

Being an executor involves being responsible for managing and distributing a person’s estate. This includes calculating what the assets are, identifying any debts that may need to be paid and any inheritance liabilities that might be due before finally paying out and distributing the estate to the beneficiaries named in the will.

What you can use a solicitor for

It is not uncommon to instruct a solicitor to assist with all or certain aspects of administering an individual’s estate due to the time-consuming nature or complexity of some areas. For example, inheritance tax calculations can be extremely complicated.

Picking your executor(s)

Executors can be caught in the crossfire of disputes about estates. This is often the reason why they decide that they do not want the responsibility of administering an estate and in these situations executors have the right to give the position up – known as ‘renouncing probate’. For this reason, when you are drafting your will, it is wise to consider naming alternative executors.

If no alternative executor is provided or a nominated executor passes up the opportunity to take control of the estate, the responsibility automatically falls to the beneficiaries which can lead to further estate disputes. Inheritance tax issues are surprisingly complex and can catch out executors who may already be experiencing pressure from beneficiaries.

Communicating with your executor

It is good practice to inform executors that they have been chosen to administer the estate, however there is no legal obligation to do so. The testator – the person making the will – often has a specific reason why they have chosen an executor and having a conversation about it may assist in ensuring that the wishes of the deceased are carried out. Opening up a line of communication between the testator and his or her executors in order to ensure all understand what is involved from the outset is recommended.

It is also useful that an executor knows where the will and other important paperwork is kept in order to avoid unnecessary delays and increased costs in trying to locate documentation.

Handling hostile situations

Communication is key when distributing an estate and can often take the heat out of many situations. It’s about getting the basics right, so informing beneficiaries about what they are entitled to and when, and keeping them updated as the administration of the estate progresses.
**Your team**

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Peter advises on all aspects of rural property law, from freehold purchases and sales to agricultural tenancies. He also advises on options to developers and promotion agreements, and is highly experienced in the complexities of family farming partnerships.  

Chambers and Partners state that Peter is known as a practitioner who “gets the job done”. He is also commended for his “wide and up-to-date knowledge of agricultural law” that leads to him being instructed on a wealth of different issues and appreciated for his “excellent grasp of the technicalities”.

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Paul advises a range of clients on their estate planning issues. This involves preparing wills, trusts and powers of attorney. Many of his clients own businesses, including agricultural businesses, and his advice includes how to maximise any inheritance tax reliefs that are available.
Shakespeare Martineau is a leading law firm that combines creativity, commerciality and clarity. We pride ourselves on protecting and growing our clients’ businesses through pragmatic advice and sector expertise.

Our approach goes beyond legal solutions; clients instruct us to advise on what’s possible, what’s prudent, and what’s around the corner.