



Farm Succession Guide

Sponsored by **mymilk**[™]

Contents

Introduction	1
History, changing expectations and the legal rights of parents	2
Why family succession is important	3
Why is farm succession so challenging?	3
Defusing emotion	4
Step one developing a succession culture in your family.	6
Step two engaging with an objective Advisor.	8
Step three establishing a decision-making team.	9
Step four pulling together the information.	10
Step five developing a plan.	12
Step six providing regular updates to your family.	14
Step seven accepting the complexity of succession.	15
Step eight reviewing structures and documentation.....	16
Step nine documenting and presenting the plan.	17
Step ten following the plan.....	18
Conclusion	18
Roundtable Delegates	19

A summary of two roundtable discussions between New Zealand's leading rural lawyers, farm advisors, bankers and accountants on the challenges of family farm succession.

Introduction

Farm succession is a unique type of inheritance that has underpinned rural life for centuries. Succession is an important objective for many New Zealand farmers. This publication, prepared by MyMilk Ltd, summarizes a series of discussions held with New Zealand's leading farm accountants, lawyers, bankers and advisors. It seeks to provide insight and advice that rural families will find useful as they prepare for farm succession.

Establishing a succession plan is critically important for the continuation and sustainability of a family farming enterprise. In the past this was a relatively straightforward process. However, societal expectations have moved and what was once considered the appropriate way to pass on the family farm is no longer widely regarded as the most equitable manner to deal with the inheritance of family assets.

In previous generations, when the parents were ready to retire, the eldest son would typically take over the property. His siblings would receive other benefits generally of lesser monetary value. This was considered reasonable as it met the parents' objective to keep the farm within their family.

However, expectations have changed and the way things used to be done is not necessarily regarded as "fair" by many in today's society.

In the modern context, to achieve a seamless transition of the farm from one generation to the next, the family must focus on a number of important principles. These are:

- » Have regular family discussions about succession from an early stage.
- » The parents must provide strong leadership on the issues on succession.
- » Farm succession must be understood as a unique form of inheritance which serves a farm owner's desire to keep their farm in their family.
- » Always aim to fully complete succession during the parent's lifetime. Succession is not inheritance upon the parent's deaths.
- » Succession generally means one child inherits most of a farm.
- » New Zealand law allows parents not to follow society's expectations around equal division.
- » Farmers should recruit an independent Advisor to lead their family's succession project.
- » The advisor should establish a strong decision-making team to assist them and the family.

- » All family members must be provided with regular succession project updates.
- » Review ownership structures and legal documentation immediately to ensure these will facilitate smooth succession.
- » Put a succession plan in writing and commit to completing its actions on time.

This document explains these principles in more detail, and describes a process to put them into effect.

History, changing expectations and the legal rights of parents

In previous generations farm succession was very predictable. Society was accustomed to seeing farms passed down through generations of one family in a manner that was not common to other types of inheritance. Typically the eldest son would take over the farm. The other children received an education and the daughters were given Mum's jewelry. That was a formula that everyone in the farming community understood and accepted. It was also generally accepted by the legal and accountancy professions. Over time, however societal expectations, driven by pursuit of equality, have diverged from those traditional rural practices. Old fashioned family farm succession is becoming less socially acceptable.

Society now expects families to address succession in a much more proactive and equitable manner. The common expectation today is that succession should be "fair". Tension arises in many families from differences in defining what "fair" means. For many people, particularly those from non-farming backgrounds, 'fair' literally means 'equal distribution' of assets between all children. But to farmers 'fair' often does not mean 'equal' distribution because that definition may not allow for pursuit of the owner's wish to keep the farm in the family. To many farmers 'fair' can actually mean a very unequal distribution that does the best possible for all children while giving more assets to one child in order to keep the farm in the family.

Many New Zealanders incorrectly believe that in this country children have a legal right to equality of inheritance. As the judge explained in the recent farm succession case of Rippey v Hunt, this is not true. There is no guaranteed right of inheritance for any member of a person's family, and no presumption that all children must be treated equally. Parents are only obligated to make "adequate provision" for any child who needs support. In other words, a child who is not fully capable of adequately providing for him or herself will need providing for to the extent that the parents are able to do so. Due to the economic realities of the farming sector, and the common desire of many parents to keep a financially viable farm within the family, it is not legally required, and often not possible, to treat all members of the family 'equally' when farm succession plans are formulated. Being 'fair' in the more traditional sense that most farmers would understand can be a realistic goal.

This principle of fairness should be applied first to the parents. They own the farm and if they wish that farm to succeed as an economic unit to a child, then their wishes must be addressed through the succession process. In this

case both the farm and the parents should be in good financial shape for the future once the transition is complete. Making sure that the retiring couple will have sufficient assets and income to maintain a reasonable lifestyle for the rest of their lives needs to be uppermost in every family member's mind. The process must also be fair to the succeeding child (the child taking on the farm). The succession plan must ensure that the farm they take on is operationally and economically viable and their ownership situation must be legally secure once the parents have passed away. Finally the process must seek to provide as much benefit as possible to the non-succeeding children. This might mean drawing equity from the farm earlier in family life to help non succeeding children gain further education, develop careers or build businesses off the farm.

Why family farm succession is important

Research by the Agribusiness and Economics Research Unit recently showed the “growing of products” contributed 6 per cent of NZ's GDP in 2011/12. Add in the processing of those products, and all of the goods and services these activities consume, and the total size of the agri-food sector in 2011/12 rises to \$40 billion. Close to \$1 for every \$5 spent in NZ that year.

Without farmers we'd be a poorer nation and most NZ farms are still family run. Of all the farming models in NZ, family farms are by far the most persistent type. This is not likely to change soon. Farming families remain the backbone of New Zealand agriculture.

When one generation succeeds the previous, it is not just land that is passed down through the family. Along with the land comes the knowledge and passion required to farm that land successfully. Even in the corporate farming world, many senior managers have gained their knowledge and passion for farming on a family farm. It is a fact that few corporate farming operations today make significant effort to introduce the younger generation to farming.

The transfer of family farms from one generation to the next drives a vast farming apprenticeship system on which the whole sector relies. The national importance of this educational process is often under-rated. Every farm is different and complex. Each farm has strengths and weaknesses that may take years to understand. A working knowledge of the crops, livestock and machinery that suit a farm takes years to acquire. Farms are generally better run by people who have a long personal history on and passion for the land. Many of our country's best farmers were trained by their father and mother from the age of 5 or 6 in how to farm the very block they still run at 65.

Why is farm succession so challenging?

- 1. Society's expectations have changed.** While historically it was accepted practice for families to pass farms down to selected children, in part because the parent's retirement was tied to the farm's continued operation, as we have become a more egalitarian society we have increasingly demanded equal division of wealth between children. Favouring one child no longer meets societal norms.

2. Farms have a minimum economic size. Most farms are about as small and carrying as much debt as possible while supporting a family. Divide most Kiwi farms further and the parts won't be economically viable units. They would certainly become unviable if divided multiple ways over successive generations.
3. Farmers are motivated by land ownership. Many of our farming families came here from Europe to own the land they work on rather than spend their lives as tenants. It is rational to invest more effort and passion developing land and livestock that you actually own. The less a farmer feels they own the farm the less motivated they will be to improve it. Working for your brothers, sisters, aunts, uncles and cousins is not as motivating as working for yourself and your children.

These three economic and social factors create a headache for farming families. If they want to keep their farm in the family, it probably has to remain intact and without much more debt. If that farm is to be optimally managed it would be owned by the person asked to run it. The farm probably can't support more than one family but the non-farming children won't find an unequal division of family wealth palatable in the context of modern societal trends.

Succession is therefore a formidable challenge. It has to be completed during the final phase of the parent's working lives, unlike most inheritance which tends to happen after the parent's death. It tends to treat children unequally. It needs to be completed while simultaneously protecting the farm as a business and establishing the succeeding child for their farming career. It needs to ensure that the parents retain a reasonable lifestyle in retirement and it needs to ensure, as far as possible, that non-succeeding children are content that the process and outcome were fair.

Although society's attitudes to inheritance have changed, in some respects laying siege to the traditional process, whatever the future holds for New Zealand, family farming and succession will remain an intrinsic feature of rural life.

Defusing emotion

Before farming came about humans had less permanent connections to land. Multi-generational farming has been a core driver in the development of civilization. Creating a legacy, to hand on to succeeding generations, is often the primary rationale for all the hard work, sacrifices and reinvestments that develop a great farming business. Improving a property throughout a career is rational when a farmer knows that their children will enjoy all the improvements they make too.

When a family, their home, their wealth and business are as closely connected as they tend to be in a farming operation, emotion is likely to play a big part in any handover from one generation to the next. Finding ways to use that emotion positively, rather than let it potentially split the family, is a priority.

Succession can be a highly emotional experience for all family members, particularly the parents who are moving on from a pursuit that has defined their identity for decades. Rural accountants and lawyers report even the most stoic farming types breaking down in tears when they begin to address

these personal issues. This is hardly surprising as they are laying bare their whole career in front of the people that matter most in the world to them.

When your objective is to build a family legacy, succession planning is more than an administrative process, it is the motivation for the hard work you do every day. Farmers, with the ambition to pass the farm on, look constantly to the future and plan how to create an asset that will give the best possible prospects to their descendants.

Considerable capital is usually tied up in a farming business. This has often been built up through slow appreciation over generations, as a direct result of previous generations of succession, rather than through retained profits. It is very difficult to take that accumulated equity out of a farming business without compromising its viability.

For the children, particularly those who have moved away and are not involved in the farm, the family property is often still a place they consider 'home'. It is where they grew up, where they established precious memories and it remains part of their identity. They would often prefer the farm stay in their family even if they won't personally inherit it. These attachments to the land place some expectations on the succeeding child to make a success of running the property for the family, to retain the land through farming's cycles, to allow siblings and parents some level of continued access and, ultimately, to pass it on to the next generation.

Not all siblings will be equally passionate about keeping the farm in the family. Some may be more interested in what the equity in the asset could do for them if sold, especially if it represents significant wealth. Children's partners and spouses might also bring in different perspectives on the way family equity should be shared. Their views and ambitions may create tension.

Parents have the highest stakes in all of this and can be pulled in many directions. They have spent their productive lives keeping and building the farm. They now have to front up to those they love on how they plan to share that asset.

The first thing parents must do is step back and dispassionately evaluate whether the child currently nominated to take over the farm is actually capable of running the business successfully. Their own future security may depend on the ongoing operational success of the farm.

Meanwhile, their role as business leader and steward of the family land are being dis-established after decades at the helm.

All of these factors create colossal, and complex, emotional dynamics. Great care is required to properly negotiate them all.

What is required to enable all members of the family to work through these emotions is strong leadership by the parents, clear communication with all participants throughout the process, acceptance by all parties that farm succession is a unique process that will require many concessions and as much objectivity as possible.

A ten-step process

Following the steps outlined below will assist in the transition of farm ownership from one generation to the next.

1

Step one

the parents must develop a family culture where succession is discussed regularly.

Parents should:

- » Provide strong leadership toward their desired outcome.
- » Regularly initiate family discussion about the future of the farm.
- » Explain why succession is important.
- » Take time to understand each child's perspective and motivations.
- » Decide exactly who they want involved in the succession process.
- » Work hard to maintain lines of communication and align expectations.
- » Commit to a completion of succession while they are still alive.
- » Avoid surprises for anyone.

The sooner the topic of succession is raised within a family, the better. Although it can be tough to establish family dialogue around succession, the topic should be discussed regularly. It is important to be open within a family about the farm's future and to create a culture where the expectations of all family members are clearly understood and reconciled wherever possible.

Starting these discussions early in a generation will ease the process and minimise surprises when final decisions are made. Regularly raising the issue of succession around the kitchen table, when family members are together, should ensure everyone develops a greater degree of comfort with the process. If open discussions about succession become a natural part of family life, and these establish clear expectations in everyone's mind about what the parents intend, much of the drama and tension will be defused.

It is the parents' role to initiate and lead succession discussions. They need to explain why the family is going through a succession process and make their thinking clear on who should be involved in the process and why. The parents should certainly include all children in the process as far as possible. The parents have the right to decide that some of the children's spouses or partners have something to contribute to the process, but that others should not be involved in discussions.

Parents must also ensure each child has a realistic understanding of the farming business. One impressive example of this was a Southland family who alternately took their son or daughter out of school to attend routine meetings with farm accountants, lawyers and other advisors. After each meeting the child was asked to write a summary of the discussion. This approach developed each child's business acumen and made the eventual succession smoother and more successful because they both understood the farm.

Later on in the children's lives, one of the key challenges parents must address is ensuring that the children living away from the farm actually understand the sacrifices of freedom, income and lifestyle that their farming sibling has made to earn the inheritance. It is often the case that off-farm children mistakenly think their brother has had it very easy living in a farm cottage and getting an income. They don't realize their brother has missed out on many of the opportunities they have enjoyed. They have had the freedom to live where they want and build a career that has often given them more income and greater security than farming really provides. The brother meanwhile has no savings and has gambled his most productive years on parental promises about succession.

It is most important that the succeeding child has total certainty about their future. They need to know that the succession will be economically feasible for them and will not be legally challengeable by siblings after the parent's death.

When farming parents come to retire and pass on the farm, the ideal outcome is that, after the succession plan is carried out, their children will tell them, "Oh, it was really easy. We knew what you were going to do. We knew Johnny was going to take over the farm. You have told us about it for years and we understand the sacrifices he has made to qualify for this. We were quite happy with that."

One simple formal way to ingrain succession into the family culture is by making sure that, if the farm is owned by a trust, when the trust formally meets each year to review its accounts, an agenda line entitled 'succession plan' is included at that annual meeting and all adult beneficiaries of the trust are invited to that meeting and provided with the minutes.

Parents need to commit to succession happening and leading it strongly to completion while they are still alive. It is the worst case scenario when parents procrastinate and pass the problems on to others to deal with after their death. This can often happen when farms are placed into trust. Trusts are not a fail-safe option. The memoranda of wishes they come with are generally not legally binding on trustees. There is a real risk that interested trustees can rearrange things after the parent's death. Independent trustees can also sometimes avoid implementing unpopular parental wishes to avoid legal action from beneficiaries. Failing to plan and complete succession properly during the parent's lives, is planning to fail.

A farm is a business. A successful business will have a continuity plan. Those involved in the business need to have the relevant conversations to formulate the plan, then execute it. Families that complete this process successfully, while the parents are alive, will become New Zealand's dominant farming enterprises in the future. Any family that is unsuccessful because it avoids this conversation or does not rise to the challenge of working through the issues related to transition between the generations will eventually exit farming.

2

Step two

engage with an objective Advisor.

- » The parents should engage a professional lead Advisor to facilitate the family's succession project.
- » The Advisor should be someone who understands family farming, can weigh up all the issues, and make rational decisions.
- » The Advisor should be someone with succession experience who is able to establish relationships of trust with every family member.
- » The Advisor must be able to develop productive working relationships with the lawyers, accountants, bankers and other parties connected to the succession project.
- » The Advisor must be prepared to listen and learn from the family and their unique circumstances.

The Advisor is likely to be a professional Farm Advisor with significant experience in farm succession.

Taking on outside guidance will help ensure that the process is as successful as possible for the family. While a 'do-it-yourself' ethos is at the core of New Zealand agriculture, succession is best undertaken with the objective advice of professionals. Typically this might cost \$30,000 in consultancy fees. Spreading this cost over a full generation of farming and in the context of the value of the business and family relationships at stake, this is a prudent investment. The cost of failure can be high.

When an objective and independent Farm Advisor guides the process and presents everyone else's opinions and aspirations, each family member should better understand what the others think. Done effectively this style of moderation ought to deepen the trust and respect they have for each other.

New Zealand has a large number of professional rural advisors with experience in guiding families through succession. Parents should use their contacts to find the most respected advisors in their region, engage them and follow their advice to get the succession process running.

3

Step three

establish a decision-making team.

- » The Advisor should help the family pull together a team encompassing different disciplines and expertise.
- » The team should include the farm owners, appropriate family members and professional advisers including lawyers, accountants and bankers.
- » The team has the family's nominated Advisor (described above) as its leader.
- » The team will provide advice through the nominated Advisor
- » Decisions ultimately rest with the parents.

It is the Advisor's role to map out the succession project and to use their contacts to pull a strong team together. They will decide where and how often the team meets throughout the succession process. They will facilitate those meetings and publish the outputs and recommendations of the meetings to those concerned.

The key members of the team are the parents and the succeeding child. Other members of the team are likely to be a lawyer, an accountant and a banker.

Aside from the professional specialists, input might also be welcome in this forum from trusted family friends and farming neighbours.

Each member of this team needs to have a clearly defined role and a good understanding of where they fit in relation to the other team members.

The child who is likely to inherit the farm should be involved in this decision-making team as the team is deciding their economic future. Where relevant and possible, non-succeeding siblings might also be included.

Formal meeting times and structures are likely to be beneficial to assist in conducting and completing the team's business efficiently. The lead Advisor has the responsibility to put these processes in place.

Ultimately, all decisions rest with the farm owners, which means the rest of the team is simply there to contribute to the development of the team's advice.

Other family members will be asked to abide by the decisions reached by the team. A well understood and tightly run process will help ensure that all family members have confidence in the decisions reached. The team leader, the Advisor, should take responsibility for regular communication between the decision making team and the wider family.

4

Step four

pull together the information necessary for a good plan.

- » Establish the parent's requirements and their vision for the farm.
- » Establish which child is the natural successor.
- » Ensure full disclosure of the farm and family history including any family conflict.
- » Perform one-on-one interviews with each family member to get their views.
- » Detail any parental promises that may exist.
- » Compile detailed records and accounts of the farm going back 10 years.
- » Compile current farm, stock and plant valuations.
- » Compile details of the parent's other interests, assets and liabilities.
- » Compile details of the succeeding child's family, assets, liabilities, aspirations and farming qualifications.
- » Compile details of any current or potential developments or diversifications of the farming business.
- » Compile details of the non-succeeding children's lives and aspirations.

Every family farm situation is unique. Succession will not be possible in many cases. There is no point in any child taking over a farm with unsustainable debt levels, uneconomic scale or if succession leads to irreconcilable family and legal conflict. It is also very important that parents ensure the succeeding child and their spouse fully understand the real long term financial performance and prospects of the farm. Succession should not be based on "rose tinted" experiences gained over a few good farming years. The incoming owners need to understand that droughts and commodity downturns will happen.

It is the decision making team's job to conduct one-on-one interviews with the parents, all of the children and the family's farming advisors to bring together a "warts and all" assessment of the family's total situation on and off the farm. Summaries of these interviews should be written up by the Advisor and circulated to every member of the decision making team. These interviews will reveal whether there is a "natural successor" child who has invested their time in the farm and whether any parental promises have been made to them or other children.

Full disclosure of the farming business is required. How has the farm performed as a business? Who currently owns it? Does one of the children actually want to take over the farm? What houses and other income streams come with the farm? What long term outcome do the parents want for the farm? What are the parent's lifestyle expectations? Could the farm realistically carry a new owner while still supporting the parents in retirement? Are there any opportunities for diversification? Can any portion of the farm be split off or sold while preserving an economic unit? Has the succeeding child demonstrated the ability and commitment to run the farm successfully? What help do the other children need to lead happy and productive lives? What other assets do the family have that might help make the division of family wealth more equal and the retirement of the parents more comfortable?

All of these details and more need to be gathered together by the decision making team. Preferably, if the family has been proactive, the members will already have a good understanding of most of this information. For example, proactive parents will have been talking to each of their children through school and university about the farm and about what they want to do with their lives.

Succession planning should always be guided by the parent's wishes and needs. The best place to start is with an independent advisor interviewing the parents to establish their:

- » **Values and principles.** What do they value most about life, about family and about farming? What purpose do they feel the farm serves? What do they believe the farm brings to the family and why do they want it to stay in the family?
- » **Vision.** What is their vision for the future of the family and its farm? What is their vision of the future for the succeeding child? What is their vision for the non-succeeding children?
- » **Expectations.** What type of retirement do the parents expect? Where do they want to live? How much income will they need? How well do they understand what it will cost them to maintain their lifestyle after farming? Often the off-farm children will be able to guide the parents on what income they will actually need once the farm cheque book is no longer available.

5

Step five

commence development of a plan.

- » Start with the succession outcome the parents ideally want.
- » Determine a realistic outcome that is as close as possible under the circumstances.
- » Ensure the bank will support the succeeding child in pursuing the plan.
- » Get all parties in agreement on that target outcome.
- » Establish the genuine intent and commitment of the succeeding child to the outcome.
- » Develop a series of steps to get the family to that achievable outcome.
- » Adapt the plan as events disprove any assumptions.

There is a good quote to bear in mind when tackling the development of a succession plan. “The hardest part of leadership is judging how far to stray from what is ideal for the sake of what is necessary.”

It is the decision making team’s job to agree what outcome would be best for the family given the parents’ wishes, financial situation and all the other contributing factors. For every family this will be different. But the plan will likely involve some staged hand-over of operational control to the succeeding child accompanied by the staged purchase and/or gifting of equity in the farm to that same child over a suitable period and in a fashion that secures the parent’s retirement and the other sibling’s interests.

The team then need to draw on their collective experience to develop a timeline of specific actions that will take the family through that plan and deliver them to the desired outcome.

It is critical that the farm’s bankers are involved early in this planning process. There is no point in the family committing to a plan that includes outcomes that the bank will not support.

This plan will likely include some initial changes in the ownership structure of the farm. Possibly to a limited liability company owned by a family trust as respected rural lawyer Ian Blackman advises. It might include the sale of some non-core assets, or the investment in some diversifications to give the non-succeeding children future benefits. Further milestones will be the transfer of the farm checkbook, and the change in reporting structures for farm staff to recognize the new boss. At some point a key milestone might be the parents moving out of the farm house and the succeeding child moving in with his or her family.

That plan might map out actions over two decades, or it might require succession to be completed within 12 months. The timescale will depend on the life stage of the parents and children.

It makes sense for the parent's equity in the farm not to be entirely gifted to the succeeding child on the day that operational control is passed over. Parents will generally envisage their child keeping the farm and passing it on to their grandchildren, but there is a moral risk that the succeeding child could cash out. The plan should set milestones of farming where the succeeding child earns lumps of equity from the parents after 5 or 10 years of proving their intent to keep the farm and meet the parent's wishes.

It is very unlikely that the parents or children will get every single thing they want out of the succession plan. Succession, like politics is the art of the possible. Compromise is likely to play a big part in getting the family to a good result. It is the job of the nominated Advisor to manage everyone through that process.

6

Step six

provide regular updates and clear information.

- » Keep all family members informed.
- » Make sure the succeeding child understands the business.
- » Keep the information clear and direct.
- » Provide opportunities for input.
- » Make definite and unambiguous decisions.

While some of the outputs from the team's discussions will be potentially upsetting, the issues need to be worked through by all family members. All family members need to be kept informed of the progress of the succession project and given chances to respond.

It is very advisable to get the farm accountant to provide the last 10 year's farm accounts to an independent accountant who can help the succeeding child assess the viability of the business they are taking on.

The parents, succeeding child and advisors are likely to be close to the farm and to the project, whereas non-succeeding children might be living in other places. Giving non-succeeding children as much information and certainty as possible about the progress of the succession plan and how they will be treated is vital.

While sons-in-law and daughters-in-law can bring a fresh perspective they may not fully appreciate the unique nature of family farm succession, the history of the farm in question and the family expectations and emotions tied up with the property. In some cases it might be necessary to ask the children's partners to maintain distance from the discussions.

When emotion threatens to overwhelm family succession and break down the lines of communication, the Advisor's role is to open up communication channels again. They should be able to develop a process that puts the emotions into perspective, and continually refocuses everyone on the need to deliver an outcome. This might require them to continue meeting members of the family separately. As long as these conversations provide accurate information and bring in each family member's perspective and aspirations, constructive progress should follow.

Either way, a good structure and clearly articulated expectations will help to smooth the process. So long as the communication is clear, the strain on family relationships will be minimized and the transition will become easier.

7

Step seven

accept that this is a complex, on-going process.

- » Succession is part of family farming. A repetitive cycle that some farming families are almost always engaged in.
- » Succession is actually part of what attracts those who go farming.
- » Differentiate between ownership and control.

In most instances the process of family farm succession will be extensive. It should therefore start as early as possible. Those who expect to sort the whole thing in a matter of months are likely to find otherwise. Rather than succession being viewed as a burden or inconvenience, taking that amount of time and care would more usefully be thought of as a welcome and intrinsic part of farming and family culture.

Just as the difference between fairness and equality needs to be understood, it is also important to differentiate between “ownership” and “control”. They are not the same, and unless the difference is highlighted, disharmony can eventuate.

Put simply, who holds the cheque-book? Who sits in the driver’s seat of the ute when you look over the paddocks? Who calls the shots? Who sets the terms for the management of the farm? That is the person who has “control”, and much of the art of farm succession is about how that control is transferred.

Sometimes it will be possible for a farming family to identify the child who will take over the farm early on. In many families that person virtually selects himself or herself. However, that is not always the case, and it would be unwise to make irreversible assumptions about who the successor is going to be. Those who keep an open mind about their children are more likely to preserve long-term family harmony. For the parent’s future the farm needs to be passed into the most capable hands. Not just the eldest hands.

8

Step eight

review structures and documentation.

- » The succession plan needs to be built into legal documents and structures as soon as possible.
- » Ensure land and the other parts of the business are properly defined.
- » Ensure all legal titles are in order.
- » Confirm that everything possible has been done legally so the process will be smooth and the succession outcome will be legally secure.

Even when viewed as an ongoing process the handover of a farm can still be compartmentalized. First you have the core farm assets, then you have the core operations of the business, then you have any diversifications such as rental properties, forestry blocks and so on.

Each part will ideally be transferred legally from the control of one generation to the next. Specific legal and accounting advice should be sought about how best to achieve the desired outcome. Being aware of the various legal structures available is a good place to start. How the land and buildings and the business associated with them are owned will make a significant difference when it comes to the succession process.

It is paramount for the succeeding child that once a succession plan is determined it is legally documented and all the required new legal structures put in place as quickly as possible. There is always the risk that parents will die before a slow process is completed and if this happens then all of the work towards succession could be wasted.

Reviewing the current ownership structures of the land and other legal documentation, such as wills, partnership agreements, property titles, leases and trust deeds with an experienced rural lawyer is essential.

Partnerships, limited liability companies and the various types of trusts all have their proponents. Tax implications also need to be taken into account.

One potential solution is to vest ownership of the farm and farming business, including stock, plant and other assets, into a limited liability company; while placing ownership of that company into a family trust. Following such a formula, advocated by rural solicitor Ian Blackman, allows the succeeding child to gradually buy the trust out of its ownership of the company over the decades preceding the parent's retirement. Thereby building up the cash within the trust of which the parents and other children will be beneficiaries. Upon retirement or death the parents then have the option to gift part or all of the remaining shares in the company to the succeeding child. This approach allows the farming child to partially buy the farm, gives the parents a life interest in and ongoing income from the farm and potentially enables the off-farm children to benefit with some cash earlier than their parent's death.

While these suggestions may be useful, they do not provide the complete answer. Farms encompass a disparate set of assets. Passing them from one generation to the next is complex, and will be more successfully accomplished with expert assistance, from any or all of the banking, legal, accountancy, and farm advisory professions.

9

Step nine

document and present the plan.

- » Keep the plan brief and simple, no more than two or three pages.
- » Ensure the plan includes definite handover milestones with specified dates.
- » Ensure the family members commit to meeting those milestones.
- » Treat it as a living document to be updated as circumstances change.
- » Hold a meeting with all family members to present the plan.
- » Get a Deed of Family Arrangement which secures agreement to the plan signed by all family members.

A detailed plan will articulate what is intended and give the family something tangible to respond to. While this plan should be written down, it does not need to be extensive. Two or three pages should be sufficient.

The plan will clearly outline what is intended, how that is to be put into action and the legal aspects required to bring the transition from one generation to the next to a successful conclusion.

This plan should form a Deed of Family Arrangement document which outlines the main milestones agreed within the plan. The actions the participants agree to take, what everyone, including non-farming children will receive and when. All family members should be asked to sign the Deed.

Ideally this plan will also establish the platform to repeat the exercise 25 years later when the following generation is ready to take over.

If a comprehensive plan is developed and can be achieved within the appropriate timescale, then all members of the family can continue to look each other in the eye over Christmas dinner every year.

10

Step ten

follow the plan and actively monitor achievement of milestones.

- » Plan 6 monthly meetings to measure and record progress against the plan.
- » Call a one off meeting whenever circumstances change affecting the plan.
- » Keep communications on the project open with all family members.
- » If the plan is not working, acknowledge this and restart the process.

It is the parent's and their lead Advisor's job to determinedly keep the family on track to complete the succession plan on schedule. The management of the succession project needs to be very strong and uncompromising. If the plan slips behind schedule then circumstances could change, a parent could die, and the chance to achieve the farm succession may be lost.

Conclusion

The process of farm succession is almost never easy. Even when everyone agrees on the plan it will involve a lot of disruption to the participant's lives as they change roles, houses and lifestyles. However it is fundamentally important to the continuation of a family farming business. If everyone can approach the process with good intentions, an understanding that seeking continued family ownership of the farm is the owner's legal prerogative, a firm commitment to resolving issues and an open mind then it should be achievable for most family farms.



Roundtable Delegates

This paper was prepared from discussions conducted in Christchurch and Invercargill. The following professionals gave their time and expertise:

Ian Blackman, BlackmanSpargo

Frazer Weir, BDO

John Redpath, Coach Approach

George Forbes, Rhodes & Co

Don Chamberlain, Westpac

Philip Guscott, Property Consultants

Mark Tavendale, Tavendale & Partners

Chris Haworth, Rabobank

Peter Glassford, Brown Glassford

Ashley Burdon, Coach Approach

Jeremy Anderson, ASB

Dave Gibson, AWS Legal

Aaron Drake, AWS Legal

Matt Harrington, Farm Forward

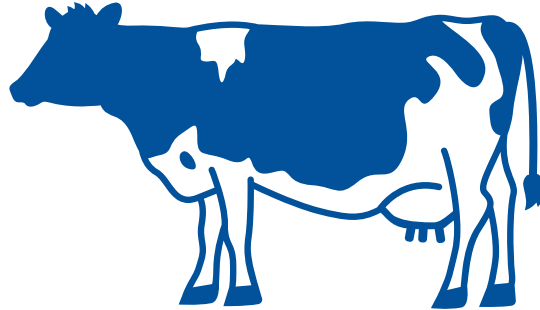
Eric Van Eeden, MMCA

Peter Flannery, Farm Plan

Moderator: **Hamish Hutton**, MyMilk

NOTES

Lined area for taking notes, consisting of 28 horizontal lines.



Thinking about buying your first dairy farm?

Ask about our new offer for
First Time Dairy Farm Owners.

Give us a call

0800 224 660

Drop us a line

moreinfo@mymilk.co.nz

mymilkTM