

## **Farm and Ranch Divorces**

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## **FARM AND RANCH DIVORCES**

### **INTRODUCTION**

Many family lawyers are intimidated by the thought of representing farm or ranch client who has agricultural assets. Despite the agricultural roots of our province, most of us are far removed from the day to day operation of the family farm or ranch. Many have never visited a farm, let alone lived in the country and do not understand the way of life or the culture of the agricultural community.

In addition, while the farm and ranch divorce has many similarities to any other divorce, there are a number of issues that do come up that we rarely see in other situations. This paper will raise some issues and provide some information about divorces on the family farm or ranch.

### **KNOW YOUR CLIENT**

Farmers and ranchers have a very unique approach to business. In many cases, they are part of a generational agricultural operation. Over their lifetime, they have witnessed their parents buy and sell property, cattle, machinery and seed on the basis of a promise and a handshake. They are part of a culture where one does what one promised to do, even if it turned out later to be a bad deal. Their word is truly their bond and they have a heightened sense of fair and unfair.

But when it comes to dealing with lawyers and accountants, they often have a hard time following advice. They are used to paying for “things” and when we want to charge them for having a conversation (to understand which land they own and which they rent – which everyone in a surrounding 50 km radius already knows) or preparing an accounting (to be able to prove how much money the hay brought in this year – which they already told you anyway) they offer some reluctance.

It is vital to make a connection with these clients and to understand, not only their businesses but also their family connections. The family dynamic is often extremely influential on these matters and the possibility of the existence of shadow-negotiators is high as many family members will have or believe that they have a stake in the outcome of the property settlement that involves a family farm or ranch.

One of the ways that you can make a connection with these clients and make them feel valued is to inquire with the client whether they would be interested in having you come out to see their operation. It shows the client that you are interested in them and their business and can prove invaluable to creating the relationship between you and the client. If you make the offer, however, be prepared to go without charging the client for the time; consider it marketing. These clients often

have complex matters and you will have plenty of time to reap the rewards of cultivating a good relationship. Also, dress appropriately. If you are going out to understand the business, go prepared to “get dirty”. Your client will appreciate your effort.

While it is definitely true that everyone in rural or small-town Alberta thinks they know everything about their neighbours, it is also true that these clients are often intensely private. While many people will have an idea about the size of a large farmer’s or rancher’s operation, the actual details of that information will not be known or understood. It is important to keep these matters discrete, even more so than with many of our clients – your discretion will be important if you are hoping for referrals. For these clients it is often difficult to engage experts or find witnesses that your client will agree to, because they may not want others to know a sufficient amount about their business for their evidence to be of assistance to you.

Like with so many of our clients, creating a relationship with the farmer or rancher is one of the most important parts of doing this work, and you may find that the relationship building benefits from you doing some things that are outside of your comfort zone.

#### **INDIVIDUAL V. CORPORATE OPERATION**

As with any business, there is more than one way that a farm or ranch can carry on business. While many farmers or ranchers operate as a sole proprietorship, there are also many large farms and ranches that are owned by corporations. How the client carries on business can affect a great deal of the negotiation between the spouses.

Farm or ranch corporations are often owned by more than just the separating spouses. In fact, shares in the corporation may be owned by more than one generation in a family. Sometimes, the shares will be the same type of shares and sometimes different members of the family will own different types of shares. Obviously, the value of the shares might depend significantly on the type of shares that the clients own. Unfortunately, the share structure and ownership may not be clear to the “in-law” spouse. This may mean that the in-law client has an expectation that does not align with the reality of their entitlement. In addition, it is possible that the corporation may have a Unanimous Shareholders Agreement which determines the method of valuing the shares in the event of divorce. Corporate documents must be reviewed to determine what affect they will have on the negotiations.

Despite the fact that many farmers and ranchers are professional averse, some of them will still have fairly involved tax plans. Consultation with the accountant, preferably before a deal is reached, is necessary to try to preserve the tax advantages that have been so carefully crafted. Rural clients

are no different than most of our other clients in that Canada Revenue Agency is the only entity it gives them more pleasure to keep money away from, than their soon to be ex-spouse.

Some of the tax issues that it is important to discuss with the accountant are:

1. How has the equipment been depreciated?
2. What is the impact of the recapture rules?
3. Is either the farmland (in a sole proprietorship) or the shareholder (in a company) eligible for a capital gains exemption?
4. If so, what, if any, capital gains room do either of the clients have and can it be used to “grease the wheels” of a deal?
5. Are there alternative minimum tax questions if the capital gains exemption is elected by either of the spouses?
6. If so, who will be responsible to pay?

#### **PRE-NUPTIAL OR MARRIAGE AGREEMENTS**

Make sure that the issue of whether or not there is a pre-nuptial or marriage agreement is addressed early on in the process. It is possible, especially where “the farm” has been passed through multiple generations, a pre-nuptial or marriage agreement has been signed as a condition to land or shares being placed in the name of the next generation. Farmers and ranchers have heard the same stories (even if they are mostly urban legend) as our other clients, about the poor sot who brought everything into the marriage and left with nothing. Given that farms and ranches often represent the hard work of many generations, and that it is still the desire of many farmers and ranchers to pass the business to the generation after them, many have put some serious thought and effort into how their way of life can be preserved for their children in the case of a divorce.

#### **LAND**

For the farmer, the love of the land is one of the main reasons that they do what they do. In many cases, they are asset rich, but cash poor; they could be making more money doing just about anything else. They do it because they love it.

The value of farmland is not as static a value as a city lot. One of the most common ways that the appraiser determines a value for land is by using comparable sales in the area. That makes it