

Succession Planning Guide for Farming Families



Hello.

My name is Linda Crawford. I am a Chartered Accountant with over 39 years' experience in helping farming families.

Like my father, Allan Patterson, before me, a significant part of my life's work has been to guide such families on the issues closest to their heart – welfare of loved ones; legacy; intergenerational planning and importantly, the future of their farm.

Here at LCA Accounting we understand these issues intimately. It's why we've chosen to specialise in them. Quite simply, they are too important to leave in the "too hard basket" or potentially even worse, to be entrusted to advisers who lack our experience.

It's highly likely that you are reading this guide because you have expressed an interest in your estate planning and/or farm succession.

The purpose of the guide is to describe what our process is, let you know what to expect and to explain some underlying philosophies which we have found helpful.

We look forward to working with you.

Sincerely



Linda Crawford

Contents

Our House Views on Estate Planning and Farm Succession	4
Three key strategies	
Involvement of lawyers	
What to avoid	
Our Process	6
The flowchart	
The stages explained	
Mutual commitments	8
Frequently asked questions	9

1. Our House Views on Estate Planning and Farm Succession

Our overall aim is to nurture and maintain happy families throughout any estate planning and farm succession process.

Accordingly, the process we use is designed to ensure everyone's point of view is heard and considered. We find this approach results in a sustainable, fair outcome.

A good sign that this has been achieved is that you remain active participants in each other's weddings, christenings and other significant family occasions long after the process has been completed.

We believe that all this is best achieved without recourse to expensive and harmful litigation.

A thorough understanding of your objectives

Optimal solutions only come from knowing all parts of the puzzle, both factual and emotional. We take the time to understand, then document, the objectives. Thereafter we are skilled at helping clients reach consensus on what is to be achieved.

So, our starting point is to help you define the optimal solution. The mission thereafter is to achieve it, or failing that, an acceptable variation.

Three key strategies

Whilst every case has unique characteristics, our approach always ensures the following strategies are considered –

1. **Capital Gains Tax (CGT) exempt land.**

The CGT rules were introduced on 19 September 1985 and became operative as at that date. Property which is directly or indirectly pre CGT should be treated as the rare and prized asset that it is.

We take special care to preserve pre CGT status wherever possible, as the ultimate gain on sale will be exempt from income tax. That's the reason why we will ask you some detailed questions regarding your family's history of the property, especially regarding the original acquisition. Please bring a map of your property to our first meeting. It could be of considerable assistance in optimising the outcome.

2. **Fairness for all children, including those who are off-farm**

A sustainable solution means that the interests of all children have been considered. This includes those that currently do not live or work on the property.

In our experience, its far better to canvass widely now than to have a contested will later.

Having worked through and agreed upon what's fair, we secure the agreement of all children not to subsequently contest their parents' wills.

3. **Combining family trust income with aged care.**

We are highly experienced in assisting the older generation farmers to maximise their personal income, without costing the farm the maximum daily allowances.

Involvement of lawyers

The *Sword of Justice* is indeed a double edged implement. Our joint aim will be to avoid expensive, traumatic litigation.

Ideally, the only involvement a lawyer will have in your estate planning and farm succession will be to prepare a competent set of documents that will deliver upon your wishes.

Accumulated over many years' experience, here are our top tips for an optimum legal outcome -

1. Engage a specialist

This is a complex area that involves many aspects of the law. We will refer to you a specialist in whom we have confidence. By all means retain your usual lawyer for standard transactions but we strongly recommend not for this assignment.

2. Secure a fixed fee for the engagement

We want you to avoid a "fee surprise". The lawyer we refer you to will not only advise a fixed fee in advance, the actual fee will be at an advantageous rate. This is because the lawyer knows he/she can rely on receiving a high quality briefing document from LCA and ready collaboration with us.

3. Collaboration provides the best outcome

Unfortunately, the British legal system upon which Australian law is founded presumes opposing sides. This often results in high stakes, *winner takes all* encounters.

We want the families we advise to be on the same side, which is why we avoid engaging lawyers who will readily take you down the path of litigation.

4. We treasure ongoing relationships

The difference between lawyers and accountants is the nature of the relationship. Lawyers are transaction based whereas we have an ongoing care relationship.

As an accountant, we take the time to address the often complex taxation and financial implications of the solution, based upon a deep appreciation of your legal structure. We'd go as far as to say that lawyer-driven solutions nearly always omit vital considerations. That's why we at LCA take a lead role in not just developing your solution but in ensuring your lawyer gives effect to it.

What to avoid

Whilst we've largely covered how to have a successful estate planning and farm succession process, here's a quick summary of some significant aspects to avoid.

- Don't adopt a *win at all costs* attitude. Better results come from flexible thinking.
- Don't allow yourself to be led down the destructive part of litigation.
- Don't engage a lawyer who has not been thoroughly briefed by us.
- Don't engage a lawyer who will give you a fee surprise. Fixed fee is the way to go.
- Don't exclude legitimate stakeholders from the process. This will avoid legal challenges later.

2. Our Process

The process we follow has been carefully designed to achieve the best outcome, with the least fuss. We do this in logical stages, pausing at appropriate intervals to allow for your queries and consideration. Our fees mirror these stages, allowing you to pay progressively as you advance through the process.

The flowchart

The process is mapped out on the following pages.

The stages explained

Discovery

It's here where a full understanding of the brief, including a thorough exploration of the ideal outcome, is ascertained. In this regard, we will ask you to provide certain information such as a map of your farm, ahead of the initial meeting.

The outcome to be provided to you at the end of this Phase will be a concise summary of not just what has been ascertained but our initial thoughts regarding what's possible.

We expect you will want to reflect upon this document before proceeding to the next phase.

Design

We expect that you will want to ask further questions and have further issues to raise at the beginning of this next phase.

It is common for us to conduct "off line" meetings with various stakeholders to answer questions about how the approach suggested could affect them. For example, "Mum and Dad" may wish to have a conversation with us without their children present. For that matter, one or more adult children may wish to discuss the implications from their perspective, without parents present. This is all quite normal.

In fact, we encourage everyone to have their queries and concerns addressed at this point before proceeding any further. These discussions thus become a firm foundation upon which to base the final solution.

When everyone is ready to proceed, a meeting with all stakeholders is convened, in order to explain the plan which has been developed.

After obtaining your agreement, we then proceed to preparing a detailed set of instructions. These are for the lawyer who has been engaged to prepare the documents that will give effect to your wishes.

Documentation and Implementation

Accurate representation of your wishes in the legal documents should not be left to chance. During this Phase, we will facilitate a meeting with you and the lawyer, following which the lawyer will send us a set of draft documents to review.

Our role at this stage is to ensure the documents accurately reflect your wishes. We will return them to the lawyer if any corrections need to be made and keep repeating the process until completed to our satisfaction.

Legal execution

After the final documents have been issued by the lawyer, we will convene a family meeting at which these instruments will be executed by all relevant parties.

Accounting execution

It's highly likely that after your wills and other documents are signed that a second round of execution will be required, this time of an accounting nature.

To give you an idea as to what this entails, so common examples include –

- Application for tax file number

- Bank accounts to be set up

- Instructions and arrangements for financial record keeping - these are usually standard accounting functions which we can instigate on your behalf.

Consolidation

It's quite normal for there to be ongoing "settling issues" to be worked through over the ensuing six months. This includes queries to confirm stakeholders' understanding of who is entitled to what. We know these queries will arise and as such have provided for them in our fee.

3. Mutual commitments

We are about to embark upon a very significant journey together. A successful journey requires two sets of commitments, yours and ours.

Your commitments

1. To keep an open mind and to work respectfully towards a mutually beneficial outcome at all times.
2. No swearing. No shouting, No storming off.
Kindly note that we reserve the right to withdraw from the engagement if this occurs, whereupon there will be no refund of any fees you have paid.
3. Ask questions. Be actively engaged. By all means request additional explanations where required.
4. To advise at any stage if you have concerns.
5. To pay our fees upon receipt of invoice.

Our commitments

1. To secure the best possible outcome for you and your family.
2. To remain objective at all times
3. To advise all fees in advance of performing any service related to this engagement.
4. To respect matters told to us in confidence.

4. Frequently asked questions

How are the interests of off-farm children taken into account?

A lasting solution can only be achieved after the interests of all stakeholders are taken into account. Especially in the case of adult children all circumstances need to be carefully and objectively tabulated. For off-farm children this will include –

- Involvement with the farm, past and present.
- Desire to be involved with the farm in the future.
- Income and personal financial circumstances.

How are the interests of on-farm children taken into account?

This follows on from the above. The circumstances considered in relation to on-farm children will include -

- The above factors
- Previous income forgone as a result of working on the farm

What does a process like this cost?

We will always ensure you know in advance what your investment in our services will be. So too, we will ensure you have an accurate indication of legal costs related to the process.