



**Aaron Drake**

# Farm Succession – Don't Delay

*Aaron Drake is a partner with the Invercargill Lawlink firm of AWS Legal specialising in rural law. In this article he reiterates the importance of planning for the future.*

There are many articles on farm succession planning and they mostly provide the same information. This article is not intended to be a regurgitation of issues but a reminder of the importance to go beyond simply planning and actually **implement** the succession plan.

Farmers are certainly talking about farm succession plans and do realise it is an important part of the farm decision-making, but they are only doing just that – talking. Experience tells us that the longer succession planning is left, the harder the decisions become. Land prices have been increasing for some time now and with Fonterra's latest announcement of increased returns for those in dairying it is likely that trend will continue. Delaying a critical business decision will only cause problems in the administration of your estate.

A succession plan must be treated as a living work – one which evolves and responds over time to changes in circumstances. You should not rush decisions but you should ensure that once the process of planning for succession is commenced, it is seen through to completion. Once a plan is in place, it should be kept under constant review as circumstances change from time to time.

Some parents assume their children will want to take over the farm. More and more we are seeing that this is not actually the case. Different generations have different views and therefore you need to commence the process early. You may not get a conclusion immediately but at least put some mechanisms in place as an interim measure and air the issues for all parties concerned. Communication with family members and your advisers, lawyers, accountant, bank manager, etc is the key. Ultimately, you may not get total agreement within a family, and if that occurs, then it is you that must make the

decisions, taking into account as many views as you can.

There seems consensus that there are three main questions to be asked when discussing farm succession issues:

1. Is there sufficient security and income for Mum and Dad in their retirement?
2. Is the passing of the assets to the next generation viable (debt burden)?
3. Have the non-farming siblings been treated fairly, if not equally?

These questions will begin the process of implementing a successful farm succession plan.

Again, experience tells us there needs to be transparency and strong lines of communication between **all** family members in relation to farm succession planning to save issues of conflict and to fully explain why some decisions have been made. There is serious money involved in farming and if there is conflict now, there will certainly be more conflict in the future if issues are not discussed and the views of all family members taken into account. One option never to be excluded in planning is directing by will the actual selling of the farm assets! This may seem extreme but in some circumstances it seems to be the best and only option available.

Another important decision for Mum and Dad is whether the next generation is in fact capable or even interested in taking over the farm? Is the intended successor in fact competent to run the business successfully? The bequest of a farm to a child is a privilege and not a right. Some children think it is the reverse. There also needs to be strong commitment from the successor as you don't want them selling the farm or exiting farming one or two years later.

There is no easy answer to succession planning, but many farmers realise their equity in their farm and

diversify their assets, for example, investing into an investment portfolio or into commercial or residential property. This will hopefully alleviate some of the concerns in relation to non-farming siblings.

It is important that you at least begin the process in relation to farm succession, which may be at this stage no more than the forming of a family trust and/or making sure your will is up to date. Don't leave it too late. You can't make decisions when you are no longer here.

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