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News and information for clients and friends of Lawrence, Lawrence, Stevenson LLP

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Transitioning the Family Farm

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Jim Smith, a widower, has operated a farming business since he bought his farm property in 1975 for $200,000. He has three adult sons who help him with the farming operation; one or more of them may wish to continue a farming operation in the future. In his Will, Jim has named his three sons as equal beneficiaries of his estate. The current value of the property is about $4.2 million. Some developers have approached him about selling the farm. He does not know what he should do.

A family farm is both a home and a business. This complicates the transfer of property, which is complicated enough. There are many planning concerns for a farm family, not least of which is ensuring that they get specialized legal advice.

Some Legal Considerations

- Should Jim keep the farm in his name or should he add his sons as co-owners? If adding the sons as co-owners, should they receive the property by gift or should they pay for their interest?
- Does he want the sons to own the land, the farming business, or both?
- Should Jim transfer the property while he is alive or on his death?
- If he includes the sons as owners, should they have a co-ownership agreement in which they spell out what will happen in the future and who will make decisions in the event of disagreement?
- Should they have a partnership agreement or should they incorporate?
- Do any of the sons owe money or have problems managing money? Are any of them going through marital difficulties?
- What will be the family law implications to the sons?
- Is Jim's Will up to date and are its provisions consistent with his plan? Who is the executor?
- What if Jim loses capacity to make decisions and can't live on the farm anymore?

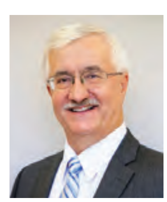
Tax Considerations

What would be the income tax implications to Jim if he sold the farm to a developer? If the farm is a "Qualifying Farm Property" within the provisions of the Income Tax Act, Jim may be entitled to an $800,000 capital gain exemption. If certain requirements are met, it may be possible to multiply this exemption amongst several owners. Jim may also be able to claim a Principal Residence exemption for a portion of the property that includes the home.

What would be the tax consequences if Jim transferred the property to his sons and remained a co-owner? Under certain conditions, it may be possible to transfer the farm to his sons with no immediate tax consequences and without paying land transfer tax. Jim should also consider how to minimize probate tax that may have to be paid if he retains an ownership interest in the property at his death. In this example, the probate tax could be over $60,000. If the farm is not sold at Jim's death, how will the estate pay the tax owing?

Obviously, the answers to these questions will differ from family to family. One constant, however, is the need for specialized legal advice.

This year Lawrences is celebrating 90 years in business. We have been providing advice to farmers from the beginning. Our Estates and Real Estate lawyers have worked with many farming families and their advisors to help each family work through these types of questions and tailor a plan that meets the family's specific objectives.



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