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LAW FIRM

We present the third and last part of a three-part series of articles related to agribusiness and family law as Meighen Haddad LLP joins Manitoba Ag Days 2024 from January 16-18 at Keystone Centre.

Farming and Family Law: Farm Corporations

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As with any business, farmers can structure their farm operation in a number of different ways. For example, they might operate their farm operation personally as a sole proprietor, as a partnership, or as a corporation. This article highlights a few ways that a separation can impact a farm corporation.

We commonly see our farming clients set up the shareholders of their farm corporation in a couple of different ways: (1) the farmer is the sole shareholder of the corporation, or (2) the farmer and the farmer's spouse are the two shareholders of the corporation. There are other ways that ownership could be held as well. The shareholder structure of the farm corporation dictates how the farm corporation will be treated in the event of separation.

The legislation in Manitoba stipulates that separated or divorced spouses (or common-law partners) are entitled to an equal division of their shareable family property (a "family property accounting"). Their shareable family property includes any assets and debts that they acquired during the course of their cohabitation. There are exemptions to this rule, but the general principle is that if an asset was acquired by one or both of the spouses during their cohabitation, the asset is to be equally shared between them upon separation. Shares in a farm corporation are an asset, so they must be considered when a family property accounting is being completed.

If a farmer owns all of the shares in the corporation (and they acquired those shares during the course of their cohabitation), the farmer must account to their former spouse for the value of their shares. Before the value of the farmer's shares can be shared between the former spouses, the value of the shares must be determined. It is possible for former spouses to agree upon a value for the shares, typically by calculating the difference between the value of the assets owned by the corporation and the balance of any debts owed by the corporation. In some cases, however, an agreement cannot be reached and a report from a certified business valuator may be required to assist the parties in settling on a value for the corporation (and in turn, the shares) or to provide evidence to the court regarding the value of the corporate shares. So, a farmer who owns all or most of their farming assets in their solely held corporation will still have to account to their former spouse for any value in their shares as part of a family property accounting.

If a farmer and their spouse are equal shareholders in the farm corporation, the manner in which the farm corporation is dealt with after separation can vary. One way that the corporation may be dealt with is by the non-farming spouse transferring their shares in the corporation to the farming spouse. This requires the farming spouse to "buy out" the non-farming spouses shares. This necessarily requires the spouses to settle on (or the court to determine) the value of the corporation itself, so that the amount of the buyout can be set.

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If the shares are bought out, they do not need to be accounted for as part of the family property accounting because they have already been transferred and paid for.

A second way that the corporation may be dealt with is for the parties to wind up the corporation so that both spouses can be paid out what they are owed based on the shares that they hold in the corporation. If the spouses are not equal shareholders in the corporation and they wind up the corporation, the spouse that received the higher payout at the end of the wind up process still has to account to the other spouse for the difference between their respective payouts. I note this because some clients think, when they set up the corporation, that their spouse would only receive, for example, 10% of the value of the corporation if they owned 10% of the shares. While it is true that the minority shareholder would only receive 10% of the value of the corporation after the wind up is complete, the majority shareholder still ends up accounting to them for the excess shares they held in the family property accounting process.

Understandably, having to share the value of the family farm corporation upon separation can cause hardship for farmers. It is possible to protect the value of a farm corporation by entering into a spousal contract (also known as a prenuptial agreement or postnuptial agreement). This can be beneficial to farmers that farm with other relatives, or on their own, and want to ensure the viability of their farming operation long-term even in the event of separation.

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