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LAW FIRM

We present part two 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: Inherited Property

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The family property legislation in Manitoba states that former partners are entitled to an equal sharing of the assets and debts that either or both of them acquired during cohabitation. The legislation specifically states that inherited assets are not to be shared in the event of separation. The exception to this rule is that an inherited asset might become shareable if the owner of the asset “co-mingles” the asset with their partner. This article touches on only a few common arguments that are raised regarding the shareability of inherited land. The issue of whether a piece of inherited land was co-mingled during the relationship can be a significant issue for a farmer going through a separation.

In the case of farmers, I commonly see this issue arise regarding the home quarter on which the family home is situated. If the farmer inherits a quarter section of land from their parents, rents out the land, and puts the rental income into their own separate account and keeps it there, it is likely the case that the inherited land value would not be shareable with the farmer’s partner if they separate. If, however, the farmer moves with their partner onto the quarter section and they live on that land with their family, the farmer has co-mingled the land with their partner resulting in the inherited land becoming shareable, even if the title to the land was not put into joint names with the partner.

It can also be argued that inherited land has been co-mingled with the partner even if the couple does not live on the land if, for example, the farmer borrows against the inherited land to finance a joint purchase, or if the farmer mixes the rental income from the inherited land with funds in joint bank accounts. The way an inherited piece of land is treated in the event of separation is not black and white.

In some instances, the former partner may recognize that the home quarter was passed down to the farmer by their family and they may voluntarily agree not to include the value of the inherited land in the family property accounting between them on that basis. That is not often the case, however, and it is common for the inherited home quarter to be deemed shareable with the former partner on the ground that it was co-mingled during the relationship.

Every farmer (or other person who inherits land) should know this information. It is possible to protect the home quarter or other inherited land and ensure it remains not shareable regardless of how it is used during the relationship by entering into a spousal contract (also known as a prenuptial, postnuptial or cohabitation agreement). If both partners agree the contract could state, for example, that in the event of separation the inherited land would not be shareable, even if the parties come to live on the inherited land. If such a contract is done properly, the farmer and their family could live on the inherited home quarter for years, and in the event of separation, the farmer would not have to share the value of the inherited home quarter with their former partner and the inherited land would remain in the name of the farmer.

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There are several factors to consider when entering into a spousal contract, so this should be done with the help of a lawyer.

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