Annual Farming Families Update

2024

The future of farming

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Speakers

Topic	Presenter
Introduction	…
Future-proofing your farm	Caroline Peters, Rickard Luckin
Unlocking opportunity	Jen Carroll, Whirledge & Nott
Pre-nups, post-nups and cohabitation agreements	Mel Loxley, Birkett Long
Navigating tax issues in future-proofing	James Boustead, Rickard Luckin
Wills don't need to be complicated	Caroline Dowding, Birkett Long
Avoiding transaction nightmares and succession nightmares	Paul Walker, Whirledge & Nott
Q&A	…

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Future-proofing your farm

Caroline Peters

Director

What is future-proofing?

- Allowing for continuity
- Protection
- Identifying Risks
- Mitigation

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Risk Assessment

Financial

Key Personnel

Sustainability

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Financial

- Consider what is changing
- Replace with similar income
- Diversify
- Mitigate tax

Key Personnel

- Who knows what?
- Sharing knowledge
- Recovery Plan
- Succession

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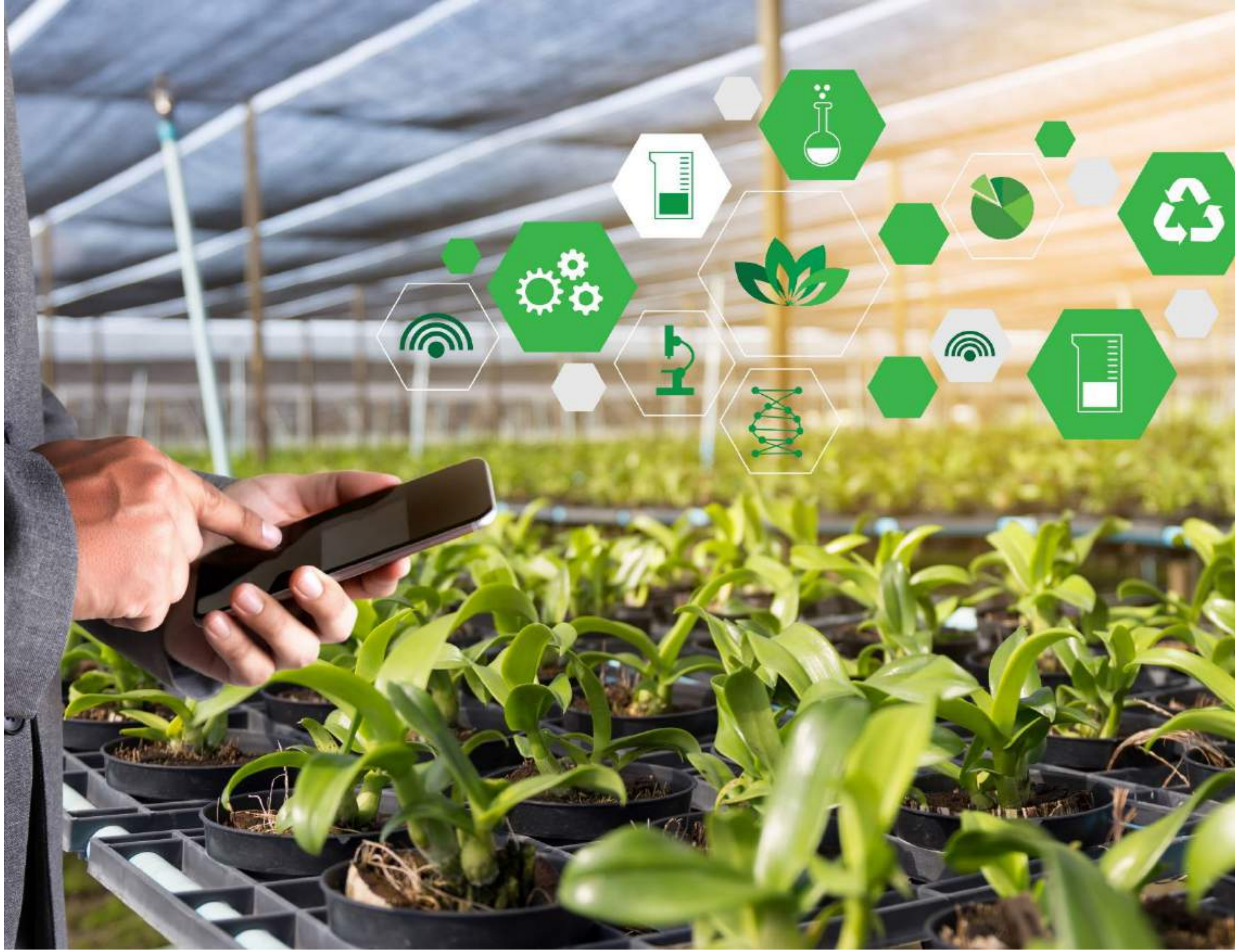
Sustainability

- Environmental
- Agricultural technology
- Office technology



Act now!

Talk to those around you

Take small steps

Seek help from the right people at the right time

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Unlocking Opportunity

Name: Jen Carroll

Job role: Associate Director - Planning

Introduction & Overview

- Maximising agricultural assets
- Maximising commercial assets
- Permitted development for temporary uses

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Asset utilisation:
Class Q-COU Agricultural to Residential

- Larger dwellinghouse (up to 465 sqm)
- Smaller dwellinghouse (up to 100sqm each)
- Could achieve up to 865sqm in a range of combinations
- Barns need to be structurally capable of conversion

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Asset utilisation:
Class Q-COU Agricultural to Residential

Checklist:

Site location plan

Existing plans

Proposed plans

Asset utilisation:

Class R-COU Agricultural to Flexible Use (Sui Generis)

Storage/ distribution

Hotels

Commercial businesses (*shops, offices, cafes, gyms, restaurants, light industrial, creches*, etc.)

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Asset utilisation:

Class R-COU Agricultural to Flexible use (Sui Generis)

Under 150sqm

Over 150sqm, but under 500sqm

External alterations

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Asset utilisation UPDATE:

Class MA – Class E to C3: Light Industrial to Residential

- No floorspace caps
- Use Class E for at least 2 years
- No vacancy requirement

Asset utilisation:

Class MA – Class E to C3: Commercial to Residential

Limitations/restrictions:

- No external alterations
- Article 2(3) land

Available in Conservation Area

Once granted you have 3 years to carry out the work.

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New buildings, temporary uses & structures

- New build
- Extension or
- **New barns: Class A**
- Altering a building or
- Excavation or engineering operations

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New buildings, temporary uses & structures

Camping and glamping

Filming

Opportunity a Plenty

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Pre-nups, Post-nups and Cohabitation Agreements

Name: Mel Loxley

Job role: Partner, Team Leader of the Divorce and Family Team

Why is wealth protection important when entering a relationship?

- Legal implications
- More than 50% of marriages end in divorce
- Ongoing increase in cohabiting couples year on year
- Increase in remarriage rates
- The older you are, the more wealth you are likely to have which needs protection
- What happens if no wealth protection in place?

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Claims on divorce

- Claims for property, lump sums, maintenance, pensions
- Court has wide discretion

  S.25 MCA 1973:-
  All circumstances of case, welfare of minors first consideration, financial resources, financial needs, standard of living, duration, ages, disabilities, contributions and very rarely, conduct

- In farming cases, the farm can be one of, if not the only financial resource

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How can wealth be protected on divorce?

By having a Prenuptial Agreement!

<u>When will a Prenuptial Agreement be upheld?</u>

- Provided it is fair and meets needs of the parties, it is likely a prenup will be upheld by the divorce court if:-
  - Freely entered into
  - Independent legal advice
  - Fully understood meaning and implications
  - Financial disclosure
  - Signed more than 28 days before wedding

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How can wealth be protected on divorce?

- Farming families – dynastic wealth and of utmost importance to protect for future generations – a worthwhile investment
- If no prenup is in place, nothing to fetter the Court’s broad discretion

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Why do many couples not protect their wealth?

- In love!
- Not very "British"
- Rude/unromantic
- Parents keener than the couple themselves
- Cost!

  (Although the cost of a prenup is far less than the cost of an acrimonious divorce or losing some or all the asset you brought to the marriage)

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When should wealth protection be considered?

- At the very beginning!
- 6 months before wedding is sensible
- A prenup must be signed not less than 28 days before the wedding

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What if the wedding is less than 28 days away?

<u>Postnuptial Agreement</u>

- Conditions for them to be upheld the same as for prenups
- Implications are the same as a prenup
- Can add more credibility to a prenup signed in a hurry – shows entered freely and without any pressure
- Drawback – if spouse refuses to sign

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Cohabiting couples

What are the legal rights of cohabitants?

- Very different to married couples
- Law that applies is different for those with children and those without

If the cohabitating couple have no children?

- Trust of Land and Appointment of Trustees Act 1996

Sole ownership property

- Legal presumption ownership follows the legal title
- Can displace i.e. significant financial contribution by non-owner, assurance an interest and detrimental reliance
- Farms can have lots of dwellings – are any of these occupied by non-owning partners?

Cohabiting couples

<u>If the cohabitating couple have no children?</u>

<u>Jointly owned property</u>

- Beneficial joint tenants; legal presumption equal shares – even if financial contributions are different!
- Beneficial tenants in common; own in shares stipulated at time of purchase – often in TR1
- Many don’t record their agreement in writing – leads to significant dispute and legal costs at point of separation

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An unmarried couple with children

- In addition to their interests in any property being determined as above, a couple with children also have potential claims under Schedule 1 of the Children Act 1989
- Similar powers to MCA 1973 (but not to share pensions and only for the benefit of the child and generally only during their minority or ongoing education)

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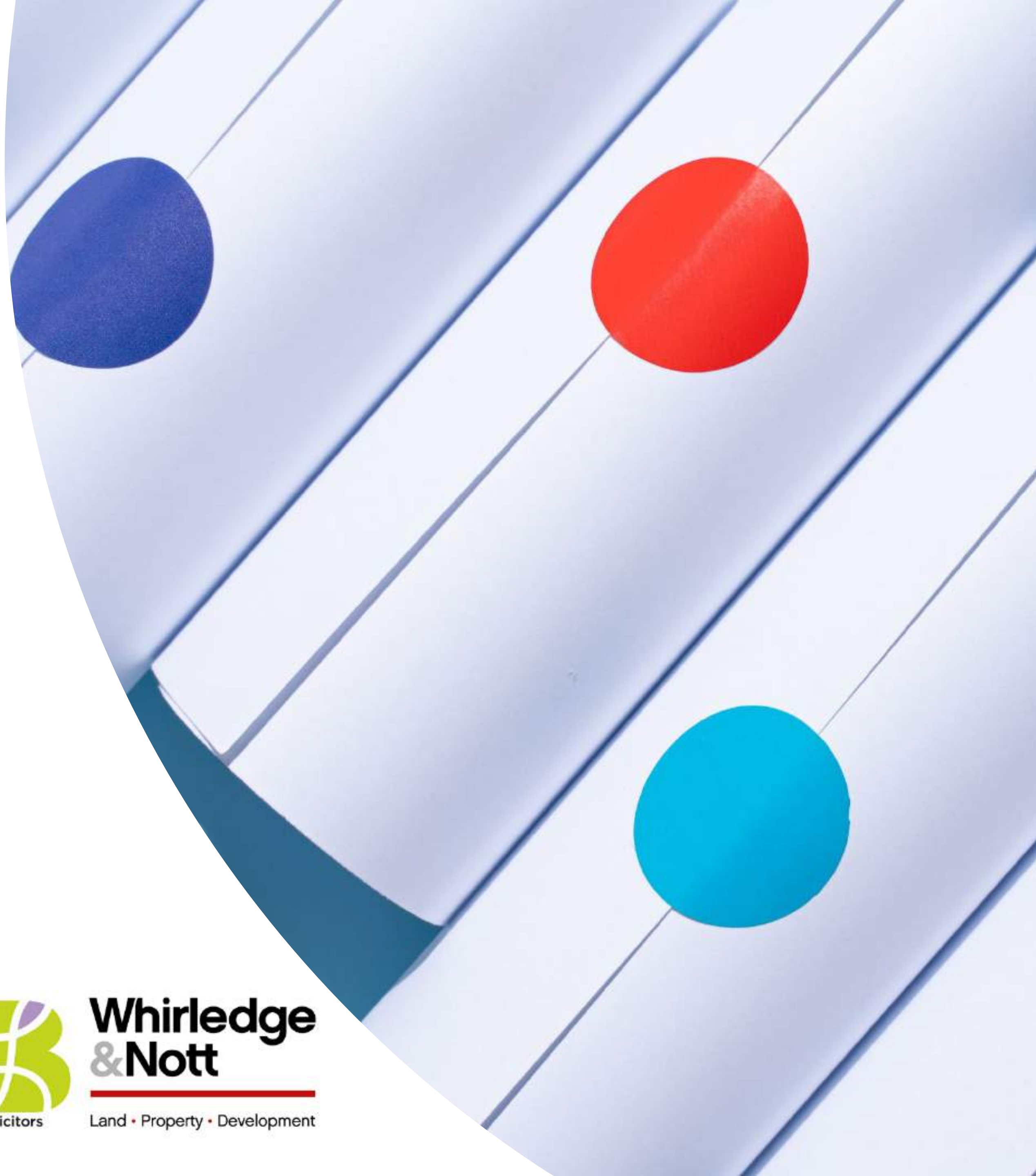
How can a cohabitating couple protect the wealth they bring to a relationship?

- Deed/Declaration of Trust or at the very least clearly in the TR1 if they are joint owners of a property
- Cohabitation Agreement – helpful for joint owners but particularly important in sole ownership cases
- Court will uphold a Deed/Declaration of Trust and a Cohabitation Agreement provided it has been properly entered into and it is satisfied it has not been subsequently displaced
- Remember to review these if a child is born



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Conclusion

<u>Why protect wealth at the outset of a relationship?</u>

- Certainty
- Avoids future disputes
- Saves stress, Court delays and legal fees

Remember – if there is no legal document in place protecting your wealth, then you are guaranteeing the Court cannot take it into account!

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Navigating tax issues in future-proofing

James Boustead

Tax Director

Forms of future-proofing

- Risk of claims from third parties
- Risk of losing accumulated asset values through Inheritance Tax (IHT)
- Risk of IHT planning leading to lack of bloodline protection
- Risk of greater Diversification increasing the IHT risk

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Business claims

- Are property assets at risk of claims against the trading business from employees, customers or whoever?
- Partnership assets exposed but also potentially non-partnership wealth in the absence of limited liability protection
- Why have most farming businesses stayed as partnerships?
- Has anything changed to make a corporate structure more appealing?
  - Hanson tax case for farmhouse held outside?
  - BPR protection still relevant?
  - Can combine with ringfencing some property assets?

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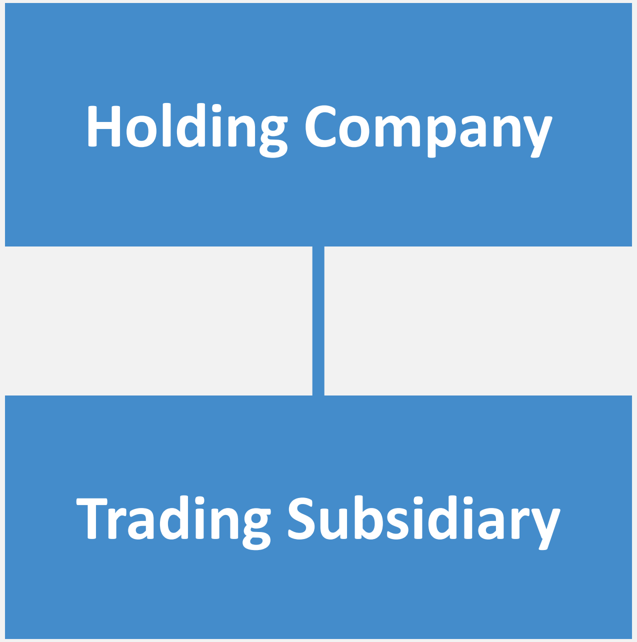
Example



Owns 100% of TradeCo worth £5m plus £4m of investment property

Farmland potentially owned by Trading Sub but equally may be able to additionally ringfence without compromising BPR (HMRC manual reference: IHTM25263)

IHT risks & structure considerations

- Legislative change or change in activity “scales” a threat to BPR
- Better to bank reliefs sooner than later? What about retaining some influence / control?
- Could a corporate structure make succession planning easier, e.g: preference shares versus growth shares
- Or… have the scales swung so much that separating the property & farming businesses should be considered?
- Bloodline protection… could this still be achieved through a corporate wrapper, e.g. shareholders’ agreement compelling shares to be offered back to the company in certain situations?

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Wills don’t need to be complicated

Name: Caroline Dowding

Job role: Partner, Head of Agriculture and Estates

The beginning!

- 56% of you have not made a will
- Out of 46% of you that have made a will, 58% of you are over the age of 55 (the National Wills Report, 2023)

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Intestacy rules

- If the deceased leaves a spouse but no children – everything passes to that spouse
- If the deceased left a spouse and children - £250,000, personal chattels and ½ of the residuary estate pass to the spouse, the other half to the children at 18

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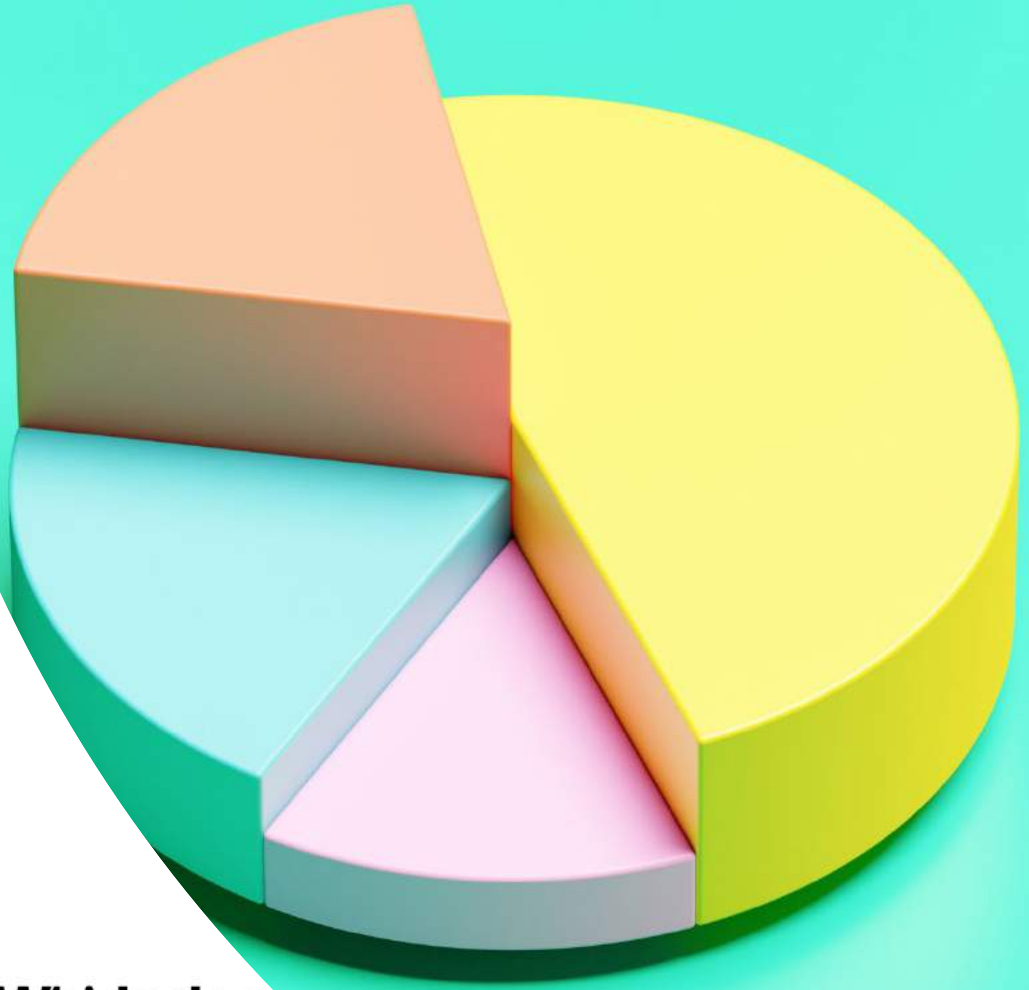
Why?

- To expensive
- To complicated
- The survivor will remarry and disinherit the children
- The adult child is ‘to influenced’ by his or her behalf
- A son or daughter is terrible with money
- The adult child will get divorced
- The successor of the farm will wind up the business, sell it and sail off into the sunset



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Early planning

- Start the succession planning process early – last minute planning can lead to rushed decisions and potential family conflicts
- Involve all family members who have a stake in the farm in the planning process

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Define objectives

- Clearly define the goals and objectives for the farm succession
- This could include:
  - Passing on the farm as a working entity
  - Ensuring financial security for the retiring generation
  - Providing for family members who are not directly involved in farming

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Legal & Financial Advisors

- Legal and Financial professionals experienced in estate planning and agriculture can provide advice
- They can help navigate complex issues related to taxes, land transfers and business structures

Will & estate planning

- Create a comprehensive Will that addresses the distribution of assets
- Consider establishing a trust to manage and distribute assets over time – providing financial support for the surviving spouse and ensuring a smooth transition for the next generation
- Consider your business structure

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Fair & equal distribution

- Strive for fairness in the distribution of assets among heirs
- It doesn’t always mean equal division

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Communication

- Open and honest communication is crucial
- Discuss the succession plan with all family members involved
- It is easier for children to accept (even if they don’t agree) a parent’s decision if discussed during lifetime rather than finding out on the table in a solicitor's office

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Training and transition

- Ensure that the next generation have the necessary skills and knowledge to take over the farm successfully

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Contingency planning & business structure

- Include contingency plans in case unforeseen circumstances such as disability or death, impact the succession plan
- Choose an appropriate business structure that aligns with the goals of the succession plan
- Periodically review and update the succession plan to account for changes in family dynamics, the business environment or legal and tax regulations

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Avoiding Transaction and Succession Nightmares

Paul Walker

Head of Agency

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Be Prepared …

"Can anyone think of a way to be prepared besides retaining a lawyer?

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So where do you start?

- Do some housework
- Unpeel the onion
- Create an estate terrier/bible

What should go in the Bible?

- What land do you own
- Red line plans
- List of land registration titles
- Copies of deeds
- Copies of agreements
- List of occupiers
- Account details
- Primary contacts

Who occupies what?

Do you have occupiers?

Is there a farming company or tenant

Is there a written agreement – where is it

What is the rent?

Who is paying for what?

Is there a partnership agreement

Where are these documents?

Who should know what?

LPA:

- Access to accounts
- Information and ability to keep trading
- Paying the bills

Executors

Advisors

Next generation

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Final words …

- Start considering these issues now.
- Housework is easier broken into pieces and not left to just before Mum gets home (or when you urgently need to do something).
- Not everyone's cup of tea, it can be challenging where relationships have become familiar (especially tenants) but better addressed whilst there is time (and with support from the professionals).
- Maximise opportunity and values.
- Save costs now.
- **Whirledge & Nott are experts in this emotive area and offer bespoke advice for farming families/landowners in your succession planning**

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Thank you for joining us

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