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## THE FARM BUSINESS

It is open to a farmer to transfer the land but to continue to take part in the business of the farm in a partnership. This is very much a personal decision based on the lifestyle choice of the farmer and his income requirements.

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## LIVING ARRANGEMENTS

The living arrangements for the farmhouse will be of great importance. As the farm buildings will very often be close to the farmhouse, the decision must be made whether the farmhouse itself will be transferred. Various arrangements can be entered into to ensure that the transferring farmer continues to have independence in the future.

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## INDEPENDENT LEGAL ADVICE

Nowadays, solicitors acting for a farming family will insist that the transferring farmer obtains independent legal advice from another solicitor for the protection of all concerned.

Farming families, having decided on the transfer, will often be very enthusiastic to put matters in place but it is important that they consider all of the possible relevant issues that could arise in the future. The solicitor providing the independent legal advice (and indeed the family solicitor) will be able to point to these from his experience in dealing with farming families.

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## FARM ENTITLEMENTS

The transfer of the farm entitlements (single farm payment, milk quota etc) must be considered in the context of the new financial arrangements on the farm.

Transfers of family farms will very often be of great interest to the remainder of the family and the best solution is to ensure the transfer does not give rise to family disputes either at present or in the future.

Transferring the family farm is a very big step and the best way of going about things is for the farmer to speak with his solicitor long in advance of the proposed transfer to tease out the various issues that are involved so that a workable solution is reached for all concerned. Once the transferring farmer is financially secure and happy with the new arrangements, the transfer of the farm can lead to a great relief that the future of the farm has been secured.

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## RESTRICTIONS/LEASING ARRANGEMENTS

The farmer may be nervous that a young farmer will not continue to stay on the farm and rather than transfer the farm to him entirely, it is open to him to consider a leasing arrangement to see how he or she gets on.

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## TRANSFER TO JOINT NAMES

Farmers who do not wish to transfer lands completely may consider the transfer into the joint names as joint tenants. This would mean that the farm would automatically become your sole property of one party on your death of the other party.

The farmer however would remain a joint owner of the property, and therefore, if they went into a nursing home, half the value of the asset will be liable to assessment for payment of the fees.

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## WILLS, ENDURING POWERS OF ATTORNEY, ASSISTED DECISION MAKING AGREEMENTS & FAIR DEAL

If the farm is transferred, the transfer will override the provisions in your will for the farm, and for any money or other obligation, you intended to come out of the farm. A will speaks as and from the date of death only. Assets remaining as and at the date of death fall to be administered only. Assets transferred prior to the date of death do not form part of one's estate.

It is important you review and update your will after the farm is transferred. It is important to make a will to deal with your remaining assets.

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## DWELLING HOUSE

There are three choices here. The dwelling house can be transferred and an exclusive use of the dwelling-house kept for the lives the farmer and their spouse so that the farmer can remain in control of the house.

Alternatively the farmer can keep the house in their name for the rest of their life, and leave it pass in their will. A transfer of the house can also be made with no restrictions on it. It is important to be practical here, and consider all factors. You need to ensure that you will be protected and secure when you are facing into old age.

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## RIGHT OF SUPPORT & MAINTENANCE

The transferee can be responsible for your support and maintenance, as set out in the Deed of Transfer. This support and maintenance goes as a first legal charge against the property, and it affects the property regardless of who owns it. You do not ever have to exercise these rights, but they are available to you, should you require them. The

Deed of Transfer can set out that this support and maintenance includes the provision of all food, clothing, heating and lighting in the dwelling-house. It can also include that your nursing home expenses shall be paid by the transferee, in the event that it is required. Again, you do not have to exercise these rights, but there are available to you.

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## TRANSFERS TO OTHERS

If the farmer wishes to give a site to other children, this must be done prior to the transfer of the farm, as a map will be required to mark out the various sites to be transferred prior to the transfer of the farm.

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## ENTITLEMENTS

As the law stands, the single farm payments are attached to the farmer, not to the land. If a farmer wishes to have the single farm payments go to a family member who is to inherit the farm, this needs to be stated separately in their will. Otherwise, the single farm payment could end up in the residue of the will, and could pass to someone who has no involvement with the farm whatsoever.

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## POTENTIAL CLAIMS OF CHILDREN IN LAW/ PARTNERS OF CHILDREN

A qualified cohabitant or spouse may apply to court for a range of orders, including maintenance, property or pension adjustment orders and provision from the estate of a deceased cohabitant or on the ending of a relationship.

If the court is satisfied that the applicant is financially dependent in the case of co-habitants, it can order the other party in the

relationship to provide maintenance, property, pension entitlements or a provision from the estate, in the case of a deceased cohabitant.

**Factors considered by the court include:**

- The financial circumstances, needs and obligations of each party
- The rights of others. An order may not affect the rights of a spouse or former spouse.
- The duration and nature of the relationship.
- The contribution made by each.
- The court can vary, suspend or discharge an order, if circumstances change.

A way of side-stepping the possibility of this scenario ever arising is by drawing up a Cohabitants' Agreement. If an agreement is entered into, it is essential that all parties are independently advised.

## FOR MORE INFORMATION

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