

**Practical Methods for Passing on the Family Property  
presented to Brennan Mayne Agribusiness  
"Beef Business Workshop"  
on Wednesday 6 March 2002  
at Emerald  
by Bill Loughnan**

**Objectives**

To provide rural families facing successional planning with:

- (1) knowledge of resources available;
- (2) knowledge of the issues involved
- (3) an awareness of the importance of proper succession planning; and
- (4) some key concepts including:
  - decision making;
  - powers of attorney; and
  - wills.

**What is a Succession Plan?**

A succession plan is:

A PLAN for our business and property for us and our estates.

MADE IN DOCUMENTS e.g. wills, powers of attorney, insurance policies, partnerships, companies, trusts and superannuation.

TO PROVIDE FOR EVENTS (some certain some uncertain) e.g. death (before or after retirement), physical disability, loss of mental capacity, retirement, relationship breakdown (marriage or partnership) and bankruptcy.

## TO ENSURE:

- asst protection, flexibility and wealth accumulation;
- our welfare and happiness in retirement; and
- our family's welfare and unity (minimising tax and government duties).

### **Statistics – Lack of Communication**

- Spouse to Spouse  
42% of parents with married children
- Parents to Returning Generation  
63%
- Parents to Son-in-law/Daughter-in-law  
82%
- Returning Generation to Spouse  
60%

Source: University of Western Sydney

### **Important Steps**

- Identify who owns what;
- Establish the objectives of the family;
- Plan to meet those objectives; and
- Regularly review the plan.

## **Assets and Liabilities**

- Who owns what
- Who owes what
- Structure
- Joint Tenants/ Tenants in Common
- CGT Status
- FMD
- Deferred Profits
- Carry-forward losses

## **Existing Operation**

- (1) Understanding existing business structure.
- (2) Understanding accounts – issues of accountant's treatment for tax purposes eg:
  - (a) partnership improvements on non-partnership land;
  - (b) issues of capital/current/loan accounts
  - (c) beneficiaries accounts in Family Discretionary Trusts
- (3) Importance of documenting the structure eg:
  - (d) partnership;
  - (e) buy and sell agreements; and
  - (f) lease.

## **Decision Making**

- Work out the big issues.
- Gather information.
- Meet with everyone.
- Agree on general direction.
- Get expert advice.
- Review the arrangements regularly.

## **Family Meeting**

- Fear
  - conflict;
  - losing control;
  - breakdown in relationships; and
  - embarrassment about talking about other people's business.

## **Rules**

- (1) Take it seriously;
- (2) Get independent facilitator;
- (3) Take notes;
- (4) Be honest and open;
- (5) Find out what everyone thinks;
- (6) No interruptions; and
- (7) Identify all solutions (however weird).

## **Specific Issues to Watch**

- Stamp duty
- Tax including CGT and GST:
  - (1) CGT rollover relief; and
  - (2) Partnership elections.

## **Partnership Agreement**

- Certainty of terms.
- Agreed period of notice for retirement.
- Option to buy (may include land).
- Tax benefits.

## **Powers of Attorney**

3 classes:

- (a) specific;
- (b) general; and
- (c) enduring.

## **Wills**

- (1) Issues
  - Executors/trustees;
  - guardians; and
  - bequests.
- (2) Can be challenged
  - lack of testamentary capacity;
  - undue influence;
  - suspicious circumstances; and
  - TFM

## **Succession Issues**

- Gender equality;
- Fairness;
- Fairness – not equality;
- Parents – the “mortar” in the family building;
- Danger of breakdown; and
- Standard of living.

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