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Leaving the Family Farm After Separation: What You Need to Know

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Farms aren't just businesses - they are often multi-generational legacies tied to family identity, income, and home all at once. Whether you are the primary owner or joined the family through marriage, understanding how a farm is treated after separation is crucial.

Australian family law has specific ways of dealing with farming properties, and the outcome can have lasting consequences for your finances, your housing, and your future. This article explains how it works and what steps you can take to protect yourself.

Why leaving the family farm feels different to other separations

Leaving a farm often means leaving home, work, and family history in one move, so emotions run high. Farms often sit at the centre of extended families, with parents, adult children, and siblings relying on the same property for income and housing.

Separation in this setting brings legal questions, financial pressure, and family expectations all at once.

How does Australian family law treat a family farm?

Australian family law treats a family farm as part of the overall property pool for separation. Along with:

- Homes
- Savings

- Superannuation
- Vehicles
- Livestock
- Plant, and
- Water entitlements.

The Family Court follows abroad four-step approach:

1. Identify the property pool
2. Assess contributions
3. Look at future needs
4. Decide on an outcome that is just and equitable in the circumstances.

No automatic rule protects a farm from division because of history or inheritance. However, those factors influence the assessment of contributions and final percentages.

Farm ownership structures: why trusts and companies complicate things

Many farms sit in company or trust structures, sometimes with multiple titles, loans, and family members listed in different roles.

Family law looks past labels such as “trustee” or “director”. Instead it looks for who controls the asset and who benefits from income before deciding whether any trust assets and interests form part of the property pool.

Complex structures often require specialist valuations and accounting evidence, so early legal advice helps you understand your position before major decisions about housing.

Do you have to leave the farm when you separate?

Separation does not mean every farming partner must leave the farm straight away.

The courts look at safety, care of children, the ability to keep animals and crops cared for, and practical housing options in the local area when deciding who stays on the farm during proceedings.

Final outcomes can range from one partner keeping the farm and paying out the other, through to sale and division of proceeds, or transfer within a wider family succession plan.

What are the most common settlement options for farming couples?

In many settlements, one partner stays on the farm and takes responsibility for the business, while the other partner receives more off-farm assets or a payout over time.

Sometimes both partners move off the farm, the property sells, and the proceeds divide along with other assets.

Some families agree on transfer of the farm to the next generation, such as an adult child running the enterprise, with each separating partner receiving other property or staged payments instead.

When other family members have an interest in the farm

Parents, siblings, or adult children often hold interests in the farm, either on title, as shareholders, or as beneficiaries of a trust. These interests do not remove the farm from the property pool. The courts will, however, take third-party rights into account when shaping orders.

Where parents have advanced money or transferred land as part of a succession plan, the courts look at whether those transfers were loans, gifts, or early inheritances, then factor that history into contributions.

How is a farm valued in a property settlement?

It is crucial to have an accurate valuation of the farm completed by an expert valuer. Inaccurate valuing can lead to farms being under or overvalued, resulting in an unjust outcome.

Expert valuers usually assess land, water, plant, livestock, and sometimes goodwill, while an accountant can help clarify farming loans, overdrafts, and contingent tax.

Seasonal conditions, drought relief, commodity prices, and recent investment in infrastructure often have real impact on value and on cash flow for any payout arrangement.

Your housing options after leaving the farm

If you expect to move off the farm, you need to really understand your short-term and long-term housing needs. Think about whether you want to stay near the local community, schools, and health services. Do you want to move to a regional centre, or would a city better suit your work and support needs?

You should seek legal advice to get the clearest picture of your entitlements, regardless of whether your ex is going to retain the farming property or not. However, you might be entitled to more of the non-farming related assets if they wish to retain the farm.

Children, schooling, and routines: keeping stability after separation

The court considers the 'best interest of the child' when determining where children are going to live and how much time they will spend with each parent. The list of primary and additional factors was consolidated into a shorter core list of considerations in May 2024 when the Family Law Act was amended.

Even when making the decisions on parenting matters themselves, parents might find it helpful to consider these factors:

- The safety of the child and people who care for the child (including any history of family violence and family violence orders)
- The child's views
- The developmental, psychological, emotional and cultural needs of the child
- The capacity of each person who will be responsible for the child to provide for the child's developmental, psychological, emotional and cultural needs
- The benefit to the child of having a relationship with their parents, and other people who are significant to them, and
- Anything else that is relevant to the particular circumstances of the child.

As much as parents can, it's important to try to keep the children's routines as close to pre-separation as possible.

When deciding if the children will remain on the farm or not, you should also consider:

- The distance between you and your ex - the greater the distance, the longer time needed to travel for handovers
- Have the children become accustomed to farm life and would moving them unsettle their routine and take them away from their interest?
- Consider your capacity to fulfill any care arrangements and account for busy seasons when you might need to be more present on the farm.

What to do before you leave the farm

Before leaving the farm, or any property post-separation for that matter, you should:

- Make copies of important financial documents like:
  - Financial statements
  - Tax returns
  - Loan documents
  - Stock numbers
  - Water licences
  - Land titles, and trust deeds.
- Prepare a simple budget that lists your personal living costs, likely rent or mortgage payments, day-to-day expenses for children etc. Doing this will help you formulate property settlement proposals that reflect your real needs.
- Reach out for emotional and practical support, trusted friends, health professionals, and rural support services offer help during separation and move-off periods.

Planning your life after the farm

Leaving the farm often means a shift in work, daily routine, and sense of identity, so planning ahead helps - think about your skills, experience, and interests. Many people move into roles linked with agriculture, transport, trades, small business, or community services.

Property settlement can include support for retraining or further study through how cash or superannuation divides, so share your plans with your lawyer during negotiations.

Protecting the farm in future relationships: binding financial agreements

For farming families still together, forward planning offers protection for both the farm and each partner. Consider drafting a family constitution and updating wills.

A binding financial agreement (BFA) sets out in advance how the farm, company shares, or trust units divide if a relationship ends. It often keeps the farm with the farming partner and provides the other partner with agreed nonfarm assets or a payout. It records whether family advances are loans, gifts, or inheritances and addresses future farm transfers or inheritances. For a BFA to be enforceable, it must meet strict formal requirements and independent legal advice must be sought by each party.

Talk to a family lawyer at Meillon & Bright

Meillon & Bright provide advice to farming families on property settlements and broader family law concerns, including farms held through trusts and companies.

Our experienced family lawyers focus on practical, outcome-focused advice, clear communication, and tailored strategies.

Early advice gives you time to understand options, negotiate where possible, and, if needed, seek court orders that support safe housing and fair division when you leave the family farm.

Contact Meillon & Bright today to arrange a confidential consultation with one of our family lawyers in Perth or Sydney.
