

# Divorce & The Family Farm

**Separation, divorce and maintenance can have significant implications for the family farm, writes David Higgins, Partner at Berwick Solicitors.**

While separations and divorces are always difficult, they can take on an entirely different level of complexity when a family farm is at stake.

The fear of divorce by farming families and the impact divorce can have on generations of farming has often been met with reluctance and delay of farming parents to pass the farm onto their children, leading to uncertainty for many young farmers.

The key question is whether farms are marital assets that can be divided and distributed in the event of marital breakdown. Unfortunately, there is no simple answer to this question as a multitude of factors must be considered and each case is unique.

The courts are obliged to ensure that "proper provision" is made for both spouses and any dependent children. A judge has wide discretion and can make any orders that the court feels appropriate in order to ensure that this objective is achieved.

It is not automatically the case that a family farm will have to be sold. The court will take into account the financial and personal contribution of each party within the marriage, particularly where there are children. It will also look at factors

such as the length of the relationship and marriage along with the ongoing financial prospects and ability of each individual spouse to earn an income.

When the court does not order the sale of land, it may order the transfer of the family home to the non-farming spouse. This creates its own problems as the home on a farm is typically at the centre of the hub of the farm and will result on ongoing interactions between the former spouses. Furthermore, it could lead to significant logistical difficulties, for example, in terms of calving where a farmer may have to reside in an alternative property some distance away from the farm.

The sale of the farm is often unsuitable as farms tend to be small-holdings and are often the main source of income for both spouses, and to do so, in order to make proper provision for the wife and their children, would also end the employment and income of the farmer.

Farming is typically a seasonal occupation, with the sale of animals mainly not occurring until autumn and the large reliance of farmers on EU subsidies, by way of the Single Farm payment and Forestry payments. The selling of land or a division of it between spouses may have a significant detrimental impact on the payment of EU subsidies to the farmer.

Consideration should also be given to the implications for young farmers who have achieved the agriculture cert in order to benefit from lower tax rates on inheritance. The rates may be impacted through claw backs as a result of divorce.

The above should not be taken as legal advice and is merely for informative purposes.

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# Divorce: Is Your Pension Your Biggest Asset?

**Keeping your pension could be your top priority in the division of marital assets during a divorce, writes Solicitor David Higgins.**

Often when discussions about divorce arise, there is an assumption that the family home is the biggest asset and parties to a divorce may place a major focus on the family home. However, in reality, and certainly given property market values of the past few years, a pension may be the most valuable asset.

Typically the parties and the courts will deal with the pension itself, the pension lump sum, spousal death in service benefits and spousal death in retirement benefits. It should be noted that if one spouse has a substantial pension and the other spouse has none, perhaps because he or she worked in the home, the court can order that part of the spouse's pension be paid to the other spouse or to a dependent child. Alternatively, part of the pension fund could be split and put into another pension fund in the name of the second spouse. This is known as a pension adjustment order.

Some clients, particularly those working for government organisations or large

companies where there are often good pension plans in existence, may find that they

have sizeable pensions worth significantly more than the family home. In such cases, those clients may look to protect their pension in the division of assets. Indeed, there are cases where, as part of a divorce settlement, a spouse has kept the pension and given the other spouse the family home.

The courts attempt to separate the parties in as fair a manner as possible and try to insure that proper financial provision has been made for both the children and the parents. Before making a pension adjustment order, a court will consider all of the finances available to the parties and if it refuses to make a pension adjustment order, it may decide to reflect the value of the pension fund in the division of other marital assets.

Once granted, a pension adjustment order is then served on the trustees of the pension scheme who will then amend the pension in favour of the other spouse.

The danger in not dealing properly with pensions during a divorce is that the problem may not become apparent until such time as someone retires. There have been cases where parties have divorced and remarried, yet when one party retires, it transpires that their former spouse and not their new spouse is the person entitled to the pension or the death in retirement benefit.

As pensions are very complex, it is strongly advised to consult with a solicitor and a pension specialist before negotiating any family law settlement.

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