



# Farms and family law property settlement

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Dividing property following separation can be a complex and stressful process. When couples who own a farm decide to separate, this poses a unique set of challenges. There are various factors to consider when dealing with farms in family law property settlements, including how farms are treated, what the farm comprises and its ownership structure, and whether the farm will need to be sold.

## How are farms treated in family law property settlements?

There are no specific or separate rules relating to farms or farming matters. The Court will consider the same factors when determining property settlement after separation, regardless of whether a family farm is involved. Under the *Family Law Act 1975*, the factors considered in a property settlement include the following:

1. Identify and value the assets and liabilities of the relationship.
2. Determine the contributions of both parties, including financial and non-financial contributions.
3. Determine the future needs of both parties.
4. Consider whether the proposed division is just and equitable in all the circumstances.

Although there are no specific rules related to farming matters, there are often added complexities when negotiating property settlement due to the significant values involved, historical ownership, multiple ownership, and the mix of personal property and business and commercial property.

## Farm composition and value are crucial considerations in property settlement

Farms will often include land, livestock, crops, machinery, plant, equipment and water rights. It is crucial to understand the ownership structure of the farm and its associated assets.

The farm may be held in the names of you and/or your former partner or in the form of a partnership, company, trust or other structure. This can involve reviewing and unravelling complex corporate structures or family trusts established over many generations. It can also involve determining whether any other family members such as siblings or parents, or third parties hold an interest in the farm.

Once the farm assets have been identified, values need to be attributed to these assets.

It may be necessary to engage several different valuers experienced in valuing farming assets, including the land, livestock and plant and equipment. This will usually involve providing the necessary information and documents to the professional valuers, including financial accounts, tax returns, relevant agreements, licences or other records. It may also involve a physical inspection of the farm.

## Does the farm need to be sold to meet property settlement requirements?

One of the main challenges in farming matters is whether the farm (either part of it or all of it) is required to be sold as part of the property settlement. Farmers and farming families are often considered 'asset rich and income poor' which can make it difficult for one partner to buy out their former partner's share upon separation.

Where possible, the Court prefers to preserve the family farm and enable the farmer to continue to earn an income rather than selling the asset they need to derive their income from. However, the Court will not preserve the family farm if that means that the overall outcome of the property settlement is not just and equitable to both parties.

## Unique factors to consider in property settlement involving farms

There are some factors particular to farm-related property settlements which are important to consider. These include:

- Did the farm exist when you and your former partner began living together? If so, what was the value of the farm at this time? How was the farm acquired – for example, was it purchased or inherited?
- Is the farm the primary asset of your relationship? What proportion does the farm (including its various components) represent of the overall asset pool?
- What are the contributions made by each of you to farming endeavours? Did you receive remuneration for your work on the farm?
- What are the needs of you and your former partner in the future? For instance, did a non-farmer partner spend substantial periods working on the farm, making it difficult for them to earn an income unrelated to farming?

In farming cases involving children, a relevant consideration is whether one parent may need to relocate with the children to the city or another state. It can often be difficult for both parents to live near the children after separation in regional and/or rural areas compared to metropolitan areas due to the availability of housing, employment opportunities and access to services.

## Get help from a family lawyer

As you can see, there is a lot to consider when negotiating property settlement involving a family farm. Whether you are going through or considering separation, property settlement is a significant part of what you'll need to work through with your former partner.

It is worthwhile speaking with a family lawyer who can equip you with the knowledge you need to confidently take your next steps. Contact us to speak with one of our experienced family lawyers today.

## Contacting Smith Family Law

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