

Saving Probate on Private Farm Corporations-a Change in BC Law



Dr. Patrick O'Brien, (DVM), CIM
Wealth Advisor & Vice President
604 467-5321
patrick.obrien@rbc.com
www.patrick-obrien.ca



Cameron MacKenzie, CFA, CPA,
CA
Investment Advisor
604 467-1674
cameron.mackenzie@rbc.com



Celine McKay
Associate
604 467-3173
celine.mckay@rbc.com



Tanner Hassell
Associate
604 467-3259
tanner.hassell@rbc.com
#200 – 11980 227 Street
Maple Ridge, BC V2X 6J2



The new Wills, Estates and Succession Act in BC is good news for farmers (and business people) who own private corporations. This was probably the most important article I wrote in 2015, and it is just as applicable now. The new Act (not so new now; it was enacted in 2014) allows you to use a multiple will strategy to eliminate probate costs on the transfer of private corporation shares to beneficiaries.

Example: Farmer Bob with his wife Helen own a farm worth \$10 million. He also has personal non-registered assets of 1 million and a house worth 1 million when he passes. Generally, the house and the personal assets would be owned jointly with Helen and so would pass without probate to her. But, for example purposes, assume they are in his name. Bob's farm shares would still have to be transferred to her or if she has already passed, to someone else.

Under the old Act, he would have all his assets listed in the probate application and he would pay \$14,000 per million in probate fees (1.4). That works out to be \$168,000 in estate shrinkage due to probate costs. When Helen passes, another \$168,000 disappears when her will is probated and the farm is caught again.

Under the new Act (called WESA for short), a separate complimenting will (called the non probate will) would cover the farm corporation shares and prevent the double probate whammy. This removes the listing requirement of the farm shares in the probate application for the house and the \$1 million of assets. Hey presto-the probate cost shrinks to \$28,000 from \$168,000. Twenty-eight thousand dollars is still a lot of money, but better than it was.

Here are a few more points before you head off to your lawyer to put your probate discount in place.

You need to have different executors for the two wills.

Be sure that the 2 wills coordinate with each other. They must be clear on which assets-farm or private they cover and which one is on the hook for any estate debts.

It is pretty clear in the “Bob and Helen example” above that the extra legal cost of the second will is worthwhile. Not always the case though, and you should ask before proceeding if the expected legal bill will be significantly lower than the expected savings on probate.

In some businesses, there are non-family directors and the deceased may not have had a controlling interest. The directors could in those cases, insist on probate to transfer the shares to the beneficiaries to protect themselves from future liability. I don’t know of any farms that would fall into this category, but we should consider the possibility. I would like to point out that this article is intended to alert you to a possible savings on probate fees, not to provide a legal opinion. Only your lawyer and accountant can properly guide you in this matter.

Dr. Patrick O’Brien DVM, Wealth Advisor, VP and Portfolio Manager

Cameron MacKenzie, CFA, CPA, CA, Investment Advisor

Celine McKay, Senior Associate

Tanner Hassell, Associate

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