

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

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How would you like to pay a lot more for your feed today and then pay again a few years from now? Probate used to be like that here in BC under certain circumstances, but the new Act covering this area of law could be a significant benefit to many dairy farmers who farm via the corporate structure.

The new Wills, Estates and Succession Act in BC is good news for farmers who own private corporations including farms. This is probably the most important article I will write this year for BCHN, so pay attention owners of farm corporations. The new Act 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.



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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. This is still a lot of money, but better than it was.

Here are a few more points before you trot 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 dairy 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 can properly guide you in this matter.

I have an excellent article written by a Vancouver law firm for those who would like more detail; contact me if you would like a copy.

Regards,

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This information is not intended as nor does it constitute tax or legal advice. Readers should consult their own lawyer, accountant or other professional advisor when planning to implement a strategy. Dr Patrick O’Brien DVM, Associate Portfolio Manager is an Investment Advisor with RBC Dominion Securities Inc. Member CIPF. He can be reached at 604 467 5321
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