

Putting the farm in trust to protect against risks

BY far, the most common mode of farm ownership remains the informal partnership. Partnerships have the advantages of simplicity, so there is much to recommend them. Increasingly however, small to medium sized farms are owned by trading trusts.

Trusts are generally popular in New Zealand. On a per capita basis, we have more trusts than any other country in the world. Some would say that there are too many.

At its most basic level, a trust is an arrangement where property is owned and managed by one group of people for the benefit of another group of people. Various legal benefits often attach to this arrangement and so trusts are utilised for the ownership of businesses up and down the country.

The most common reason for a trust owning some or all of the farm's assets is to provide protection against business risk. It's a little bit like putting an electric fence around those assets.

If creditors don't have a specific security over the assets, these assets are safe if the farmer gets into financial trouble.

There are sometimes taxation benefits for trust ownership. However, as tax rules are subject to constant change, few people utilise trusts primarily to get a tax advantage.

But, for farmers, trusts really come into their own when it comes to planning for the next generation. There are high barriers of entry for new farmers, and it can take two or

by
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three lifetimes to build a farm up.

After a lifetime of hard work, many farmers like the idea of the farm outliving them, especially if there are children keen on going into the family business. But it may be financially crippling for the farming child to have to buy out the others, or to farm a smaller, unviable portion of it.

Furthermore, what if the farming child has spent years working for you? What if you've previously helped your non-farming children to buy a house, or to go through university, or get started in business? As the Greek philosopher Aristotle said; the worst form of inequality is to try to make unequal things equal.

These circumstances, it would be manifestly fair to leave a bigger portion of your assets to the farming child.

However, this is legally tricky. The Family Protection Act allows children to challenge your will if they feel they have been unfairly treated. Needless to say, bitterness and ill feeling between your children can ensue. A trust can help you avoid this trouble. A farming couple would set up a trust and transfer ownership of the farm to it.

A debt would be owed by the trust to the couple, and this would be reduced by an annual gifting programme. It is conceivable that by the time the couple dies, the farm is owned by the trust free of all debt.

The actions of trusts are not subject to challenges by children under the Family Protection Act, and if the trust is discretionary, it has more flexibility to treat children fairly, rather than equally.

Naturally there are downsides. First there are legal fees. At a minimum, it will cost you around \$1500 for a trust deed and associated documents.

There will be more fees for transferring your assets into the trust's name, and ongoing (usually annual) costs for maintaining the trust and gifting the debt. The bank and other secured parties will also require guarantees from the trustees to protect their position.

Trusts are also subject to scrutiny by the judiciary and from Inland Revenue who may deem the trust to be a "sham" if they believe that the trust is simply a "puppet" of its creators. The risk of this happening is dramatically reduced if you employ a competent solicitor who assiduously ensures the trust deals with its assets properly and keeps correct records.

It is important to ensure that you have planned for the problem of farm succession. What is best for your farm will depend on the circumstances. Involving a trust, with its in-built flexibility, may be an integral part of the solution.

* Liam Hehir is a solicitor with Fitzherbert Roue in Palmerston North

Energywise? Yeah right

ONE would think that having your own renewable source of energy on your property would make environmental sense. Recently, I discovered that the only thing it sustains is the jobs of environmental boffins.

A farmer I visited lived in an isolated spot. His homestead was iconic - mountains glowing on the horizon, only the nearby waterfall broke the silence.

It would cost \$200,000 to replace the ageing lines supplying electricity to his property.

"Have you thought of micro-hydro?" I asked.

"Come back to me with some figures," he said.

Some information was easy to find. The Energy Efficiency and Conservation Authority has the www.energywise.govt.nz website which provides and links to a lot of the basic information. It even had equipment estimates.

At least \$15,000 it would cost for a generator.

So far, so good. Then I made a trip down to the regional council. They had all the latest aerial photos and computer wizardry. They didn't have any information on the stream, however.

"It'll cost you a hundred grand for consent," the regional council planner said.

"Huh? What for?"

"We need to do an ecological study of the stream and measure how sustainable the flow is."

Just a minute. Nothing lives in a 10-metre sheer waterfall. Also, what's proposed is diverting the water through a generator and then back into the stream. If there's no water, that's the farmer's problem.

I was then given forms and guides for the consents process and a list of local engineers and environmental consultants. As I left they said the application would be publicly notified.

"The entire catchment for the waterfall is on the farm," I said. "But we need to cover all our bases," he replied.

I could smell a rat. I asked a hydrological engineer and an ecologist colleague (who weren't on the list) for a quote. A few thousand dollars it would cost - mostly for the design work.

I then asked the people on the list for a quote - mentioning to them that I got their details from the regional council. \$40,000-\$50,000 they said it would cost.

One even suggested that a landscape archi-



by Grant McLachlan

tect and "iwi consultant" be used.

The waterfall is only visible from the farm. The regional council didn't even know it was there. The waterfall didn't even have a name.

I rang up a few manufacturers of micro-hydro equipment. I pointed out to them that the biggest hindrance to sales of their product appeared to be getting resource consent.

I got some interesting responses. They all accepted that a lot of inquiries resulted from the Energy Wise website but only a small proportion eventuated into sales. They all accepted that resource consent was a major barrier to getting a sale. One supplier said, "Considering where it is, no one's gonna know."

So now that the regional council knew of the proposal, all up it was going to cost the farmer at least \$200,000 for the micro-hydro option. One wonders whether any of the parties were aware of the power line quote from the start.

Ironically, a wind farm is proposed on the ridge behind the farm. The power lines serving it won't travel past the farmer but will follow a less "visually intrusive" route.

Micro-hydro makes sense in a lot of areas around the country. I've seen irrigation schemes that utilise micro-hydro to charge the batteries for the scheme equipment. Some electricity companies are also working with irrigation groups to share the use of the resource.

But the barrier to self-sufficiency shouldn't be letting everyone else know your business. Nor should it be letting bureaucrats create work for their mates.

EECA offers a raft of grants for insulation and heating of homes to reduce energy dependency. The only grant available for self-sustainable energy is \$1000 for solar heating.

I am not an advocate for grants. As witnessed in Australia, it encourages price-gouging by suppliers.

While EECA's website is a positive step for self-sustainability, if they are serious about maximising the potential of what they are proposing, they should be focused on minimising the bureaucracy that threatens cost blowouts.

* Grant McLachlan is a planning law specialist

Rural people sought for consumer committee

GOVERNMENT drug-funder Pharmac is seeking nominations for people from rural areas to join its Consumer Advisory Committee.

The committee provides Pharmac with advice from a patient or consumer point of view. Its membership reflects a broad range of New Zealanders including people of different ages, genders, ethnicities and from different areas.

It is not involved in making

decisions on funding medicines. Its advice assists Pharmac to engage with a range of consumers on policy and operational matters.

Chief executive Matthew Brougham said the committee needed people who could bring a rural perspective to the committee's deliberations.

"People in rural areas can face difficulties not faced by people from urban areas," says Matthew Brougham. "In relation to healthcare, these issues can

include accessing treatment or specialist services, or even getting to the pharmacy, and there are particular rural communication and engagement issues to be brought to consumer discussions," Mr Brougham said.

"We are seeking people who have experience in representing the views of consumers and who have a particular interest in the needs of people from rural areas. It's important the committee has this perspective."

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