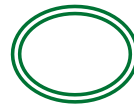


# Legal Rights Farm Inheritance & Succession

IFA Regional Meetings April / May 2023



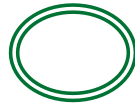
Aisling Meehan Agricultural Solicitors  
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# BACKGROUND

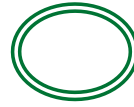
**PRACTICAL** – Award Winning Family Dairy Farm



**ACADEMIC** – Solicitor, Tax Consultant,  
Young Trained Farmer, Nuffield Scholar



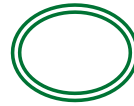
# OVERVIEW



- Practical Advice in Structuring Family Farm Transfers
- Lifetime Transfers (Inter Vivos Transfers)
- Will Drafting (Testamentary Transfer)
- Prenuptial Agreements
- Fair Deal Scheme
- Ward of Court / Enduring Power of Attorney



# Practical Advice in Structuring Family Farm Transfers

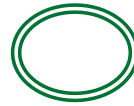


- **Aspects to be addressed outside of legal and tax considerations**
  - Parents have financial and emotional security
  - Succeeding child has a flexible and resilient long term plan
  - Non farming children are treated fairly
- **Succession Plans**
  - Farmer Successor Identified v No Successor Identified
  - Collaborative Farming Structures
  - Long Term Lease



# Practical Advice in Structuring Family Farm Transfers

## Inter Vivos Transfer

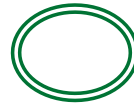


- Other Family Members
  - Lump Sums / Sites – Remember Farms are Asset Rich / Cash Poor
- The Dwellinghouse
  - Right of Residence –V- Keeping Full Ownership
- Support and Maintenance
  - Usual covenant in Deed v Annual Payment
- Nursing Home Care
  - Impact of Transfer on “Fair Deal” scheme?
- Prenuptial Agreements / Cohabitants Agreements
  - Not legally binding but Court can have regard to Prenups
  - Can have the equivalent to a Prenup where non married partners are co-habiting for 5 years or 2 years where there is a child of the relationship



# Practical Advice in Structuring Family Farm Transfers

## Inter Vivos Transfer

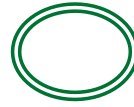


- Arrange Valuations
- Charge on the Land
- Co-op Share Transfer/Assignment of MSA
- Department of Agriculture Schemes
  - Entitlements, BISS, CRISS, ECO, ACRES
- Rights of Way
- Pensions
  - Requirement for Voluntary Contributions until parent reaches pension age?



# Practical Advice in Structuring Family Farm Transfers

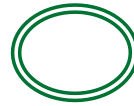
## Testamentary Transfer



- **Check Title when drafting the Will**
  - Is property in joint names? Tenancy in Common or Joint Tenancy.  
Land Registry or Registry of Deeds Title
  - If Testator is subdividing a Folio ensure there is a properly drawn map
  - What is to happen to debt owed on the property?
- **Stock & Machinery**
  - What exactly does the Testator own? Impact of Farm Partnerships
- **Farm Trading Account**
  - Bequest Conditional on investing in Agricultural Property within two years of the date of the inheritance
- **DAFM Schemes**
  - Entitlements, BISS, CRISS, ECO
- **Non Contributory Pensions and Clawback from Recipients Estate**



# FAIR DEAL

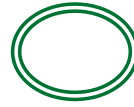


- Amendment effective since Oct 2021 – 3 year cap applies for family owned farms and businesses where following conditions met:-
  - Apply to HSE to appoint a family successor who will commit to running the farm or business for at least 6 years
  - Farm or business must have been actively run by the landowner, their partner or proposed family successor for at least 3 out of the last 5 years
  - Successor must be at least 18 years and either the landowners partner, relative or a relative of the landowners partner
- 3 year cap also applies to the proceeds from the sale of an individual's PPR





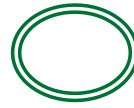
# Wardship / Enduring Power of Attorney



- **Capacity**
  - If P has Capacity, entitled to make their own decisions
  - Where they do not have Capacity, P appointed to make decisions on their behalf under Wardship or Enduring Power of Attorney
  - Next of kin have no legal effect unless appointed under EPA
- **Enduring Power of Attorney**
  - EPA needs to be executed prior to becoming mentally incapacitated.
  - Enables P creating EPA to appoint P of their choosing to act on their behalf in event of them losing mental capacity.
  - Unlike Wardship, not same level of oversight as to how attorney conducts P's affairs
  - Notice parties



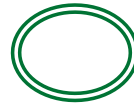
# Assisted Decision Making (Capacity) Act 2015



- New Act due to commence on 22 April 2023
- New Format Enduring Power of Attorney
  - Requirement to register instrument creating EPA within 5 weeks of execution of instrument
  - Application to vary EPA can not be made less than 6 months from the date of registration of EPA or 12 months thereafter
  - Within 3 years of coming into force of new Act, all Wards discharged from Wardship
  - No more committees for the person or General Solicitor for adults
  - Assets of Wards lodged in Court and held by the Accountant of the Courts of Justice will be released to the former Ward.



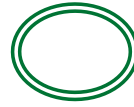
# Assisted Decision Making (Capacity) Act 2015



- New Approach Recognises Differing Levels Capacity
- Assisted Decision Making
- Co Decision Making
- Decision Making Representative
- Advanced Health Care Directive



# Questions?



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- *Disclaimer: The information in this presentation is intended as a general guide only. While every care is taken to ensure accuracy of information contained in this presentation, Aisling Meehan Agricultural Solicitors does not accept responsibility for errors or omissions howsoever arising.*

