Farm Succession Planning through Asset Transfers

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WHY TRANSFER YOUR ASSETS TO A TRUST?

Many people feel uncomfortable transferring assets from their own name to a trust that is legally controlled by the next generation. The reasons for doing so however are extremely attractive.

Certainty: by involving your family in the process and transferring your assets now, you provide certainty to the next generation as to what they will receive and reduce the possibility of a very expensive challenge on your will.

Asset protection: rather than transferring assets directly to children where they will be in danger of litigation, marital breakdown or liquidation, a family trust of this nature is currently a much safer vehicle to hold assets and is therefore more likely to withstand any court proceedings.

Aged Pension: to qualify for the full aged pension, a couple can have up to around $300,000 of personal assets (principal place of residence is exempt) with very little income annually (around $15,000). For part pension a couple can have assets over $1.1 million. Most business or farm owners will not qualify for any government assistance due to their asset levels. However, by transferring assets into a trust controlled by one or more of their children, these assets are no longer counted in the means test and hence a pension of over $30,000 per annum for a couple is available.

Health Care Card: as people age, a greater percentage of their income is spent on health care and medication. Similar to the pension, health care cards are not available to those with considerable assets or income. By transferring land now, you should qualify for a health care card, which can provide an immense saving on not only health care and prescriptions, but also possibly stamp duty and travel.

Aged Care Bond: if aged care is required, the care provider will charge a bond dependent on your level of assets. It's not uncommon for amounts of over $500,000 to be required to be paid prior to farmers entering care facilities and with no maximum amount in place this might rise in future. This obviously has a dramatic impact on a farm or family's cash flow if that money needs to be locked away without any return. Not only that, ongoing fees include daily care fees of around $40 per day as well as an additional means tested fee (often $50 or more per day) can also be payable. The catch in this though is that if a person has no assets or income, they will receive the exact same care without requiring any bond or additional means tested daily fees. Like the pension and health care card, transferring your assets now can reduce the requirement to pay a bond at all. Not having to pay for the exact same facility you otherwise would have been contributing a massive sum of money is a very attractive reason to progress with your succession planning.

THE FIVE YEAR RULE

To stop people from transferring all assets from their name just to qualify for the above, Centrelink imposes a 5-year deemed ownership period. During this period, regardless of transfers, Centrelink will still include any assets transferred from your name as your assets and hence most people will need to wait 5 years to start receiving all the above benefits.

FOREGONE OR UNPAID WAGES

There are two options available to reduce the value of the gift and therefore access benefits within five years. If the transferee (usually one or more children) worked on the family farm business during their lifetime, then the transfer may form what is called "unpaid wages". The idea behind this is that the land is transferred to children in return for their unpaid work on the farm or business. Regular work over a period (even only a few hours a week) can amount to considerable deemed "unpaid wages" which will reduce the amount Centrelink count in the 5-year gifting period – meaning you can access some or all of the benefits much earlier than you could by not claiming unpaid wages.

The great benefit of this is that there is no adverse tax consequence for these "unpaid wages". It is simply an estimate Centrelink uses in determining early pension, health care and bond assessments, without any other government body using these details.

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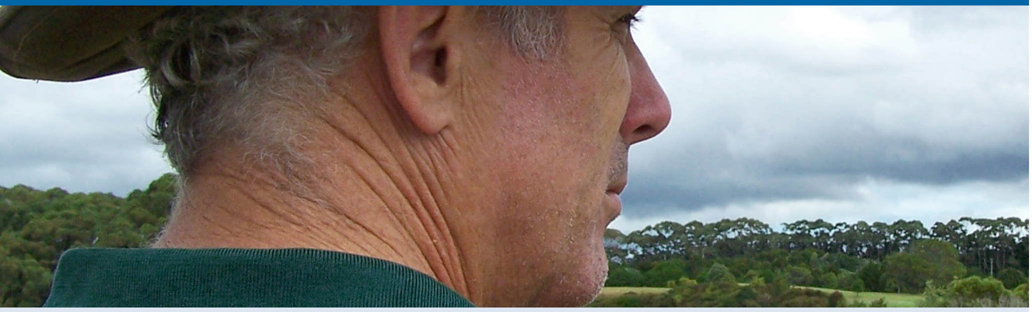

GRANNY FLAT RIGHTS

Where land is transferred to the younger generation and the older generation retain a right to live in the property rent free for their lifetime, Centrelink will deem this "Granny Flat right" to have a certain value which will offset against the sale of the gift.

The rules relating to "Granny Flat rights" are complicated and must be structured correctly to access this concession.

SECURITY AND PROTECTION

The decision to transfer assets is a decision that is not made lightly. Therefore it is imperative that every effort is made to protect the assets and family members involved.

This security and protection is provided through our farming specific Farm Deed Succession Agreement.

This deed is tailored to the families' specific needs and circumstances, providing piece of mind for.

ARE THERE ANY DISADVANTAGES?

In reality, nothing in life comes without some cost. The disadvantages of the benefits mentioned above are:

Setup Costs: there are costs associated with setting up the trust, transferring assets, dealing with Centrelink and drafting a Succession Deed.

Ongoing Fees: the trust will need annual accounts each year it earns income.

Tax Planning: as mentioned above, allocating trust income each year does require some management and in the event there is no suitable family members to allocate tax income to, then the advantages of doing this reduce for that income year.

Asset Protection: arguably a trust is better asset protection than holding in the original owners own name, however we cannot guarantee on the other hand that the assets won't be subject to some legal challenge if any of the children involved in the trust are sued for any reason.

We offer a free no obligation meeting to review your situation. Call us today on 03 5330 7200 and take advantage of this valuable offer.

Is this compulsory?

The above is merely information and it is for the family to decide whether this structure is for you. In our opinion, the advantages far and away outweigh the disadvantages in almost all circumstances. However, given it is your family and your assets, it is completely up to you and your family as to whether you wish to proceed with this.

M STEPS

Are You Financially Secure?

At Mulcahy & Co we are in a unique position to provide the expert advice and solutions of accounting, financial planning, lending, legal and information technology all under the one roof. This makes a normally complicated process seamless to help you on your way to becoming financially secure.

WHAT DOES BEING FINANCIALLY SECURE MEAN?

It means assessing your personal and business goals and developing a plan to achieve them.

1. **Goals & objectives**
2. **Estate plan**
3. **Risk plan**
4. **Asset protection plan**
5. **Taxation plan**
6. **Debt plan**
7. **Retirement plan**
8. **Business plan**
9. **Superannuation plan**
10. **Investment plan**

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