REAP WHAT YOU SOW

In cases involving a farming partnership agreement, dying intestate can create complex and long-running legal issues, explains Julie Butler FCA

A farmer may die without a will for a number of reasons, including lacking the money for legal fees, avoiding difficult decisions, or simply being unaware of intestacy. With the high value of farms, intestacy can be very damaging and lead to fragmentation.

The intestacy example of Bill Brown (Partner 3) worked through below shows the need for there to be an accurate valuation with regard to quantum. From an inheritance tax (IHT) position the surviving spouse exemption is now lost on part of the farm and agricultural property relief (APR) and business property relief (BPR) must qualify. Another problem is where on the death of one of the farming partners it is found that the intestacy of a previous partner some decades before was not sorted correctly. The figures below show what fragmentation and uncertainty this would cause within the farm.

It could well be that in addition to the intestacy it was an intestacy of a beneficial ownership as opposed to a legal ownership. Perhaps some inexperienced solicitor had assumed all of the beneficial interest passed to the surviving spouse of Partner 3 and drew up an incorrect partnership agreement to this effect. While other, more experienced advisers had raised the intestacy, the partnership agreement was 'pushed through' without including the ownership of the children of Bill Brown created by the intestacy.

PROPERTY OWNERSHIP

Now is the time to consider future events and eventualities regarding farm ownership. Work carried out on business property ownership several decades ago when values were lower, and research was perhaps not as professional, will affect property ownership now. If there are actual or perceived underlying problems, cases such as *Lidher v Revenue and Customs [2017] UKFTT 153 (TC)* and *Ham v Bell [2016] EWHC 1791 (Ch)* clearly show the need to sort out farm legal and beneficial ownership concerns before a major problem arises. This might be on the

Work carried out on business property ownership several decades ago when values were lower will affect property ownership now

death of the legal owner, planning permission being obtained for future housing development, or a farming family dispute. The advantage of a well-drafted partnership agreement is that the fact-finding to support the work should highlight these types of problems.

PROBATE VALUATION

The importance of the probate valuation was demonstrated in the recent Lands Chamber case of *Mrs Dorcas Adebowale Akanwo (as Personal Representative for the estate of Miss Taiwo Akanwo Deceased) v HMRC [2018] UKUT 0113 (LC)*. Here the Upper Tribunal upheld HMRC's valuation of a terrace house of £260,000 compared to the value taken by the executor of £200,000. Such a value is defined for IHT purposes under s160 Inheritance Tax Act 1984 (IHTA 1984) as the price which the property might reasonably be expected to fetch if sold in the open market at the time of valuation. It therefore goes without saying that such a valuation should be well researched.

Mrs Dorcas Akanwo as executor for the deceased had taken two estate agent indicative valuations in assessing the property value for IHT purposes. She had not commissioned a formal valuation report from a surveyor with comparables, which is the approach the district valuer (DV) took. This basis of comparable sales, which included the property next door, was much closer to the ultimate sales price of £312,000 less than 18 months after the date of death. The Upper Tribunal agreed with this assessment of value of the property.

Both this case and the other recent Land Chamber case of *Palliser v HMRC [2018] UKUT 0071 (LC)* are a reminder that any valuation used must be able to stand up to scrutiny by HMRC and, in this case, that saving costs by not obtaining a professional valuation can prove to be a false economy for the estate – a very important point for executors to consider under their duties as a solicitor.

While neither of the aforementioned cases concerned farms, their principles

» 44

THE CASE OF BILL BROWN

Bill Brown dies intestate as part of a farming partnership with his brothers. His estate is split as follows:

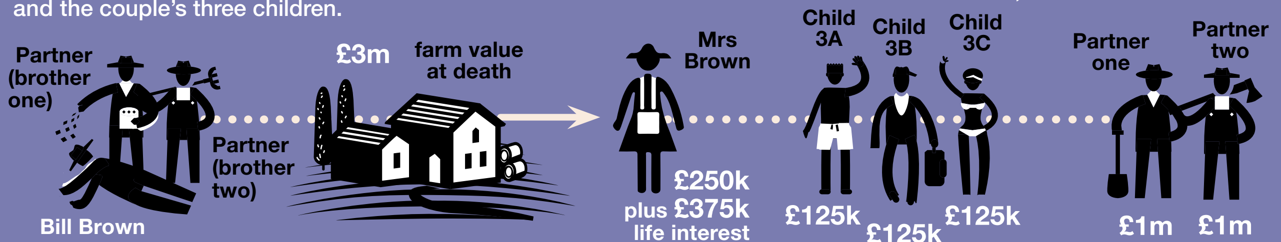
- Personal property to Mrs Brown
- First £250k of the estate to Mrs Brown
- Half of the remaining estate to Mrs Brown
- Half of the remaining estate to his three children

If the farm is worth £3m at the date of death and Bill is one of three farming partners who intended to leave his third to his wife, they will be in for a shock, as Bill's children – even if they are not interested in farming – will end up owning part of it.

Bill Brown's one third share of the farm has a value of £1m and this will be split in monetary terms as follows: £250k to Mrs Brown; £750k split between Mrs Brown and the couple's three children.

Mrs Brown therefore inherits £250k plus £375k as a life interest, while the three children each inherit £125k. So ownership of the farm becomes fragmented as shown:

Owners	£'000s	%
Partner 1 (Bill's brother)	1,000	33.3
Partner 2 (Bill's brother)	1,000	33.3
Mrs Brown (Bill's widow)	250	8.3
Child 3A (Bill's child)	125	4.3
Child 3B (Bill's child)	125	4.2
Child 3C (Bill's child)	125	4.1
Life interest for Mrs Brown	375	12.5
Total	3,000	100.0



arguably apply more so given the size and scale of farms and the potential IHT reliefs available. The valuation of the farm estate needs to be not just a professional valuation but a high quality valuation, and well-defined instructions from the personal representative on all areas on the farm, its history and exact occupation will be required for this.

The example of Bill Brown can also be taken further to the death of one of his remaining partners. At this point, the exact ownership of the farm needs to be identified and the importance of the probate valuation and need to be correct therefore comes into play as it impacts the amounts owned by the children. Any errors on the intestacy of Bill Brown could now come to light.

BENEFICIAL INTEREST

Beneficial interest in property is considered in the case of *Lidher v CRC [2017] UK FTT 153* and provides interesting comments on beneficial ownership. In this case, Judge Ann Reston concluded that the precedent established in *Jones v Kernott [2011] UKSC 50* and *Thompson v Hurst [2012] EWCA (Civ) 1752* was applicable and that there could be no scope for a legal presumption of the intentions of two parties, and that the claimant not named as a proprietor has the burden of establishing a common intention.

Farming business property ownership has historically been complex. Experience dictates that tax planning cannot be carried out until all the basics of legal ownership are understood and evidence scrutinised, and there is full understanding around the beneficial ownership.

Likewise, legal documents such as farming partnership agreements must be fully researched and verified as valid. If these documents have been produced without the full understanding of ownership and tax implications there can be serious problems in the future. For tax purposes, the worry would be achieving only 50% business property relief for non-partnership property.

Let us now take the example further where the farm is sold and the beneficial interest of the

It is likely that this is not how Bill Brown would have wanted the farm divided and it leaves his two brothers in a difficult situation. There may also be some assets not qualifying for IHT reliefs in the form of APR or BPR, which the deceased thought would be covered by surviving spouse exemption. As these have now been passed to the children, they are therefore taxable.

There is also huge pressure on the valuer to obtain the full facts on legal title, beneficial ownership and legal partnership arrangement. Furthermore, a new partnership agreement will have to be drafted to allow for the children's ownership in the farming partnership. Bill has left a nightmare position behind without realising the potential requirement for significant professional fees.

> **Experience dictates that tax planning cannot be carried out until all the basics of legal ownership are understood**

children have been identified. The first thing the widow of Bill Brown as personal representative should have done is to ensure that the farm was correctly valued, the estate correctly administered and the children protected. If this was not done, the ownership of the farm becomes a lot more complicated on sale.

ACTION CHECKLIST

If there is the combination of unrecorded beneficial interest, intestacy and a partnership agreement that does not correctly record the true beneficial interests then there will be real problems to unravel. The action points in cases such as these are:

- ensure that there is a correct recording of beneficial interest in all farming situations. 'The claimant whose name is not on the proprietorship register has the burden of establishing some sort of implied trust.' This would be Bill Brown and in turn his children;
- do not let the person with the beneficial interest die intestate – all farming partners must have a will and a strong well-thought-through partnership agreement which ties in and provides support; and
- ensure excellent instructions are provided to the farm valuer which include the details of the correct ownership and the correct trading relationship so a correct valuation under IHTA 1984 can be achieved and the exact intestacy position be understood.

All forms of tax and succession planning that help identify exact ownership to achieve correct tax planning can help. Often, farmers do not want to pay fees and consider suggestions of sorting the tax planning around farm ownership and intestacy as 'unsolicited'. Ensuring all partners have wills and a secure partnership agreement in place will save time in the future and protect their positions.

JULIE BUTLER FCA
Specialist in equine finance and tax, Butler & Co
www.butler-co.co.uk