

The Farmhouse enigma and care provided by family members

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Farming is very 'intergenerational' and very much in the headlines with the Agriculture Act 2020 achieving Royal Assent on 11 November. Agricultural Property Relief (APR) on the farmhouse is both a driver and possibly considered a 'bonus' for tax planning. Whilst the OTS review of Inheritance Tax (IHT) published in July 2019 suggests that the farmer should be allowed to retreat to the nursing home without negative impact on the IHT relief, this consultation has not become tax legislation. In addition, many farmers wish to die on the farm not in a nursing home.

In farming, succession planning consists of the overall farm operation being left to the farming children. However, it is often the non-farming child (possibly the daughter with husband) that comes to live in the house to look after their parents, with the "farming" child living elsewhere. Obviously, this has tax and legal implications for all the family to consider.

It may be possible to establish equitable rights over the property and a right of occupation which would give the "carer" a share of the economic value of the property which would be outside the parents' estate. Consideration of this approach would seem the best potential way forward and the precise facts should be investigated.

If the names of the daughter and her husband were not on the property's deeds and they had no formal legal right to occupy the farmhouse, then they will have no legal interest in the property. However, it is likely that they have acquired a beneficial interest in the property by virtue of the money they may have spent on the farmhouse and, if so, this will reduce the valuation of the farmhouse for inheritance tax purposes.

There is a possibility that the value can be reduced but as IHT relief is allowed at agricultural value (s.115/3) this can be less of an issue than with a normal property as there will be APR on the agricultural value. Again, on a case by case basis, consider whether occupation by the farmer and his daughter (in the role of carer) would have an impact on occupation under s.117 IHTA 1984. The answer is that this would depend on the parents' involvement in the farm operation together with the daughter's involvement. It could be that there is a Lasting Power of Attorney in favour of the daughter to help run the farm in her parents' absence and she is therefore occupying the farmhouse for APR purposes. Children occupying the parents' home is a developing area of law as children (often in their 50s and 60s) are coming back to look after one or both of the parents with the result a claim for proprietary estoppel may be made (based on whether it would be unconscionable or an unjust enrichment to give or not give them an interest in the property).

It is often the case that the farmhouse can be left to the daughter/carers in the Will as the brother inherits the farm and cottages. This is a complex area, if an IHT liability potentially arises after taking account of any unused allowances from the surviving spouse and APR it needs to be considered as part of full succession planning, and it is essential and recommended that specialist legal and tax advice

be taken prior to death. Any time that any children take up occupation of a house to look after parents, full advice should be taken with regard to the valuation impact, ownership and IHT impact.



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