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rural law

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Geoff Tomlinson

WELCOME

Welcome to the summer edition of Rural Law

Who would have thought in the depths of last winter's snow and ice, that the topic of conversation by summer 2010 would be hot, dry weather and a hosepipe ban?

It just serves to remind us all that everyone connected with farming is still very much affected by the weather.

In this edition we have a guest article by Robert Sheasby, the new NFU regional director and we also look at two very important topics which affect the farming industry. Napthens partner David Barnes

provides an article about inheritance disputes, and I consider the continuing need to encourage the next generation into farming, whether as owners/managers or as farm workers. As ever, food for thought I hope.

Please enjoy reading Rural Law, and if you have any comments or queries, or you think you might need our services, please do get in touch.

Best regards, Geoff Tomlinson
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FARMING: THE NEXT GENERATION

The BBC's excellent 'Countryfile' programme reminded us recently that the average age of farmers in this country is still as high as 52. There must therefore be a lot of farmers quite a bit older than that, but how many are there in their twenties or thirties and how many will there be in the next 10–20 years?

In order to guarantee a vibrant future, the industry will need the next generation to come through as the owners and managers of our farming businesses.

Young men and women, whether farm business owners/managers or farm workers, will need advice, training and encouragement, but above all, sufficient incentives to commit themselves.

Part of the process involves succession planning, something that existing owners/managers should always consider sooner rather than later. Having said that, it usually involves the handing over of farm assets, but the Capital Gains Tax (CGT) regime which is in place following June's emergency budget does little to encourage owners to pass on their farm during their lifetime.

The government would point out that usually the retiring farmer will be able to claim Entrepreneur's Relief and pay tax at only 10 per cent, but it must be remembered that that rate of tax applies equally to both long-term and short-term gains. If a farmer were to make a life-time gift to his son of a farm he has owned

since before 1982, even with Entrepreneur's Relief, tax will be due at 10 per cent on the whole of the gain since the 1982 value.

Bearing in mind that no CGT is payable on death, the farmer hardly has an incentive not to hold onto the farm for the rest of his life. The Government needs to be made aware of that anomaly, and the industry should lobby for the re-introduction of some measure of relief against tax on long-term and/or inflationary gains.

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Wills which leave a property to the next generation can be a significant source of dispute

INHERITANCE DISPUTES

▶ A person making a Will (testator) is free to leave his property in whatever way he chooses and no relative has a right to receive property under a Will.

Nevertheless, claims that contest the validity of Wills, particularly made by the elderly or mentally infirm, form a significant source of dispute.

Legally, in most circumstances the person making the Will must know and approve the contents of his Will. A person must also understand issues including the nature and effect of his wishes to make a Will and the extent of the property or his estate of which he disposes. If a Will is made as a result of force, fear, fraud or undue influence, then it will not be regarded as the act of the Testator and will be invalid.

It is a fraudulent act for a person to deliberately fabricate a Will and simulate the signature of the deceased. Such an offence can carry imprisonment – in a recent case, the person who fabricated a Will of another so as to benefit was sentenced to seven months.

The testator may leave out of his Will provision to persons either deliberately or because he did not get round to creating or changing a Will. However, certain categories of persons may be entitled to claim against the estate of the deceased on the basis that he did not make reasonable financial provision for that person.

The court does have statutory powers to order financial provision for the benefit of those certain categories of applicant -


provided they make application within six months from the date on which the grant of representation was taken out.

Certain categories of persons may be entitled to claim against the estate of the deceased on the basis that he did not make reasonable financial provision for that person. This may be because the testator left them out of his Will deliberately or because he did not get round to creating or changing a Will.

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BIG DECISIONS AND A BAPTISM OF FIRE

 In a special feature, Rural Law introduces Robert Sheasby, the new NFU North West regional director, to readers.

Since 1999, Napthens has been the official law firm representing the NFU in Lancashire and Cumbria, working closely with the NFU and its regional director.

Robert Sheasby (pictured right) succeeded Terry Abbott, who was the NFU's North West regional director from 2002 to 2009. He is a graduate of Seale-Hayne Agricultural College where he studied rural estate management, and Robert is enjoying tackling the many big issues which are affecting farmers in the North West.

He said: "Since taking over the helm I've been involved with helping farmers in Cumbria deal with the floods which took place at the end of November 2009.

"Big decisions had to be made quickly and one of the first I made was to appoint a flood recovery co-ordinator in Cumbria whose main job is to assist farmers in the affected areas to get land back into production.


"Now, following the driest start to a year in the North West since 1929, farmers in the region have a drought to contend with. So to say the last six months have been a baptism of fire is a little bit of an understatement."

The early part of Robert's career was spent working as a land agent in the South West of England. He then moved on to the Thames Valley area where he worked as a tenant's agent and auctioneer at Reading Cattle Market.

For the six years prior to coming to the North West, Robert worked as the NFU's rural surveyor and prior to that he was the NFU's livestock schemes adviser.

Robert added: "Napthens has been part of the NFU's Legal Assistance Scheme for many years, a scheme which is seen by NFU members as a resounding success and perhaps even the jewel in the crown of the organisation.

"Having a dedicated professional team of lawyers with a good agricultural knowledge at Napthens means we can guide our members through the stress of legal action. This relationship sets the NFU apart from its competitors and I look forward to working closely with Mr Tomlinson and his team for many more years to come."

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