



# FARM OWNERSHIP AND TRANSITION

RESOURCE BOOK | FEBRUARY 2020





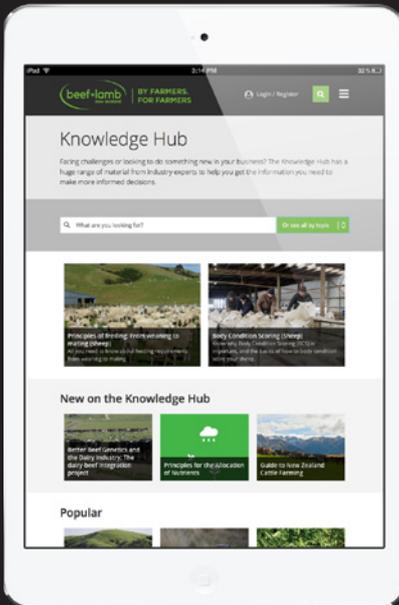
FARM BUSINESS SUCCESSION PLANNING

# LEARNING MODULES

More information on farm business transition and succession is available online. You'll find modules to help you understand what a transition and succession plan is, benefits of having a plan and how to develop one.

Go to: [www.knowledgehub.co.nz](http://www.knowledgehub.co.nz)

🔍 Search "Farm business succession planning"



### Acknowledgements

Beef + Lamb New Zealand and the Red Meat Profit Partnership acknowledge that this resource book is a culmination of work that Mandi McLeod of Systems Insights Ltd has developed. The content is her own original work unless cited otherwise.

# CONTENTS

## PAGE 02

### Foreword

## PAGE 03

### Background

## PAGE 04

### Family businesses

- Employment
- Family business meetings

## PAGE 09

### Decision-making

## PAGE 09

### Strategic planning

## PAGE 09

### Governance

## PAGE 11

### Introduction to the transition of family businesses—a new perspective

- Business continuance model

## PAGE 13

### Getting started—the process

- Business transition is a process not an action
- Family business transition readiness assessment
- Checklist
- Retirement costs of living
- Essential documents
- Current resource inventory
- Resource utilisation

## PAGE 19

### Successful successors

## PAGE 20

### Valuing the family jewels

- Valuing the on-farm heirs

## PAGE 24

### Communication responsibility

## PAGE 25

### Conflict and dispute resolution

## PAGE 26

### Farm ownership—exploration of choices and options

- Leasing
- Equity partnerships
- Share farming
- Combination
- Your business options

## PAGE 36

### Operating structures

- Structural options
- Capital accumulation
- Non-financial issues
- Audit of your personal affairs

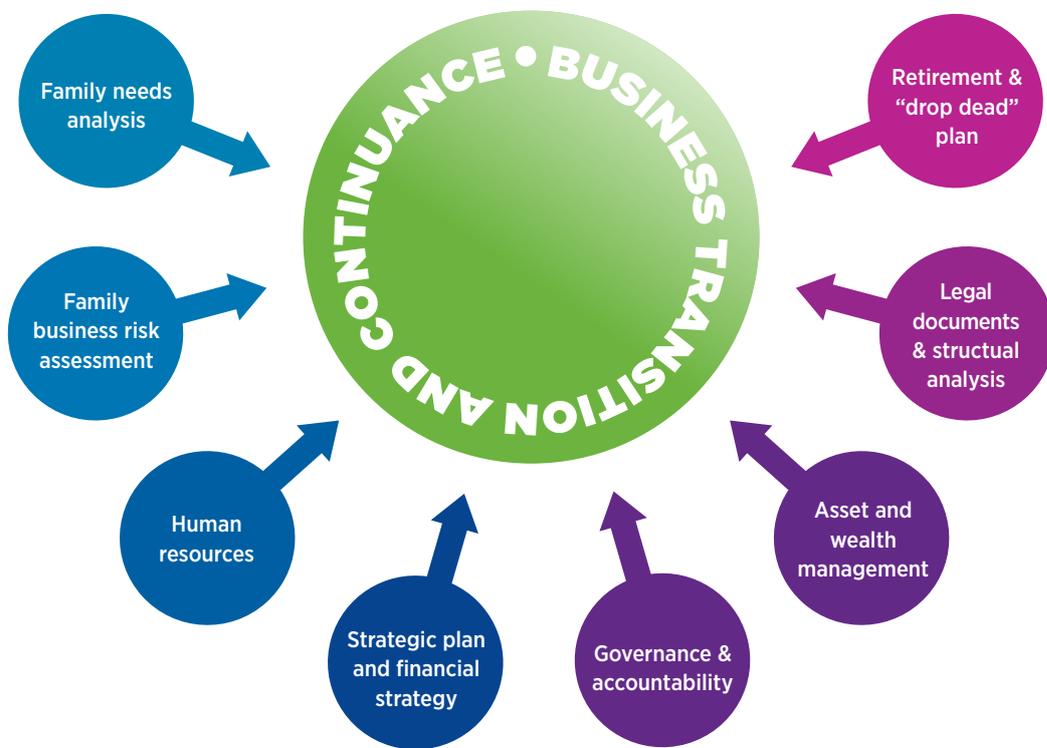
## PAGE 44

### Appendices

- Appendix 1: Decision-making
- Appendix 2: Strategic planning
- Appendix 3: Effective communication
- Appendix 4: Conflict and dispute resolution

# Foreword

Transitioning a family farm business is no easy task—it’s important to have a process that involves a team of professionals and a timeframe that helps move a family in business to a family business.



The difference between a family in business and a family business is accountability, role boundaries, communication and risk management—all important governance elements for a family business.

A family farm business is accepted as having properties unique to it. However, it should be operated like any other business and cover off the elements illustrated in the diagram above.

Each of these elements are part of a good family farm business, if they are not already being implemented, they will need to become part of the transition process. Each will require specific skills and knowledge to develop them into an integral part of the business.

An experienced family farm business facilitator will recognise the need for both a defined process and a team approach and will ensure the transition occurs in a timely manner. They should initiate the process with a review of the family (business) ownership interaction, determine where the risks to the successful intergenerational transfer will occur, and help the family develop a plan to meet, manage or mitigate these.

Family business transition takes time and a team.

**Mandi McLeod**  
**Systems Insights Limited**

# Background

A change in ownership and/or management is inevitable for every business—everyone exits eventually. But moving out of a business is often harder than moving in.

The sheep and beef industry has a traditional approach to succession, with family members taking over the family farm or the property sold and assets divided equally amongst the family. The term *succession* is usually used in the narrowest sense of asset transfer between generations with little attention paid to management succession or the succession of competent board members at a governance level.

Farm succession is a process, not an event or action. It looks at transition through a business continuance model, starting with effective family communication and then how to run a business capable of being handed on, leaving both current and future owners satisfied with the outcome. Transition is easier if the business is thriving, and not simply surviving.

Farm businesses are big businesses; often asset-rich rather than cash-rich, but still a business requiring the same level of skill and knowledge in its staff as any other. Changes to the entry cost of farming relative to income have helped alter the perception of farming. It has moved from being seen as an easy option for those who saw themselves as academically-challenged, or sought a change of lifestyle, to that of a business facing typical market forces with increasing regulations and decreasing profit margins.

Alternative approaches to farm ownership have developed. One more commonly used in the dairy industry, for example, is share farming. This allows new entrants the opportunity to build up equity and develop crucial

business skills before purchasing their first farm and has allowed a ready-market of first farm buyers. Most sheep and beef farmers still aim to pass the farm on to family members, although with a history of low returns for meat and wool relative to land value, on-farm heirs may struggle to purchase the assets from non-farming siblings and may want to seek alternatives.

Successful farm ownership and transition starts with planning. None of us expect the unexpected but it can and does happen—situations can change overnight, so better to be prepared however difficult it is and unnecessary it seems. “I don’t have time” is the grown-up version of “the dog ate my homework”.



# Family businesses

Family businesses are largely misunderstood in New Zealand. We try to fit them into the corporate or non-family business category and ignore the impact family and family relationships have on and in the business—both good and bad. A family business can be defined as any business in which business and family relationships have significant impacts on each other. In other words whatever impacts the family is likely to reverberate through the business and vice versa.

Family businesses are by nature complex, dynamic and often a paradox unto themselves as they try to balance the needs of individuals, family and business. To some extent, this is no surprise. Families are themselves complex; consisting of individuals linked only by lineage, sometimes with little more in common than the blood that binds them. These individuals form the heart and soul of a family farm, ensuring its ultimate success or failure. Yet it is these same people that may be forgotten about in a traditional succession planning model, if only developed around tax-effective mechanisms for reallocation of assets when the matriarch and/or patriarch exit the business.

This type of business presents special challenges to those running it, their success relying on finding a balance between the dynamics of the family and the dynamics of the business. To be successful, family needs and business needs must be aligned to ensure growth is sustainable, intuitive and flexible.

Examples of misalignment can include:

- A family member wishing to be involved in the business at a higher level than their competency allows, causing potential conflict either when that desire is denied or the position given and results in failure
- One or more family member wanting the business to be sold while others prefer to see it grow or remain in the family.

Successfully balancing the differing interests of family members and/or the interests of family members on the one hand and business interests on the other requires the people involved to have the appropriate competencies, character and commitment.

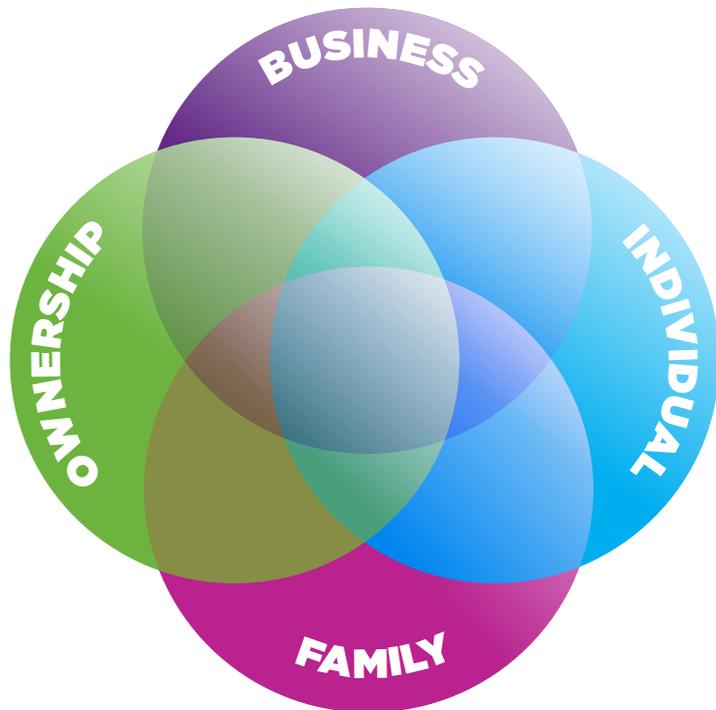


Figure 1. Adapted from Tagiuri and Davis 1982 and Hania M. Hammond 2017

The greatest risk is people and relationships in family businesses. It is rare to find a family business capable of being sustainable across generations with dysfunctional relationships, let alone being viable in the current one. Many family businesses have a reliance on one or more key employees without whom the business would suffer practically and financially. Key person insurance and operation manuals should be in place to minimise this risk to the business. Businesses with weaker or ineffective governance have a higher risk of failure.

There can also be tensions between various roles those involved in a family business must adopt, e.g., family member (parent, sibling etc.), manager, owner, employer. Figure 1. illustrates the different roles and how they interact. Family members need to recognise when they occupy the role of individual, as a family member, manager and owner in the business, they are separate roles with different

priorities, boundaries, vocabulary and accountability. Conflict may arise when the roles have competing needs and interests, and intersect without appropriate boundaries or governance. For example, if the business requires capital to grow, this could compromise the owner’s ability to make other investments or their personal expenditure.

It is important to take time out as a family and have a no-shop-talk rule imposed during these times. Taking time to build relationships and to learn about each other through play and social time builds social capital that can be called upon when times are tough. Family businesses that play together stay together. Unfortunately, little is taught about how to build good relationships, yet there are skills which can be learnt to make working and living together more rewarding and enjoyable<sup>1</sup>.

<sup>1</sup> Wayne Rivers-  
www.familybusinessinstitute.com

## Employment

### Labour use efficiency

Labour and feed costs are often the most significant cost inputs to a farm business. Managing and using labour is possibly one of the most challenging and underperforming areas in any business, but especially so for family businesses. Little, if any, consideration is given to up-skilling in the area of human resources, particularly as they relate to family and the added complexity of relationships underpinning (or undermining) the family.

Good employment relations start prior to recruitment; ensuring the tasks and skills required to fill the management gaps are identified and form the basis of the position description and ultimately

recruitment of the person most suited to the job. Understanding team dynamics is also important to ensure there will be a good social fit with the person recruited—family member or not.

### Family as employees

Family employees are seldom treated as employees in the common sense of the term “employee”. Very few have formal employment contracts (or share farming agreements etc.), position descriptions, review periods or training/development programmes. Yet it is the presence of these that prevents or minimises conflict in family-owned and operated businesses. The difference between perception, expectation and reality are so often at the heart of most family business conflicts.

As with any employees, holding family business meetings on a regular basis (i.e., once a month) provides an opportunity to discuss issues as well as continuously revising operational activities against strategies.

Operation manuals are a good way of setting operational guidelines based on the family business values and sound business practice. They also provide a good reference point for all involved in the business to understand how the family business is to be operated in practical terms. They are family business specific and are a fantastic resource for all new employees and non-business family members, should the need arise for them to suddenly become involved, i.e., upon the sudden absence of key business managers though death, disability etc.

Remuneration for all employed in the family business should be explicit and transparent such that there can be no difference between expectation and reality. Consider the child who thought they were receiving less money in lieu of an increased share in the family business. Imagine their reaction when it is explained to them this was never the intention and they were actually being paid an industry-appropriate wage. It is always less contentious to pay a fair wage for a fair day’s work. Take advice on what the current industry standard remuneration is for the position—making allowance for the current level of experience and skill. This should be clearly articulated and documented. Taking this approach will minimise any sense of entitlement that may exist and reassure those who are employed in the family business they are being treated fairly.

### Strengths

Family businesses have strengths that, if used appropriately, can make them more profitable than corporates. These have been identified as:

- **Commitment and loyalty.** A sense of ownership and commitment to the success of the family business
- **Continuity of knowledge.** Inherent understanding of the business’ environment and relationships
- **Reliability.** To let the business down is to let the family down
- **Pride.** In the family history and traditions
- **Community involvement.** In particular, voluntary positions with local school boards, local council and clubs such as Rotary, Lions or Federated Farmers
- **Shared values.** Those within the family that carry into the business.

### Weaknesses

Just as there are strengths in a family business, there are also weaknesses. If these are not minimised or mitigated, they could be the downfall of a business:

- **Governance.** Lack of roles and boundaries between family, management and ownership
- **Accountability.** Lack of separation between company or trust assets (including financial) and family
- **Human resources.** Lack of employment contracts and other appropriate human resource documents for family members employed in the business
- **Communication.** Expectations and assumptions between members of a family business not being discussed or clarified leading to a breakdown in relationships
- **Poor use of professionals.** Resulting in a lack of objectivity in assessing people and projects on their merit
- **Decision-making.** This is most commonly seen when businesses move from first generation owners making decisions autocratically, balancing the needs of the business and family without discussion, to the next generation, where decision-making might be more consensual and balance requires careful consideration.

**Regular family business meetings are essential to ensure there is continual alignment between the needs of individuals, family and the business, and to build on strengths not weaknesses.**



## Family business meetings

Research has shown regular family business meetings are one of the four keys to successful family businesses—the other three being effective communication, regular business planning and governance.

Family business meetings are an opportunity for family members to come together on a regular basis in a semi-formal setting to discuss the business. They are not for discussing production-related issues, but to develop and implement long-term strategies for the operation and management of the business. They can be held as frequently as monthly to just three times a year. The general rule of thumb is to run them as regularly as your business needs to determine what the family business does, and does not, want to become.

When individual and family group needs, wants, fears and expectations are understood, a powerful strategy for the business can be built to guide it forward. Family meetings help manage expectations and implement the strategic plan for the business and family in alignment, with a focus on healthy, productive communication and trust.

Smart, successful family businesses develop meeting rules, i.e., a meeting framework to ensure the process is robust enough to deal with conflicting opinions and differing personalities. The framework is essential to provide a safe, open dialogue between individuals.

### Family business meeting framework/guidelines

- Set time, date and place
- Send out a written agenda and stick to it. Don't fall back into production-related conversations
- Appoint a facilitator with good decision-making and communication skills, diplomacy and the ability to deal with conflict effectively. If there is no one in the business, consider using an outside professional
- Set ground rules for acceptable behaviour, language etc. to ensure a safe place for open dialogue
- Understand each meeting participant's expectations, needs, wants and fears as it relates to the family business. These should be known and understood by all, as they may influence the decision-making process
- Appoint a secretary to take notes and circulate, to keep everyone informed and record what was discussed and agreed
- Family members commit to the process and report back to the facilitator progress on any tasks they are required to do as a result of the meeting
- Consider using a "talking stick" so people can speak without interruption.



### Family business meeting checklist

	Yes	No	Don't know	Doesn't apply
1. Our statement of intent clearly communicates what we want to achieve				
2. Our values and beliefs are clearly stated and reflected in all our programmes and activities				
3. We have a strategic plan developed consultatively, that guides our family business members and professionals				
4. Our family meetings are well attended				
5. Conflicts among directors and family members do not interfere with business activities				
6. Our family business relationship with employees and in-laws is one of mutual trust and respect				
7. The roles of all family business members complement each other and do not conflict				
8. Employee performance (family and non-family) is evaluated frequently enough				
9. Employee turnover (family and non-family) in the last year has been manageable				
10. We have systems in place to ensure employee turnover (family and non-family) does not negatively impact on business morale or productivity				
11. We have systems in place to ensure production and financial systems are monitored and evaluated				
12. We make time to consider new programmes and initiatives				
13. Our financial expenditure is in line with our objectives and priorities				
14. Our team (family, non-family, professionals etc.) are kept aware of our major decisions and financial position				
15. Our financial monitoring and control systems enable us to identify budget overruns and errors quickly, and protect us from potentially illegal activities				
16. Our family business team has been carefully recruited and selected				
17. The organisation provides adequate orientation, training and evaluation for new employees				
18. Our family business has adequate measures to resolve conflicts of interest				
19. Our personnel practices and procedures provide protection from, and recourse for, acts of abuse or harassment				
20. Our family business has good internal communication within the family				
21. Our family business is generally well regarded in the wider community				
22. We communicate the results of our work to the wider community				
23. We have reason to be optimistic about our ability to deal with whatever the future brings in the next three years				
24. I am proud to be involved with this family business				

## Key questions/confrontations

These are the conversations needed to be had. Also known as the “elephants in the room”, they ensure everyone is on the same page and moving forward together in the same direction. They are often the precursor to a fundamental change in the business and or holding someone accountable for their actions. A typical critical conversation in a family business could be where the successor believes current farm practices are not in line with new or emerging regulations and, if continued, puts the business viability and success at risk. Another example is where the trusted advisor to the parents is thought to be favouring one sibling over the other and has undue influence over decision-making in the business.

### Key questions all families need to discuss:

1. Are we committed to the future of our family business? How is this measured?
2. Are we obligated to work on the farm, or can we pursue other opportunities?
3. How do we decide which family members are employed by the business? Where do in-laws fit in?
4. What education or work experience is required of family members who work in the business?
5. How do we evaluate and pay family members who work in the business?
6. What should we do if a family member doesn't perform?
7. How and when do we select the next leader of the company?
8. Do we need an advisory board? If so, who should serve on the board? Family members? Employees? Outside advisors?
9. Who should own shares in the business? Family members who do not work in the business?
10. What do we do if a family member wants to sell out or leave the business?
11. How do we teach in-laws and younger members of the family about the values and traditions of the family business?
12. What do we do if there is a divorce in the family?
13. How do we protect the contributions of non-family employees?
14. To what extent do we involve key employees in family business disagreements?
15. Could a non-family member be the next leader of our business?
16. How do we deal with and calculate sweat for equity?

## Summary

- Know where the family and family business is now and that the current environment in which the business is operating is clearly understood by all.
- Identify the key people in your business and ensure they have the right skills to grow the business.
- The closer the alignment between people's natural skills and their job, the less stress and potential for inadequate performance.
- Implement a clear human resource strategy for both family and non-family employees.
- Ensure all employees or contractors have appropriate legal documentation such as contracts, position descriptions and health and safety plans.
- Pay based on skills, experience and the position to be fulfilled.
- If you hire family, you **must** be able to fire family.

# Decision-making

An integral part of business is having a transparent and consistent decision-making process that ensures good decisions are made in a timely manner. This is often an area that challenges family businesses because they use emotion, rather than logic, as the basis of decision-making. While there is nothing inherently wrong with this, it is important to recognise when and why this happens. An understanding of decision-making styles is also useful.

Further details of decision-making styles are given in Appendix 1.

**Keeping the roles of family member, management and owner distinct is vital to the success of both the family and the business and is what governance in a family business is all about.**

# Strategic planning

Most businesses fail because of a failure to plan. Strategic planning is a process of analysing:

- Where the business is now
- Where the business needs/wants to be in the future
- How it is going to get there.

For most family businesses strategic planning is often the first step in becoming more objective and the start of a paradigm shift from being a family in business to a family business.

Strategic planning includes determining your values, writing your vision or statement of intent, setting business drivers and goals in addition to setting timelines for achievement. Determining and sharing your core values can also help those working in the business from outside the family feel included.

Once the strategic plan has been written down and agreed to, it needs to be shared with all those who are involved in making the desired future possible—including family members, employees (family and non-family) and professional advisors. It is then the owner's responsibility to keep management accountable for carrying out this plan. This can be challenging when management and owners are the same people and even more challenging when family is involved.

For more information on these elements of strategic planning see Appendix 2.

# Governance

Family businesses need to transition from families in business (where there is no separation between family, management and ownership) to family businesses with clear separation between the roles. This is governance in the family business. The word *governance* comes from the Greek word to steer and, in essence, is the function of good governance: to steer the business in the direction dictated by the strategic plan, and as governed by the values and rules set out by the business owners.

Good governance depends on developing good working relationships with those who do the day-to-day work of the business.

Governance in the family business does not have to be complicated or onerous. It does not require a board of directors and, whilst it can benefit from having an independent advisor, it is not necessary. That said, registered family business advisors are skilled at reviewing the family business in all three areas of family, management and ownership as they have no vested interest and bring no bias to the table.

John L Ward<sup>2</sup> believes governance in a family business should function to enable transparency across the family, management and ownership systems, and is focused on establishing productive procedural engagement across these systems. This ensures the ongoing alignment of interests and objectives between these three systems over time. He also states family ownership defines the values, vision and objectives of the business, including financial goals and performance expectations guiding board and management decisions.

In its most basic form, the objective of governance in the family business is to ensure:

- The strategic plan is developed and followed
- The roles of family, management and owner are distinct
- The business is operated as a business first and foremost not as an extension of the family.

<sup>2</sup> [www.kellogg.northwestern.edu](http://www.kellogg.northwestern.edu)

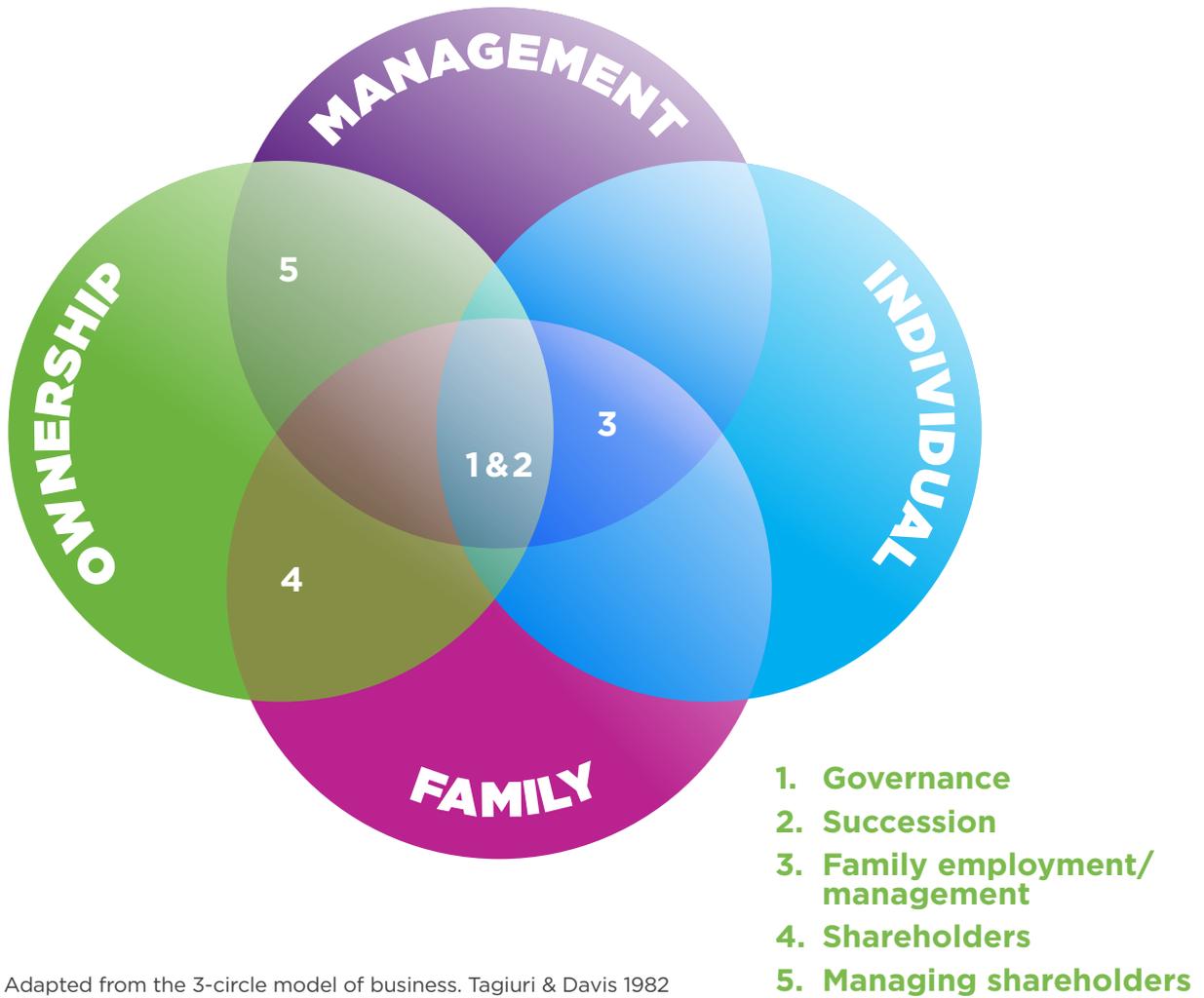


Figure 2. Adapted from the 3-circle model of business. Tagiuri & Davis 1982

## Summary

- Recognising the separate, but related, functions of family, management and ownership in a family business is the first step towards governance.
- Each role has different functions, behaviours, vocabulary and responsibilities that must be identified and policies determined to ensure they are followed.
- Governance in the family business is primarily holding individuals accountable to the vision, values and policies (fiscal and management) set by the family business owners.

# Introduction to the transition of family businesses— a new perspective

Statistics collected by Grant Thornton International Limited indicate 75% of businesses across the world are family controlled or owner operated. Of these less than 50% will survive the first 100 months (8+ years), and less than 30% of these family businesses will succeed to the second generation. In other words, 70% will be gone.

Less than 10% of these survive beyond the third generation, and less than 10% of family business owners are financially independent of their assets when they retire. It is believed that for farm business owners, the number is significantly less than 10%.

Succession is a word loaded with different meanings to different people with perhaps the most popular of these interpretations meaning the transfer of family assets to one or more heirs. Most strategies designed to achieve this result are based on a combination of tax minimisation and the division of the assets in either equal portions or on the basis of primogeniture – the eldest son takes all. The question of fairness is seldom raised nor is any attention paid to the dreams, desires and expectations of the people involved until it is too late. More emphasis is paid to the value of the asset(s) than the overall viability of the business.

## Business continuance model

An alternative view is to look at succession as the transition or continuance of the family farm business—with or without family members at the helm. This interpretation assumes the business is in a position to be continued beyond the current generation and is the deliberate intention of the current owners. This model takes the more humanistic view that current and future needs, wants, fears and expectations of the people involved are identified, and a plan put in place to meet, manage or mitigate these before any technical legal and accounting advice and structures are considered. Communication and conflict resolution skills are essential tools in ensuring everyone involved can fully operate and participate as members of the business in addition to being members of the family. Business time is separate from family time.

Integral to the business continuance model is the owners' commitment to passing the farm on to another generation, whether in the family or not. Unless the owners make this commitment the farm could be considered a “place to die with your boots on”! In cases where the successor cannot be found within the family, the same process is applied to ensure transition of the business is successful, whether it remains in possession of the family or not.

The business continuance model requires a fair process for determining the in-family heir (as opposed to an equal share amongst siblings) or non-family successor. This includes an allowance for “sweat for equity” and/or the time-value of money. Also needed is an analysis of the skills and knowledge required to operate and grow the business matched up with those of potential successors. Where there is a poor match between competencies possessed and those required a decision is made to look for an alternative solution, e.g., a supporting team, external successor and/or sale of the business. Alternatively, if appropriate, a training plan is developed and implemented.

No-one wants to set their family up for failure by supporting them into a venture that cannot be successful either due to a lack of management capabilities or the scale and scope of the business.

In cases where the successor with the right skills and aptitude for learning cannot be found within the family, the same process is applied to ensure continuance of the business is secured, whether it remains in the possession of the family or not.

A successful business continuance and transition plan should also take into account:

- Personal and business visions and goals, plus an assessment of compatibility between each
- Individual priorities, beliefs, values and expectations
- Collation and analysis of all current documentation, personal and business such as wills, financial statements, loan and insurance documents
- Strategic plan to determine where the business is now, where it needs to be and how it will get there
- Retirement plan to ensure the founders can live the life they desire when they leave the farm, including defined roles and responsibilities of both the owners and successors during and after transfer of management
- Wills are current and accurately reflect desired outcomes and have been discussed with family, in terms of what is to happen with the business and other major family assets
- Remuneration of both family and non-family members of the business is equitable with the position, experience, skill set and difficulty of finding someone to take over
- Identification and separation of individual family, management and ownership in terms of needs, wants, fears and expectations
- Communication strategies for the family and business, including family business meetings and conflict/dispute resolution policies
- Legal and accounting considerations
- Wealth management and protection strategies.

A business continuance and transition plan that appropriately and effectively deals with family, business, personal and professional perspectives saves time and money, and preserves relationships.

**There is no better time to start than now—tomorrow is the future you need to plan for today. The earlier you can start, the less stress there will be and the more money you and the business can save.**





# Getting started— the process

The aim of this section is to turn what appears to be a complex and daunting activity into a process of manageable steps.

The most common argument for a lack of planning is it's too complicated or there is no process. This is backed up by extensive national and international research showing a lack of process is identified by family business owners as being one of the top reasons for not undertaking a business continuance plan for their family.

Further to this, plans that do not cater to the personal and family values, needs, wants, fears and expectations have a much higher rate of failure than those based on, and taking into account, family dynamics. Those initiated by the desire to save tax or provide jobs or careers for family, who may or may not have the skills and aptitudes (or even desire) to manage the family business, are also doomed to fail and damage interpersonal relationships between family members.

A professional facilitator who specialises in succession and family business planning can be employed to ensure the family's key values and issues (the critical questions) are asked and answered; processes for management (practical, business and financial) are put in place and effective communication, conflict resolution, business meeting and negotiation skills are developed and/or enhanced.

The best process is one starting with the individual, followed by family, then management and finally ownership.

Step one is a facilitated meeting with the owners to determine their intentions and key issues as they relate to the family business and its journey towards being continued on by a succeeding generation.

In this meeting, parents are asked to speak frankly about their family and their business in addition to their own future needs. The business is examined to determine if it is or can be viable. Personal and business documents are also reviewed to ensure they are updated as necessary.

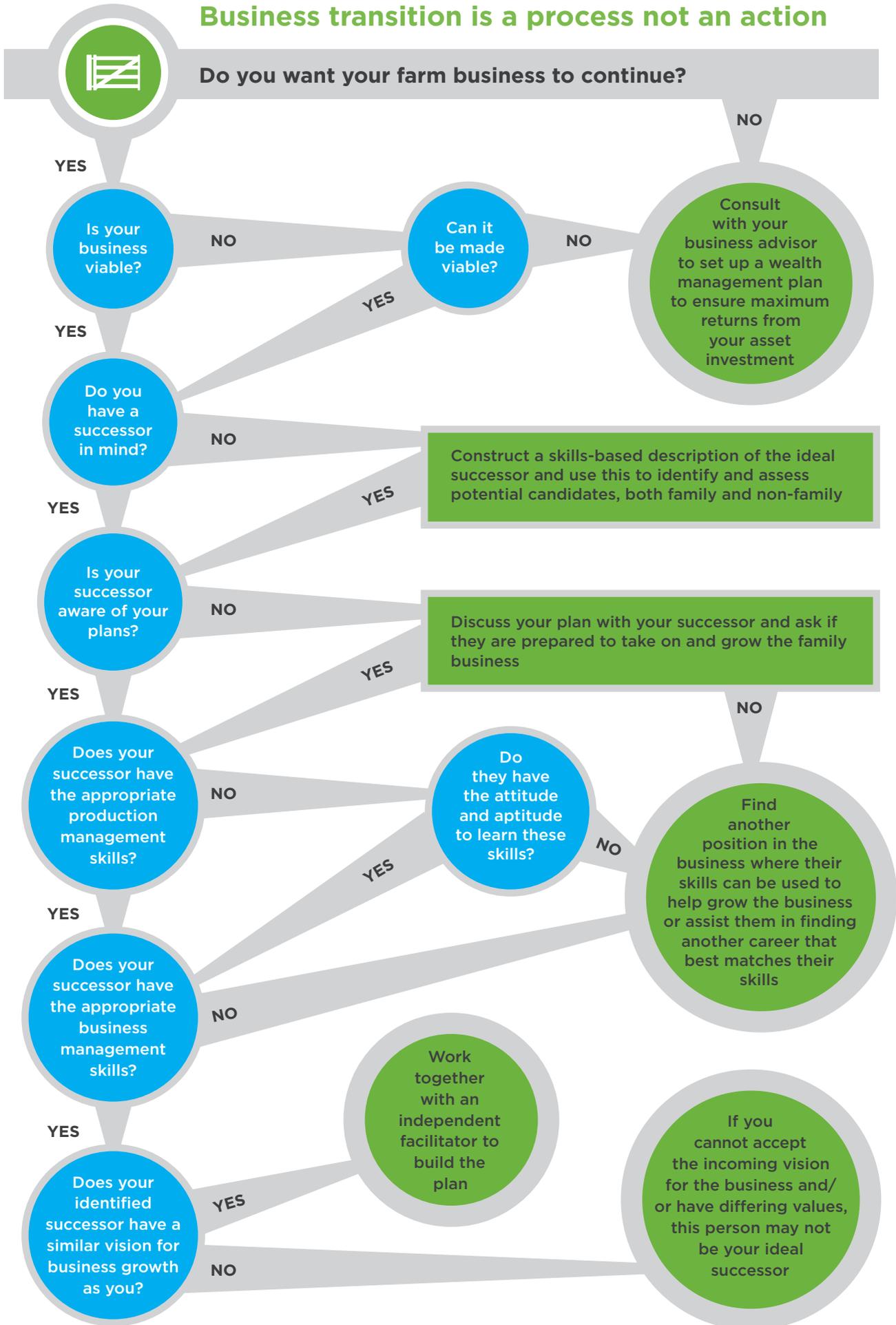
Step two is a series of separate interviews with the siblings and their partners to establish their expectations of the family business and estate. This interview also highlights any needs, wants or fears they may have in terms of the family business going forward, and any potential conflict between family members.

Step three outlines the process to work on the key issues raised and develops a plan that meets the aims and desires of the family business owners and their family. Examples of this include the establishment of a timeframe to hand over operational management to the successor, followed by financial management and ownership, will evaluation, wealth creation, and retirement planning etc.

Steps one to three must be conducted by an independent facilitator or consultant to ensure objectivity occurs. It is important the facilitator has a proven track record in working successfully with family businesses, is independent and has appropriate registration to ensure a disciplinary process can be followed if required.

Accountants, lawyers and financial planners all play an important role. But not until a clear strategy for the family and the business going forward has been established.

## Business transition is a process not an action



## ACTIVITY: Family business transition readiness assessment

How well are you facing the future of your family business? Take a few minutes to assess your readiness by placing a score in front of each statement. Answer the question from the perspective of the owner. If you are a prospective successor see how many of these questions you know your parents have considered.

**0 = Not at all**

**1 = I/they have thought about it**

**2 = I/they have mentioned it occasionally to family or friends**

**3 = I/they have dealt with it properly**

- |   |   |
|---|---|
| <input type="checkbox"/> Wills are up to date and fully reflect my wishes   | <input type="checkbox"/> I have identified who will take over the management of the business  |
| <input type="checkbox"/> All my family members are aware of the content of my will, know my wishes and the name of the executor(s)                            | <input type="checkbox"/> The identified successor has agreed and knows what is required to take over the business   |
| <input type="checkbox"/> I have talked to my immediate family members individually about his/her future dreams and plans                                      | <input type="checkbox"/> There is a firm plan in place to ensure my successor has the appropriate skills and knowledge to take over and grow the business |
| <input type="checkbox"/> I know my individual family members' needs, wants, expectations and fears, as they relate to the family, business and its transition | <input type="checkbox"/> My successor knows and understands everything in the business (financial and management) should I die unexpectedly               |
| <input type="checkbox"/> My main objective when thinking about transition is to minimise tax  | <input type="checkbox"/> My successor is capable of running and growing the business successfully in my absence   |
| <input type="checkbox"/> The business is able to be passed on as a viable business and can continue to grow   | <input type="checkbox"/> The family has regular talks about the business and family's future  |
| <input type="checkbox"/> If my business partner dies or is disabled unexpectedly, I know the contents of their will as it relates to our business             | <input type="checkbox"/> The business has a strategy for achieving the vision which is known and understood by both family and employees                  |
| <input type="checkbox"/> I have spoken to my family members about the business and other investments  | <input type="checkbox"/> Business values are well understood by all involved  |
| <input type="checkbox"/> I have spoken to my family members about inheritance   | <input type="checkbox"/> The identified successor has values consistent with those of the business  |
| <input type="checkbox"/> My family does not always communicate effectively and I am trying to resolve this  | <input type="checkbox"/> I have other interests besides work  |
| <input type="checkbox"/> Family conflicts and disagreements are known   | <input type="checkbox"/> I know my/our retirement needs   |
| <input type="checkbox"/> Any known family conflicts are in the process of being resolved  | <input type="checkbox"/> The business can afford to provide the retirement lifestyle I/we desire  |
| <input type="checkbox"/> Each member of my family is able to talk face to face about all disagreements  | <input type="checkbox"/> I have set my date of retirement and made plans  |
| <input type="checkbox"/> Each of my children is assured they will be treated fairly in my will  | <input type="checkbox"/> I have a team of people to guide the business and help me  |
| <input type="checkbox"/> I have discussed management transition with my employees   | <input type="checkbox"/> I know where to go for assistance if I need it   |
| <input type="checkbox"/> I wish to have a successor   |   |

### Total score:

**0-70:** Consider setting up a family meeting with an independent facilitator to discuss your family's business future. If not dealt with properly and in a timely manner, you run the risk of family disharmony and business failure.

**70+:** Well done! Consider a review of your plan to ensure it is current and the five Ds of death, divorce, disability, disaster and dispersal (of assets) are covered such that they are capable of being implemented tomorrow should the need arise.

## Checklist

To help you start your journey, this checklist will help you determine where you should start and what you may require in the way of resources.

Think about what timeframe you need to start distancing yourself from daily activities; who might take over the

family business and when this process should start. It will also help you determine who should be involved, where and when. It is recommended spouses and partners of your children are involved as they play an important role in the lives and decision-making of your family.

	Notes	Resources	Timeframe for completion
<b>Retirement plan</b>	<p>What is your total current expenditure?</p> <p>How much income do you need to support your desired lifestyle?</p> <p>When and over what timeframe do you plan to distance yourself from the business?</p>	<p>Historical budgets</p> <p>Statement of current expenditure and what it includes</p> <p>Lifestyle wish list</p>	
<b>Successor identification and assessment</b>	<p>Have you identified a successor/s?</p> <p>Has he/she agreed to be so?</p> <p>Do they have the right skills, knowledge and attitude? Can they learn?</p>	<p>Vision for the business</p> <p>Skills and knowledge for business growth</p> <p>Position description</p> <p>Skills and training assessments</p>	
<b>Viability assessment</b>	<p>Is the business viable or can it be?</p> <p>Can it support the income required by the successor in addition to the owners?</p>	<p>Financial accounts</p> <p>Equity position</p> <p>Asset valuation</p> <p>Return on investment/ Return on capital</p>	
<b>Documents</b>	<p>Are all the business and personal documents in a known safe place?</p> <p>Are they up-to-date and will they achieve the desired outcomes?</p>	<p>Wills</p> <p>Power of attorney/ enduring care</p> <p>Loan documents</p> <p>Insurance documents</p> <p>Company/partnership agreements</p> <p>Guardianship</p> <p>Other legal</p>	
<b>Stakeholders</b>	<p>Family</p> <p>Professional</p> <p>Key management</p>	<p>Business meeting skills</p> <p>Role identification</p> <p>Communication and conflict resolution</p> <p>Decision-making process</p>	
<b>Contingency</b>	<p>Are you prepared for:</p> <p>Death</p> <p>Divorce</p> <p>Disability</p> <p>Disaster</p> <p>Dispersal of assets</p>		

## Retirement costs of living

Many business owners have never quantified how much money they will need to have the lifestyle they want, and rightly deserve, once they retire from active duty in the family business. The table below is a guide to help work out how much money is required for living. Remember some expenses will increase over time (medical etc.) and some will decrease, so it is important to consider these. Inflation is also a factor to consider. If there is a shortfall or surplus, you need to plan how to meet, manage or mitigate it.

## Essential documents

To ensure the family and the business are well set up in the event of a death in the family, the following documents are recommended to be filed for ease of access:

- Estate plan/will
- Trust deeds—including settlor’s Statement of Intent
- Company registration
- Shareholders’ Agreement
- Partnership Agreement
- Financial accounts for the various entities
- Bank account details for various entities
- Names and contact details for professional advisors
- Structural diagram outlining the various entities in the family business, including who owns what and under what structure
- Relationship and property agreements
- Insurance policies.

Note: this list is not exhaustive and not all family businesses will require all items. Only those relevant to the business and family should be kept.

Category	Month	Year	% of total
Food			
Shelter			
Home furnishing and equipment			
Household operations, i.e., power			
Clothing			
Health care, dental and medicines			
Personal care			
Communications			
Phone			
Internet			
Post			
Transport			
Fuel			
Repairs and maintenance			
Insurances			
Gifts			
Travel			
Mortgages			
Other			
<b>Total</b>			

## Current resource inventory

Your current resource inventory comprises all the resources available to you and should relate directly to your business. It will comprise land, labour, machinery, buildings, livestock and other capital assets. This is a useful resource to hand over to your successor to assist them in understanding the business.

## Resource utilisation

Which resources could you use more efficiently and how? What would be the impact of this on your business?

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	Resource Inventory (number, type and condition)	Per cent current utilisation	Per cent desired utilisation	Reason for gap
Land				
- Area				
- Soil type				
- Fertility				
- Infrastructure				
People				
- Skills and number				
- Other team members e.g., consultant, vet, accountant				
Buildings				
- Number				
- Size/capacity				
- Condition				
Livestock				
- Number				
- Class/age group				
- Breed				
Other capital				
- Borrowed capital				
- Working capital available				
- Investments/shares, cash				
Time				
- How much spare time do you have available?				

# Summary

- Business continuance is about family business transfer.
- Succession or transition is about family asset transfer.
- Business continuance and transition planning is a team effort using relevant professionals in their own disciplines where and when appropriate to the process.
- Use of a skilled family business facilitator is vital.
- Understand family business continuance and transition planning is a process including many different aspects of the business.
- Know the financial resources required to fund the retirement of the current business owners, the income needs of the successors and any capital required to grow the business.
- Ensure all current resources are allocated to achieve at least 85% utilisation before introducing extra resources.

# Successful successors

Successful successors are those for whom there is a natural fit between them and the business—they are there because they have skills (and behaviours) which benefit the business, not the other way around.

It is often said, where there is a will there is a way. When there is a successor identified as willing and passionate about the family business, yet may not have the skills required for the position available, a training programme should be developed and a mentor assigned. Training development plans are recognised in every commercial business for their managers and should also be part of family businesses. The fear of hurting someone’s feelings or portraying a lack of trust often prevents good management of successors in family businesses and promotes lack of effective disciplinary processes.

As many farmers will know, there is a need to be selective about genetics for the future of the flock or herd. The same goes for family businesses. There is a need to prune the family tree to ensure a viable future not only for the family business, but for the family as well. Family members co-opted into the family business out of obligation or a misplaced sense of duty do not generally fare well. The individual and the business suffer, sometimes with serious consequences. Fit the person to the job, not the job to the person.

Practical/operational	Ability	Gap	Notes
Management			
Financial/business management			
Communication skills			
Leadership skills			
Time management			
Human resource management			
Decision-making ability			
Relationship skills			
Motivation			
Passion			
Other			

## Summary

- Careful consideration needs to be given to the task of selecting the business successor.
- Identification of skills and behaviours conducive to the future of the family business must be matched with those of the successor, or a training plan developed and mentor assigned.
- Governance and management policies ensuring growth and development of the successor must be instigated in addition to appropriate disciplinary procedures.

# Valuing the family jewels

Measuring the value of a family business is a time consuming and challenging process that deals with only the facts of the business and not the feelings of those who might have built it up—often with nothing more than their blood, sweat and tears.

Valuations deal with what the assets are worth now and not what they might have been worth in the past, or indeed, the future. In some cases the assets are worth more than the returns the business generates with those assets.

It is important when starting this process an independent valuation is attained and agreed on for all assets in their current state. This will prevent conflict when the time comes to use this information and ensure everyone has the same understanding and expectations on the value of assets. It is important to acknowledge the value placed on an asset does not reflect any sentimental value, nor does it necessarily mean it is the value that could be realised on the open market, but is a guide for decision-making—these valuations should be accepted as such.

## Valuing the on-farm heirs

### Equitable division of property

- An equitable division allows the on-farm heir to be compensated for the increase in wealth they have created and/or protected
- An equitable division also gives the on-farm heir a greater chance of being able to keep the farm
- Fair does not necessarily mean equal.

### Compensation for the on-farm heir

- Time
- Market price of labour
- Value added to farm
- Preserved wealth.

We can place values on services and increase in wealth/value/etc.



### Exercise: Calculating “sweat for equity”

Use the table below to calculate contributions made by family members to the family business and/or contributions made by family members to the care and well-being of the business owners.

Successor’s contribution:	\$/hour	Hours/week	Weeks/year	Yearly value
<b>Personal care</b>				
Cooking				
Cleaning (dishes, vacuuming, dusting, windows etc.)				
Laundry				
Bathing, dressing, grooming				
Transportation (to doctor, groceries, medication etc.)				
Other				
<b>Total personal care</b>				
<b>Farm maintenance</b>				
Farm management				
Personal financial advisor				
Bookkeeping				
Farm labour				
Mechanics				
Lawn mowing, ground keeping				
Other				
<b>Total farm maintenance</b>				
<b>Total</b>				
Add the value of the successor’s contribution to the wealth of the business—determined as the value of the assets at the time the successor joined the business.				
<b>Total sweat for equity</b>				

Repeat the process for non-business family members’ contributions, only including contributions either under-paid or unpaid.

## Case study

The Miller family is a typical farming family who own and operate a family business and want it to continue for another generation. Only one of their children is interested in farming.

The Millers:

- Duncan and Mary: farmers in Smallville, New Zealand
- Duncan farms with his father, Tom
- Three children: Chris, Kevin and Kathy—only Kevin wants to farm
- Mary and Duncan love all their children and wonder how to divide assets when they are gone.

**Part one:** Kevin is 21 and has a cattle herd of 100. He is at college and will finish this year. Since he hasn't contributed to the farm, no compensation is needed.

*Question: Is equal division fair because Kevin hasn't done anything extra?*

**Part two:** Mary and Duncan are 65. Kevin is 41 and married to Grace with three children. Duncan and Kevin have been farming together for 20 years. Kevin makes some management decisions. 1200ha are farmed by Duncan and Kevin. Their herds have grown significantly.

*Question: How do we value Kevin's contribution to the farm?*

Factors to consider:

- The value Kevin has added to the farm
- The value Duncan has added because he knows Kevin is going to take over
- The assets Kevin has built on Duncan's land
- The management decisions made by Kevin
- The repairs and improvements Kevin has made to the property.

Once values have been determined, we can multiply this by the number of years Kevin has worked. This may need to be increased or decreased because the value today wouldn't be the same as 10 or 20 years ago, and is negotiable.

**Part three:** Duncan's dad, Tom, passes away. Duncan is having back problems and finds it hard to drive the tractor. Kevin's daughter, Jessica, and her husband want to come back and farm. Half of the cash leases have been transferred to Kevin's name. Kevin has taken over the contracting operation and all management tasks. Duncan is slowly phasing out of the business.

*Question: How do we value Kevin's contribution to the farm?*

Factors to consider:

- The value Kevin has added to the farm
- Kevin's assets on Duncan's property
- The physical work Kevin does on Duncan's land
- Compensation for Kevin as manager for Duncan and Mary
- Compensation for record keeping
- Wealth preserved because of Kevin's presence, i.e., farm maintenance and capital improvements that have increased productivity and would otherwise not have been done
- Personal services for Duncan and Mary performed by Kevin and Grace.

Once values have been determined, we can multiply this by the number of years Kevin has worked. This may need to be increased or decreased because the value today wouldn't be the same as 10 or 20 years ago and is negotiable.

**Part four:** Duncan dies; Mary's health declines rapidly. Kevin and Grace help her with almost everything, i.e., chores, doctor visits, cooking meals, laundry, etc. Cows are gone; Kevin uses buildings, yards, grain bins, etc. on farm. Kevin received all Duncan's machinery. Mary now owns the entire land because she and Duncan had a partnership.

*Question: How do we value Kevin and Grace's extra work on the farm and caring for Mary?*

Factors to consider:

- Whether the farm business would still exist without Kevin
- Whether Mary would be in a nursing home if Grace and Kevin didn't care for her
- Other benefits Kevin and Grace are receiving by staying on the farm
- The value Kevin has added to the farm
- Kevin managing the entire business
- Increased profits due to Kevin's management.

Once values have been determined, we can multiply this by the number of years Kevin has worked. This may need to be increased or decreased because the value today wouldn't be the same as 10 or 20 years ago and is negotiable.



# Summary

- Every family has their own version of what is considered fair. It is important to understand this to initiate the discussion.
- Independent valuation of family business assets is vital although these must be agreed by both parties for the purpose of determining “sweat for equity”.
- Fair can sometimes be equal, however equal is seldom fair when there is family working in the business.
- Transparency of calculation for “sweat for equity” is vital.



# Communication responsibility

A lack of transparency and ineffective communication between family members are cited among the main causes of conflict and failed management transfers. One study<sup>3</sup> reports 60% of failure in the on-going success and survival of recently transferred businesses is attributed to these issues. In contrast only 25% is as a result of poorly trained successors.

Family businesses can draw from the shared history, identity and common language which can make communicating easier, however this same intimacy can work against family businesses as life-long histories, conflicts and family dynamics can intrude on business relationships<sup>4</sup> unless there is deliberate intervention.

Communication among family members is generally loaded with assumptions: "I know who you are. I know your body language. I know how you think. I know where you are heading." Individuals react to these assumptions before listening to what the other person is saying<sup>5</sup>.

There are at least nine barriers<sup>6</sup> to communication between generations:

- Avoidance of raising issues uncomfortable to discuss
- Assumption everyone has the same expectations/ understanding about the future

- Resistance to change
- Fear of an unknown future
- Desire to avoid conflict among family members
- Uncertainty about individual family members' plans for the future
- Established family decision-making patterns
- Difficulty in facing realities about growing old or giving up control
- Avoidance of having to make difficult decisions about the distribution of assets.

These issues are consistent with the four-circle model (individual, family, management and ownership) which describes the area of conflict as being where the interests of individual, family, management and ownership intersect and therefore compete with each other. These conflicts may be aroused within as well as between individuals as it is possible one person can represent each entity of family, management and ownership.

Communication is the exchange of information in a variety of ways; written, verbal, body language, gestures, drawings, signals, art, literature, etc. It is so ingrained in us, as humans, it takes a conscious effort to **not** communicate. Effective communication is hard work but the rewards of getting it right far outweigh the consequences of getting it wrong. In today's increasingly competitive global farming industry, only those with experience, astute business skills and the ability to communicate effectively will sustain a successful farm business.

Further information about effective communication is found in Appendix 3.

<sup>3</sup> Voeller et al (2004) cited in Klienfelter (2009),

<sup>4</sup> Gersick et al (1997),

<sup>5</sup> Ward (2004: 86),

<sup>6</sup> Kaplan et al (2008)

## Summary

- At least 60% of management problems are caused by non-existent or ineffective communication.
- The main issue with communication is people believe they communicate well or have already spoken about something others claim not to have heard.
- 80% of communication is non-verbal. When interpreting a message we pay more attention to non-verbal cues than verbal.
- The trick is to say the things that can't be said.
- Model the behaviour you want to see in others; lead by example.

# Conflict and dispute resolution

Conflict is incompatible behaviour caused largely by confusion or misunderstanding between people who have different needs, values or interests.

Some interpersonal conflicts, such as those between family members, may be difficult for those outside the family to understand, but are very real to those involved. These may be real or perceived differences which can only be identified and resolved through responsible and effective communication.

Conflict does not have to be negative. It is neither good nor bad; it is normal and necessary for growth. It is how we react to it that determines whether we can use it as an opportunity

for growth through understanding another perspective. It's also worth remembering unresolved conflict is often expensive.

Being aware of our attitude to conflict can also help us understand our reaction to it:

- Avoidance: do you avoid conflict at all cost and run away, leaving it unresolved?
- Competition: are you competitive in conflict, needing to win and assert your point of view?
- Compromise: are you concerned conflict resolution means unacceptable compromise?
- Collaborate: are you prepared to work with others to find the win-win situation?

Related to collaboration is negotiation. Like conflict, it is a fact of life because we are all different. We negotiate in everyday life with family members, employees, employers and friends, to reach agreement and prevent a conflict situation. Negotiation can be defined as pre-emptive conflict resolution—ensuring both parties are in a win: win situation from the beginning. It takes effective communication, patience and a desire to understand both sides. Both parties need to be actively involved in developing the solution to guarantee mutual satisfaction and a long-term solution.

The table below describes some common sources of conflict in small businesses and actions to help minimise conflict or its effect.

## Sources of conflict

## Actions for minimising conflict

Confusion about goals	Establish clear goals accepted by all stakeholders
Confusion about the roles of the stakeholders	Establish clear roles for all stakeholders
Compensation levels	Establish fair levels of compensation for the stakeholders
Unclear expectations	Clearly communicate expectations
Confusion over decision-making	Use a consistent method of decision-making
Generational differences	Discuss and accept the differences between the generations
Value differences	Communicate and understand value differences
Differences in communication styles	Practise effective communication
Lack of clear boundaries	Establish and respect all stakeholder boundaries
Failure to keep written records	Keep accurate and timely records

## Summary

- Conflict is stimulus followed by a reaction/response resulting in an outcome.
- YOU are the common denominator between stimulus and outcome.
- YOU choose to react or respond.
- Only response is a controlled process.

# Farm ownership— exploration of choices and options

Four main options most relevant to existing farming families are:

- Leasing
- Equity partnerships/  
company shareholding
- Share farming
- Combination of above.

## Leasing

For a farm owner, an alternative option to selling the farm is to lease it, either as bare land or as a going concern. Leasing may be an attractive option where there is reluctance to part with the family farm and/or where there has been no decision about future options (investment, lifestyle or business) resulting from the proceeds of the farm sale.

For the tenant, leasing may be a viable option for those starting out who may not have enough equity to purchase the farm outright or as a step towards buying a farm. More often, family farms are leased to the next generation as part of the succession process as it can allow the tenant to generate more income and build equity faster than if they were employees or share farmers.

In general terms, a lease is the contractual agreement between a land owner and a tenant to lease the land and its fixtures such as sheds, fences, irrigation, water system etc. The lease agreement should cover the maintenance and ownership of these chattels and ensure the pastures and fertility of the property are at least maintained. Policies covering land use, maximum stock numbers and feed on hand at the end of the agreement should also be addressed. These agreements are legally binding and exist to protect both parties and should be clearly understood and agreed to by both parties prior to the tenancy. A clause covering dispute resolution and exit clauses is essential.

It is advisable to have some common understanding of how the farm system may be operated to prevent any potential conflict. This is especially important where differences of philosophy may exist between environmental concern and awareness between the two parties.

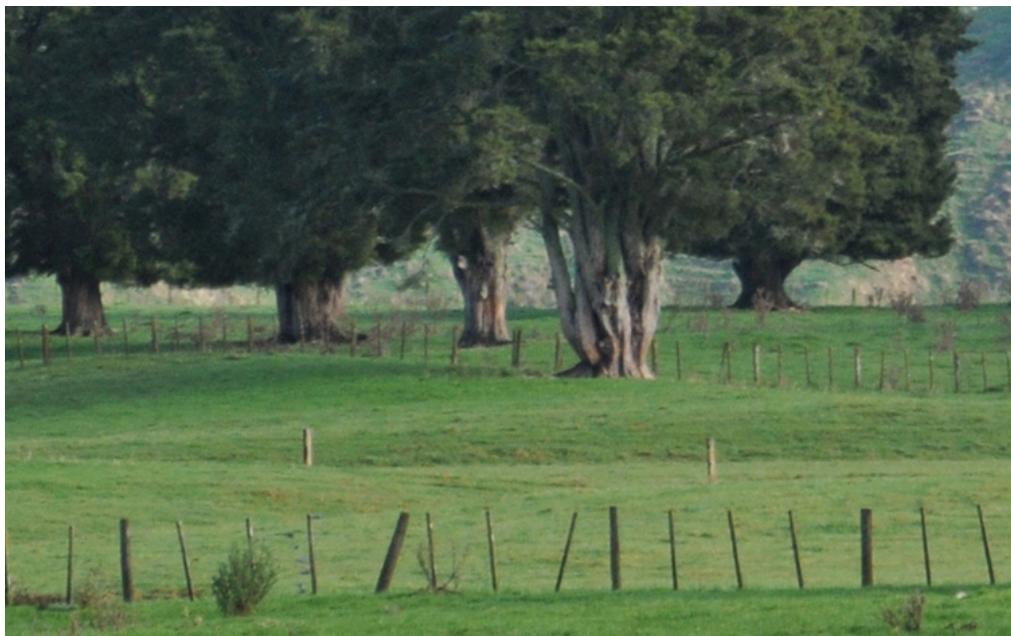
The lease agreement should outline the expectations of the lessor as to what business can be conducted on the land, what percentage of the land can be cropped (if any) and maximum stock numbers. The agreement should also identify the level of importance to be placed on general farm presentation as this is often the area causing the most conflict.

It is important a stocktake of the land and buildings is undertaken prior to tenancy, with both parties agreeing to the overall condition of buildings, fences, tracks and water supply (including irrigation) and the degree of improvement to pastures, including an estimation of the level of weed coverage. If both parties cannot agree, an independent third

party mutually acceptable to both parties should be engaged to conduct the stocktake. This assessment should extend to the quality and quantity of feed supply (pasture and supplements) and livestock, where relevant. This assessment acts as a benchmark for the level of improvements or lack thereof upon termination.

Ascertaining the value of the lease can be quite complicated where there is a difference in opinion about how the farm has been valued. Factors to consider in determining the lease price which is generally expressed in \$/ha and based on a percentage of the property value, are:

- Irrigation or dry land
- Nature and condition of infrastructure and improvements
- Dwellings
- Pasture quality
- Carrying capacity (stock units/ha)
- Productive value vs property valuation
- Soil fertility.



Where farms are in a poorly maintained state, this must be reflected not only in the lease price, but also where there is a right to purchase; any improvements made by the tenants at their own cost are taken into account to fairly reflect the value of the property. By the same token, the lease price must also be sufficient to cover any remaining debt servicing.

With the history of droughts and floods in recent years, leasing comes with the risk to the lessee of having to pay the fixed cost of the lease with no guarantee of income or capital gain. This risk needs to be clearly identified and quantified as much as possible to ensure both parties understand and either accept or reject the possibility.

## Equity partnerships/ company shareholding

New Zealand farms have typically been owned and operated as family businesses. The traditional path to ownership has been through inheritance or purchase. Whilst these routes remain, farm ownership by an individual is becoming increasingly difficult. In addition there must also be recognition of management succession as the age of most farm owners increases to a level where it is impacting upon the successful operation and/or management of the business.

Equity partnerships can be one solution to the challenge of individual ownership of land and management succession, thus ensuring the business can continue as a viable operation. An equity partnership is a farm business owned by two or more parties. The most common legal entity of an equity partnership is as a limited liability company. The term equity partnership is peculiar to New Zealand farming as it is a company by nature.

Equity partnerships are an increasingly popular response to the trend towards larger farms and the rising cost of land. For many, equity partnerships are a viable ownership structure providing an opportunity to achieve business and personal goals that could not otherwise be achieved (National Bank of New Zealand 2008).

Equity partnerships exist between interested parties who jointly provide the equity to either purchase a share in the property, or the property in its entirety. They may be comprised of groups of investors, whose only relationship between each other is their investment in the property, groups of friends or family, or between a farm owner (individual, partnership or company ownership structure) and their manager or share farmer (often known as an equity manager/share farmer). Generally, those involved in equity partnerships have knowledge of the investment and some experience in the rural sector (Rabobank 2008).

For investors, joint venture or family farms, equity partnerships may present an opportunity to grow their business and achieve efficiencies of scale with shared capital outlay. The managing equity partner can benefit from ownership, with less requirement for capital input. For managers and share farmers, equity partnerships can help them progress to full farm ownership, while retiring farmers can remain involved in the industry through their investment.

Equity partnerships offer shared capital, in addition to shared risk. The leverage of specialist skills, and/or capital, often results in the achievement of high performance and/or efficiencies of scale. They can also be an effective method of dealing with the issues of management and/or ownership succession. To deal with the issues of continuity, transferable ownership and limited liability, the most preferred ownership structure for an equity partnership is as a private company with a number of shareholders each issued shares, according to the amount of money they have invested. A company structure, in most cases, offers the benefits of transparency and regulation. It is reasonably common for one of these shareholders to manage the property on a day-to-day basis, either as a salaried employee or as a share farmer. This structure is not imperative, nor is it any guarantee for success!



Where there is no prior history or relationship between the proposed partners, it is sometimes recommended (by the banks, accountants and other professional advisers) that planning sessions are held to explore common values and goals. With polarisation of farm size trends continuing, equity partnerships offer an alternative vehicle for bringing successors into, what are often, larger agricultural businesses.

In addition to the company constitution, a shareholders' agreement is recommended to ensure the expected outcomes of the shareholders are identified. Joint ventures need to be well constructed and expert legal and accounting advice should be obtained.

Whilst there are no guarantees for success, an equity partnership with these in place has a much greater chance of succeeding:

- A clear business plan that includes the vision or ultimate objective of the business, the assumptions made (both physical and financial); capital expenditure and production projections, future asset value assessment and a cash forecast budget based on realistic income and expenses
- A communications policy addressing how communication between shareholders and all employees will be handled, including monthly reporting schedules detailing production and financial variances against budget and any on-farm issues to be addressed
- An indicative investment period including a clear process for exit
- A shareholders' agreement addressing the process of decision-making, disputes resolution and a share valuation and sales process (who is eligible to buy shares)
- Individual employment agreements for all employees and or contractors, including detailed position descriptions, clear performance criteria and set review periods.

**Good relationships between partners and a common goal for the company are critical to the success of the equity partnership. Sound professional advice will help facilitate the process which can be complex, time-consuming and costly—especially if not managed appropriately.**



## Share farming

This is more popular in New Zealand than anywhere else in the world although share farming does also exist in Australia. Share farming is simply a contractual arrangement to share income and expenses on an agreed basis, derived from the perceived risk involved, degree of management autonomy and investment in the business. Generally one party (the farm owner) provides the infrastructure required for farming, and the other (the share farmer) provides the physical labour, management skills and some of the chattels or livestock required to operate the farm.

The share farming system allows entrants to the industry to gain experience and build capital, in an effective manner, hopefully enabling them to achieve farm ownership. This ensures a level of rejuvenation in the farming population, by people who have, with determination and ability, proved themselves in both financial and operational management. In the process these people often push the boundaries and raise the standards of development and/or achievement from which the whole industry can benefit. Share farmers are often, out of necessity, the innovators in on-farm improvements—in both information and technology, and the quickest adopters of innovations. This innovative attitude, and being prepared to try new ideas, has meant share farmers often take on leadership roles in the industry.

Share farming benefits both parties to the agreement. When both the farm owner and share farmer work with integrity and respect, it is the classic win-win situation as both parties bring differing assets and skills to the partnership and a mutual sharing of risks and benefits. Both parties become part of a larger system, which allows progression in the industry.

There is a high degree of interdependence between a farm owner and share farmer which encourages both parties to have regard for each other. As such, arrangements invariably involve a shift in management control from the farm owner to the share farmer. Both parties need to identify and agree on the level of control assigned to

each party which will, in turn, dictate the profit share. A share farmer with limited or no management control may be considered an employee (by the IRD) irrespective of the agreement.

Share farming is seen as a good way to attract and retain good people in the industry by offering the potential for personal and professional growth, asset creation and/or realisation. In addition it can provide a transition plan for many farmers allowing them to manipulate the extent to which they desire to be involved in their business and how much capital they wish to release. The risks are shared and, in time, 50/50 share farmers often buy the farm, thus creating a market for non-family and family farm succession.

It is not a legal requirement to have written share farming agreements, but is strongly advised. It is also recommended both farm owners and share farmers seek independent advice before signing their share farming agreements, especially in regard to compliance issues such as ACC, superannuation, GST and taxation. The general rule is: any share farmer receiving less than one third of the gross proceeds from the farm is deemed to be an employee and therefore the farm owner will be responsible for the payment of ACC premiums.

In summary, the main strengths identified in the share farming system are:

- Its ability to allow farm owners to stop farming animals and step away from the daily operational activities yet at the same time retain ownership and derive an income from the farm
- A step towards farm/business succession
- It provides an incentive for share farmers to be rewarded for their skill and effort
- Provision for share farmers to be connected to the impact their management decisions have on the business, creating a gradual skills pathway
- Its ability to allow share farmers to gather equity toward their own goals.

### The two main share farming agreements are:

**50/50 agreement:** Under the 50/50 agreement the share farmer owns the stock, plant and mobile equipment such as tractors, motor bikes etc. The share farmer is usually responsible for all stock-related expenses, general farm work and maintenance. The share farmer receives 50% of animal income and the proceeds from all stock sales and is usually largely responsible for both day-to-day and strategic farm management. The share farmer takes significant responsibility for meat quality failures and any financial penalties. The farm owner is responsible for ensuring the farm and infrastructure (such as woolshed, yards, fences, water supply etc.) is of a standard to maximise production and profitability. They are required to pay for any capital expenses, fertiliser (but not the spreading) and half of any production-related feed costs. In the case of a poor performing farm with low levels of home-grown feed, a share of purchased feed other than 50/50 should be negotiated with the farm owner paying a larger share.

These agreements are generally for a period of three years or more to provide security of tenure.

Whilst the share farmer is responsible for employing and managing any labour required to run the farm successfully, it is the farm owner's responsibility to provide adequate housing for the share farmer and their employees.

Engaging a share farmer rather than employing labour means a farm owner has a greater degree of confidence in the motivation of those farming the stock because they own them. Because of this, share farmers effectively take on considerable responsibility, which also allows them significant involvement in the total farm management and the potential to have a positive effect on net farm income.



**Variable-share agreement:** Under the variable-share agreement the share farmer does not usually own the livestock and has minimal plant or equipment. The percentage of income received is negotiated and the farm owner is often more involved in both the day-to-day and strategic farm management than with the 50/50 agreement. This provides the share farmer an opportunity to learn from the farm owner who is often sympathetic to their desire for progress, both on and off the farm.

The financial compensation, expressed as a percentage of the payment for livestock/income from grazing etc., is commonly negotiated from a starting point of an equivalent manager’s salary but takes into account the element of risk involved with achieving production targets and being in business (as opposed to being an employee). Often the share farmer is required to pay a proportional share of any production-related expenses such as feed and nitrogen. They are required to provide their own labour to complete the tasks required, often necessitating the employment of one or more labour units.

From a farm owner’s perspective, it is generally the first step away from the day-to-day operation and removes the often perceived risk and/or stress of compliance associated with employing labour themselves. It is often a more affordable option for those farm owners not in a position to offer a 50/50 agreement. To the share farmer, this is generally a step towards being a 50/50 share farmer or equity partner. It is often a progressive step from being an employee and provides an opportunity to develop business skills and build an asset.

### Combination

Possibly the most flexible option available to any farmer looking to alter the way they operate and/or own their business is to consider a combination of options.

One such example would be to set up a share farming company involving key management with the farm owners as shareholders. The company can then enter into a share farming arrangement with the farm owners. This allows key staff (whether family or non-family) to have a stake in the business without the owners losing too much control or cash flow.

Another example could be to set the whole business up as a limited liability company with shares offered to family and or key non-family members. The business would need to be valued at current prices and a shareholder’s agreement detailing exit strategies, dividend policies and voting rights etc. established. This allows equal access to investment from both family and non-family which may provide a sense of ownership to encourage performance and stability. It can also provide an “easy-in, easy-out” opportunity for allowing key management personnel to build equity without tying them to the business, or the business to them.

For both of the above options, the rules of a successful equity partnership would need to be followed to ensure success, i.e., a clear understanding of the objectives of the business, a well-defined exit strategy, shareholder agreement etc.

There is the potential to involve a lease or partial lease, or a lease-to-purchase in the above options.

Equity partnerships can be combined with leases to grow the business or spread the risk (and reward).

# Summary

The key to success with any of these options is clear, concise communication and a common understanding and value system between all parties. All of these options will succeed (or fail) based on the level of communication between parties and the level of willingness to achieve mutual goals.

Having well-defined, legally binding contracts is a must in any business—whether they are employment agreements, lease agreements or shareholder contracts. Whilst conducting business on the basis of a handshake used to be the honourable thing to do, there is no substitute for having a charter outlining the way in which business is to be conducted, or an exit strategy if the business relationship goes sour. It is essential with any contract to have clearly defined roles and decision-making authorities, well-documented income and cost sharing and a clear termination or exit policy.

With any shift in control in a business, there are potentials for conflict. The most likely or detrimental are:

- Farming philosophy—how the farm and business will operate. This is generally based on having mutually shared values
- Feed and pasture management. What is the overall agreed philosophy Daily and strategic decision-making—who has what authority? This should be clearly defined and outlined in the agreement
- Condition of the farm (and house) and feed supply, including amount, at the start and termination of the contract. This should be well documented and agreed by both parties before the start and at the end of the contract
- Soil fertility and agreed fertiliser policy
- Expectations for general farm presentation should be clearly defined and agreed to by all parties
- Provision of labour—quantity and quality, especially where a partnership is engaged
- Communication—and expectations around this. Monthly reports are a good way to keep everyone in the loop.

Achieving a fair reward for effort, by ensuring good professional advice is sought prior to signing an agreement is important.

It is essential to complete a business plan detailing the wants, needs and expectations of the family, business and the owners to ensure the goals and objectives can be achieved with the current resources—physical, financial and human. Businesses set up with adequate capital, resources and a sound business plan have the ability to grow and succeed.

The table below offers a comparison of the potential advantages and disadvantages of the options outlined.

## Leasing

### Advantages

#### Farm owner

Relinquishes responsibility for management or care of the farm.  
Can take advantage of capital gain.  
Provides an opportunity to allow tenant to prove him/herself prior to purchase or transfer.  
Provides a relatively risk-free stable income with limited hands-on farm work.

#### Other party

Total control over the both tactical and strategic management.  
Complete management freedom (within the bounds of the lease agreement).  
Potential for increased return on capital.  
No equity tied up in land.  
Little start-up equity required.  
Increased opportunity to progress faster.

#### What to consider

Can be a means of progressive transfer of ownership.  
Potential for breakdown of trust and or communication.  
With short leases this can provide options for changing circumstances.

### Disadvantages

#### Farm owner

Risk the tenant will not maintain the property to a similar standard.  
Decreased cash flow.  
Loss of land use for period of lease.  
Someone else owns your land use.

#### Other party

No ownership therefore no capital gains.  
Locked in period of time for lease—may be a challenge in a severe drought.  
Reliance on the owner for repairs to plant, pumps and permanent structures etc.

## Equity partnerships

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### Advantages

#### Farm owner

Buy into another farm but without the high debt/risk. Achieve benefits of scale associated with large farm ownership without the major issues. Spread of risk and debt reduction. Introducing new thinking, ideas and business practices.

Invest in a different farm to spread risk; to access lower-priced property or irrigation etc.

Can provide for equitable distribution of the assets to family and/or retaining part ownership for a successor by allowing the release of equity from a farm property; divide a farm between family members or relinquish part control to a third party and consider part-retirement.

Minimises the risks associated with outright ownership.

#### Other party

Secure both a job and an investment. A good equity partnership can achieve similar or better results than a large 50/50 share farming job.

Stay share farming (or managing) in current position but gain some exposure to an investment in land.

Achieve expansion without extra work.

Provide an investment that can grow.

It can be the first step towards full farm ownership.

As a share farmer (manager or employee) take a positive step towards full farm ownership.

Minimises the risks associated with outright ownership.

Progression after a period of three to seven years to move on to a bigger partnership, or an increased share of the initial partnership or property ownership.

### What to consider

**Farms are becoming less affordable which means it has become more difficult for young people to enter into farm ownership.**

**The investment is indexed into the price of the land and stock which can appreciate more quickly than stock alone.**

**To share the experience and stimulation of working with other investors with different skills and experiences.**

**Unless the pre-investment homework has been done properly the risk of failure is potentially high.**

### Disadvantages

#### Farm owner

Lack of total control—being answerable to board/shareholders.

Potentially more difficult to remove an equity manager/share farmer.

A lack of mutual values and goals can lead to conflict.

#### Other party

Being answerable to shareholders rather than just a farm owner.

Potential to be used to grow a majority stakeholder's asset.

A lack of mutual values and goals can lead to conflict.

## Share farming

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### Advantages

#### Farm owner

Can discontinue farming without relinquishing total involvement in the farm; they can maintain an income and return on their investment.

No longer having the worry of employing staff.

Continue to live in an environment they love.

Maintain control at a strategic level.

#### Other party

Earn an income which is high enough to enable them to purchase a farm.

Obtain a fair return on the extra responsibility.

Provides an opportunity for initiative to be rewarded.

Have responsibility for tactical management and input into strategy.

### What to consider

Industry has benefited from share farmers bringing new ideas and fresh motivation to their positions, resulting in increased production. In addition, share farmers have also provided a relatively stable labour force with little industrial unrest.

Balance the risk of a bad share farmer with the possibility of getting a top performer.

### Disadvantages

#### Farm owner

Decreased disposable income.

#### Other party

Risk of working with a farm owner not disposed to change or willing to relinquish control of management.

Farm owner not willing to spend the money necessary to maximise production or to modernise equipment or infrastructure.

Risk of capital devaluation and/or being unable to sell stock when necessary.

## 50/50

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### Advantages

#### Farm owner

A 50/50 share farmer represents a relatively cheap labour source on an hourly basis.

A 50/50 share farmer will produce more than a waged worker and therefore increase, or at least maintain, the value of the property.

50/50 share farmers can increase the productivity of a farm and thus increase profitability.

Using a 50/50 share farmer releases a farm owner's capital, through the sale of livestock, which may be used to purchase more land or invest off-farm.

Increased freedom of time can enable more lifestyle choices.

#### Other party

The ability to build capital towards financial goals; the lifestyle enjoyed while farming; and the farming and business skills gained, through experience and other necessary education, while climbing the share farming ladder.

50/50 share farmers are driven primarily by the ability to make a good income in order to purchase farms.

They are rewarded for their effort and expertise more fairly.

Farm owner can provide local expertise and knowledge from which the 50/50 share farmer can benefit.

### What to consider

Allows younger people to come into the industry.

Young people provide new ideas resulting in increases in production—and little industrial unrest.

Seasonal variation can have more impact on the 50/50 share farmer with respect to maintaining animal condition.

Mutual benefits allow the farm owner to finish farming, and the share farmer to build capital towards their goal, whether or not it is farm ownership.

### Disadvantages

#### Farm owner

Decreased disposable income.

#### Other party

Risk of working with a farm owner not disposed to change or willing to relinquish control of management.

Farm owner not willing to spend the money necessary to maximise production or to modernise equipment or infrastructure.

Risk of capital devaluation and/or being unable to sell stock when necessary.

## Variable share

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### Advantages

#### Farm owner

Often the first step back from the daily management of the farm without having to give up too much of the farm income.

More free time while still maintaining control of the business.

A variable order share farmer will produce more than a waged worker because they have a vested interest.

#### Other party

A good way for skilled people with little or no equity to build a base from which to grow.

Good start to running their own business and being their own boss.

Can earn more money than being on wages.

Responsible for employees and relief staff can give more flexibility.

### What to consider

Mutual benefits allow the farm owner to finish farming, and the variable order share farmer to build capital towards their goal, whether or not it is 50/50 share farming and ultimately farm ownership.

Risk of poor business management or HR skills may impact on the job.

Opportunity for the farm owner to pass on knowledge and skills.

### Disadvantages

#### Farm owner

Risk of a poor performer or variable order share farmer with unpleasant personal characteristics living in close proximity.

Farm maintenance may not be a priority and would need to be monitored.

#### Other party

Not wanting to take time off and pay for replacement workers.

Direct responsibility for employees.

## Combination

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### Advantages

#### Farm owner

Increased flexibility to achieve the goals of decreased responsibility; increased free time and/or asset transfer whilst maintaining a viable business.

#### Other party

Increased flexibility to achieve goals.

### What to consider

Ensure clear goals are in place for the business, family and owners to facilitate achieving the right combination for both parties.

## Your business options

Options	Benefits	Challenges	Other Considerations
Current operating structure			
Lease			
Equity partnership			
Share farming: 50/50			
Share farming: variable percentage			
Combination			

## Career paths for employees

The traditional career path has seen young people enter the industry as employees who work their way up through the ranks to farm manager. If they are lucky and have family or other financial backing they have been able to purchase their own farm. Statistics show a high percentage of farm labour has been provided by family members, but as the number of farms has decreased and farm sizes increased, the reliance on non-family employees with more specialised skills has increased. There has also been a gradual decline in the number of family members returning to the farm.

A traditional career path starts at the apprentice level and culminates at farm ownership. The first three phases of apprentice, farm assistant/shepherd and farm manager are predominantly about skill and knowledge attainment. Share farming stages are geared towards equity building at the same time as growing a new set of knowledge and skills around managing a business. More modern career pathways now offer several equity options.

**It must be remembered with the current competitive labour market for farm employees, those farmers who excel in people management and who have an efficient people-friendly infrastructure will always find good staff; those who are not prepared to meet the market in terms of wages and conditions will continue to struggle.**

# Operating structures

This section has been written by Andrew Clements (LLB/BA, TEP) Director, Lawyer and Notary Public, Grayson Clements Ltd, a specialist in family business law.



## Structural options

Traditionally, people have looked to three staple structures to assist farming families. They are:

1. Trusts
2. Partnerships (also known as a “1908 Partnership” in deference to the age of the act)<sup>7</sup>
3. Limited Liability Companies.

More recently, family limited partnerships have become popular as a vehicle of choice in equity partnerships; but its uses and benefits run much deeper. A family limited partnership is an adaptation of the Limited Partnership vehicle specific to the features of a farming or business family.

Understanding the options available is helpful in deciding what tools are available to you. An awareness of the background to these structural options is crucial for you understand how they work in today’s world. Understand the thinking behind a legal tool and you can better understand its likely behaviours for you and your family. Thinking ahead is crucial in a time where a minimum of 70% of succession plans are failing.<sup>8</sup>

## Trusts

The New Zealand trust model originates from an era when families sought to protect crucial land assets for future generations. For many years people have settled trusts principally to protect their assets. Asset protection, relationship property protection and tax planning are just some advantages people consider when creating a trust. Fundamentally, Trusts remain the most effective inter-generational asset transfer vehicle for legacy assets.

Amassing family wealth in a single trust or associated trusts is a powerful way to grow capital, particularly if they are connected through a family limited partnership.

In New Zealand, trusts are private arrangements subject to the terms of the trust deed (recording the rules for the trust), the Trustee Act 1956 and the directions of the Courts. For this reason, trusts hold assets in the name of the trustee(s).

The most typical trust used in New Zealand is a called a discretionary trust. That is a trust where the trustees have the discretion of whether or not to attribute a benefit (capital or income) to a beneficiary.

This style of trust is widely used and provides one mechanism for family estate planning and business. The principal benefit of these trusts

is the ability of the trustees to determine who is to benefit and when, or if at all, whilst protecting the capital of the trust.

A recent challenge to the utilization of a trust as historically the most effective tool for succession, is that in a farm family business there is often the desire for one of the beneficiaries to own the land. This is more difficult when the land is held in trust. A company in the present time is regarded as a more flexible tool for transition.

Only at the expiry date of the trust, must the capital be transferred to the final beneficiaries. The limitation imposed by the government is that it must be distributed within 80 years from when the trust was created (settled).



<sup>7</sup> Partnership Act 1908.

<sup>8</sup> Emily Griffiths-Hamilton. Build Your Family Bank (Figure 1 Publishing, 2015), p4.



## Settlor

A trust is created when someone, a settlor, settles a gift or transfers assets to the control of trustees on terms recorded in a trust deed.

It is important to appreciate the settlement or gift creates the trust—not the trust deed per se. The settlor is usually the person that determines and sets the terms of the trust in that trust deed. Remember—one size does not fit all, and you can customise the trust terms to reflect your family.

It is also common today for the settlor to make their wishes known regarding the use of the trust funds and equally important for the trustees to understand this. Memorandums, directions and requests are commonly left for trustees' guidance, by the settlor and can be drafted to be confidential between the settlor (or settlors) and the trustees.

Even with new laws pending, the confidentiality of such instructions can be correctly preserved; and can be quite helpful for trustees. Crucial details can be contained in these instructions. These can include loans to children, the purpose to which funds are to be applied, who is to benefit and why, or even who isn't intended to benefit and why.

A regularly addressed issue is the interests of a new partner or spouse of a beneficiary and the competing interests of children from former relationships. This is a rapidly evolving area that needs specialist advice to ensure you have a platform to protect assets and relationships.

One key power a settlor may have, depending on the terms of the trust deed, is that they control by consent any changes to the trust deed. This is an important control on trustees changing the terms beyond those wanted by the settlor, or the amendment of the beneficiary list.

Another typical power the settlor has is the right to hire and fire the trustees, i.e., choice of who makes the decisions, rather than the decisions themselves.

Because trustees are powerful in a discretionary trust, engaging the most appropriate trustees is critical. Balance, objectivity and an understanding of the family dynamics are very important qualities, besides the ability to exercise the trustee duties.

Please note: this power, which can often be assigned by deed such as the settlor's will, is the legacy you pass forward. Whoever holds this power (and it can be wise to have more than one person) can influence the trustees.

## Lifespan of a trust

The settlement is for the life of the trust—being life plus 21 years or 80 years (under the Perpetuities Act 1964)—commonly called the Trust Period. In proposed new legislation, this period would be extended to 125 years. Whether this extended term applies to existing trusts will depend upon the terms recorded in the trust deed.

## Trustee(s)

The primary functions of trustees are to hold, administer and distribute the trust property in terms of the trust deed, and to give account to the beneficiaries. Trustees are appointed under the deed, but commonly by the settlors during their lives or in their will on their death. It is inadvisable for family beneficiaries to be trustees due to the perceived conflict of interest they may have in carrying out their duties.

Depending on whether you use a private trustee company or individuals, it is strongly recommended to have an independent, non-family member involved at the trustee level. In the evolving legal landscape, the need for good governance cannot be overemphasised and the indicators have been stressed for a number of years now<sup>9</sup>. In the present legal environment, it is best to use a private trustee company as the trustee. Involving the family accountant or lawyer can create conflicts of interest between their professional advisory roles and that of a trustee and expose them to unnecessary risk. It is best to avoid conflicting out trusted advisors. Do ensure your will addresses the question of replacement directors and shareholders.

The number of trustees should not be less than two at any one time, unless the trust is managed by a corporate trustee, i.e., a private trustee company, or a professional trustee company.

Trading trusts<sup>10</sup> (i.e., trusts in business) are often managed by a corporate trustee. Having only one individual as a trustee is likely to create the impression there is no trusteeship and the trust is a sham.

For the beneficiaries, there is no check on the trustee either. This can create or exacerbate family conflict.

The duties of the trustees include:

- An obligation of fidelity, a fiduciary duty to act in the interests of the beneficiaries
- To use reasonable skill and judgement in dealing with the assets
- To keep records of their decisions
- Be able to explain why they took certain action when they did. Beneficiaries are entitled to copies of decisions made by trustees, but not necessarily the reasons.

It is good practice to record your reasons separately for privacy reasons (there is normally more than one beneficiary). It should be remembered trustees are dealing with someone else's assets, even if they are themselves beneficiaries.

In most modern discretionary trusts, the decision-making power must be exercised unanimously. It would be an unhealthy situation where one trustee was marginalised from decision-making. If agreement cannot be reached then no decision is able to be made. It is only in those situations where the trustees have become dysfunctional that the trust is ground to a standstill by an inability for decisions to be made. Options need to be thought about in advance to manage any such block.

### Trustee liability

The simple rule is the trustees are liable. This can be contractually limited to the extent of the assets in the trust fund—unless a trustee is in breach of their duties, either as imposed in the deed, or in their duty to the beneficiaries. Another risk trustees face is in providing security for secured bank lending. If guarantees are required, or the trustee gives an obligation under the covenants of the mortgage if these liabilities are not limited to the assets of the trust, the liability is then personal.

For independent trustees this is important, as few are paid to take the risk imposed under a mortgage or guarantee. For this reason, private trustee companies are often the most practical solution for trustees. Bank documents should be checked to ensure there is a limitation of liability clause for any independent party. Be warned—not all clauses are the same.

### Beneficiaries

In discretionary trusts, there are two distinct classes of beneficiaries—discretionary and final beneficiaries. The first group have no ability to enforce a payment to them, until the trustees have allocated income or capital. They may be considered for benefit during the life of the trust (or Trust Period) at the discretion of the trustees.

The second group, the final beneficiaries, have rights to a distribution at the end of the Trust Period. However, it is very much dependant on what assets remain in the trust.

### Applying discretionary trusts to business continuance and succession planning

Traditionally, New Zealand advisors have struggled to make best use of trusts as a legal ownership entity to use for passing assets from one generation to a multiple of owners in the next and bringing other family members into the family business.

Part of this struggle is due to:

- A lack of separation between legacy assets (such as land) and the operational business
- Short-term mind-set where advisors only counsel families to think and plan how to split assets up between each generation; compounded by
- Significant growth in the value of capital (land) assets in New Zealand.

<sup>9</sup> Denham Martin "Getting trusts and related arrangements match-fit" (2012) presented at the Auckland District Law Society. See [www.denhammartin.co.nz/assets/publications](http://www.denhammartin.co.nz/assets/publications)

<sup>10</sup> With the Limited Partnership available many of the traditional reasons for using a Trading Trust have been superseded with family limited partnerships. Andrew Clements, Greyson Clements Ltd.

Many advisors favour a company where there is only a one generation deep plan. Companies are perceived to be easier to manage—this ignores the director’s duties imposed<sup>11</sup>. The limited liability company has its origins in separating the running of business operations and associated liability (directors) from the underlying and traditionally passive owners (shareholders). It remains a recognised structure, has understood governance requirements, and share ownership is clear and transparent. One of the benefits of a company owning the family farming enterprise (as opposed to the legacy assets) is it can provide for clearly transparent multiple ownerships.

Within the shareholding there is no restriction on individuals holding their interests in their own family-based trust. This compartmentalising of interests reduces the risk for conflict in decision-making. A company can be a very good entity for owning the farming operation. It can also be used underneath the trust structure as a form of family bank.

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<sup>11</sup> Companies Act 1993

If the farm is owned by a trust already, it will be more robust in the hands of the next generation.

There are four areas of attack for a trust, being:

- Failure to effect the initial settlement (that means the trust was never created)
- Settlement to void a known creditor
- Settlement to avoid a claim under the Relationship Property Act 1976
- Settlement to avoid tax.

**Question: How does one “pass forward” a trust?  
Answer: By passing forward control of the trust.**

However, legacy assets are of limited benefit if they have no cash flow. A trust on its own is inadequate. The answer can be in leasing assets to the family business company or limited partnership (or a share farmer).

Dependent upon the family circumstances, where there are several children, it can be more prudent to have the trust inject its land into a family limited partnership; a form of a family equity partnership. This enables family members to exit on commercially viable terms.





## Partnerships

For many farming families the “partnership” has been the structure of choice for how farm operations were held and managed during “Mum and Dad’s” lifetime. The tax treatment is very simple—tax is payable by the respective partners, allowing the free distribution of both losses and profits to be taxed in the respective partners’ hands.

Simply put, a partnership governed by the Partnership Act 1908, is where two or more persons carry on business in common with a view to profit<sup>12</sup>.

It is one of the easiest legal structures to fall into; may or may not have a written partnership agreement (tragically undervalued) and can be readily maintained for compliance purposes.

Beware however—partners are jointly and severally liable for risk. Families have lost their whole asset base years after entering into a partnership because a bank guarantee was not released and the other partner collapsed financially. There are NO protections in a partnership.

The traditional partnership may have its place in farming operations—keep it well away from legacy and key assets!

## Family limited partnerships

The family limited partnership has been the legal entity of choice for family-owned enterprises for many years. Unlike the traditional partnership model there is a form of limited liability akin to a company.

Philosophically, the family limited partnership is about:

- Collaboration
- Privacy of investment
- Certainty of roles.

There are legal requirements for a family limited partnership<sup>13</sup>:

- At least one general partner—who takes all the risk, and for this reason is typically a limited liability company
- At least one limited partner—in respect of whom risk is limited only to their capital contributed (like a shareholder in a company)
- A written partnership agreement.

Note: unlike a company, a family limited partnership’s interests are not a public record. This is an advantage in farming families where genuine privacy of ownership or interests inside the structure is often a family value.

## A written family limited partnership agreement

A family limited partnership is a flexible vehicle capable of being customised to a family’s particular circumstances and requirements. A family limited partnership is not a separate tax payer therefore allowing the limited partners to attend to their own tax, net of business expenses (rather like a traditional partnership).

It also allows for a Family Advisory Board which can be exceptionally useful in a family business context, giving clear lines of influence without risk of being a deemed director<sup>14</sup> and incurring the associated risks. Such a board gives the family a voice but not at the expense of the family member running the farm.

A further advantage of a family limited partnership is those not involved in the operations of the family business may not intervene in management decisions unless they wish to incur joint and several liabilities with the general partner.

<sup>12</sup> Section 4 (1) Partnership Act 1908.

<sup>13</sup> Section 8 (1) and Section 9 (1) Limited Partnerships Act 2008.

<sup>14</sup> Sections 126 and 151 Companies Act 1993.

## Limited liability companies

A company is a separate legal entity, different to a sole trader in that it owns the assets and liabilities (sole traders are considered their business) and provides its shareholders limited liability for any debts or liabilities it owes. However, if a shareholder (e.g., a director) is found to be operating fraudulently and/or not in the best interests of the company, then that person can be held accountable for losses/liabilities.

A company can last as long as it remains viable, with profits distributed to shareholders. If profits are retained by the company they attract a lower tax than most individuals (currently 28%) and can be passed out as dividends to shareholders (with a credit note for the 28% deduction). Traditionally, any losses made by the company are retained by the company.

A look-through company (LTC) is a company with limitations around who can be a shareholder (numbers) and are taxed like sole traders or partnerships on the basis the shareholders guarantee payment of tax to the Inland Revenue Department. Tax is paid by the shareholders of an LTC at their own tax rate on revenue received. Losses therefore can be allocated to individual shareholders to reduce their own tax liabilities from other sources; or the company can carry them forward.

Following the global financial crisis, more emphasis has been placed on the fiduciary responsibilities of directors of companies—they must put the interests of the company and shareholders before their own personal gain and there must be clear delineation between management and ownership. Good governance is no longer a nicety, it is being seen for what it really is—a necessity.

Unfortunately, many small businesses, like family farms, rarely see the need to separate ownership from management and operate their companies (and trusts) as if they were sole traders. At best, this is a high risk behaviour.

### Application

It is also important if there is a farm succession plan in place, that any explanation about the execution of the plan after the death of a parent is clear. A common issue affecting family owned businesses arises when parents (often the stabilising influence) pass away, the family dynamics can change.

Parents often exert a long-term moderating effect on their children of all ages—their death can lead to the emergence of old rivalries or tensions.

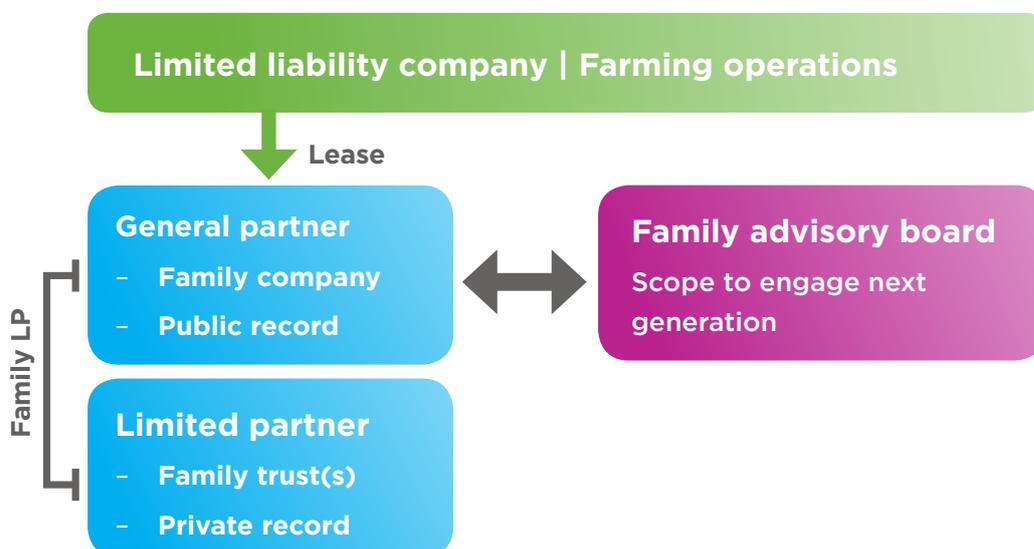
While the contents of a person’s will is private, open and frank discussions between family members can help ensure there are no surprises when a will is read after the death of a family member. When a settlor dies without leaving directions it is always interesting to learn what the settlor wanted.

Equity partnerships in the form of a company or limited partnership, can be a good way of bringing the next generation into the business—whether they are in management or not. Shares or interests can be bought, sold and/or gifted depending upon the terms outlined in the shareholders agreement/limited partnership agreement. This is a vital document that outlines how shares can be transferred, valued and what the process will be in the event of a dispute. The depth of thinking in the design of an equity partnership, and the bespoke use of advisory boards and managed transition teams will have a major effect on the benefit or otherwise for following generations.

Unfortunately, many small businesses, like family farms, rarely see the need to separate ownership from management and operate their companies (and trusts) as if they were sole traders rendering the value of the structures open to attack.

Planning based on long-term thinking and values is increasingly vital if we want to select and build the correct structures to give a family and their family business the best chance of success.

**A more robust model is illustrated below:**



## Capital accumulation

The most ancient way of accumulating wealth is to use the compounding effect of capital. At a return of ten percent per annum one dollar doubles every seven years. This is how many farmers have made money. The challenge for most families is how to retain this capital and grow it for the benefit of the family group.

An example of the difference in the value of accumulated capital over time can be shown as follows:

1. If you invest \$100,000 at age 25 at 10% per annum, at the age of 74, after 49 years that sum will be \$12,800,000
2. If you invest \$100,000 at the age of 39 at 10 per cent, at the age of 74, after 35 years that sum will be \$3,500,000.

One fundamental force of economics which has assisted capital growth in farming and aggravated returns on capital is persistent inflation in land values. The compounding effect of capital has the beneficial opposite effect on the ratio of debt to equity, i.e., if inflation runs at ten percent per annum the capital gain improves the debt to equity ratio by reducing it by a half, every seven years.

Clearly there is a very significant difference in the outcomes of the two examples. The challenge in estate planning is to find the point at which to start transferring assets between the generations so the next generation can start creating their own independent worth and the family as a whole is significantly better off.

The reason for the transfer is children are likely to be better off in the long run as a result of a transfer because adults between the ages of 30 and 50 years have a higher degree of energy, drive and appetite for risk than those in the 60s and older age range. These children may be able to obtain a better than ten percent return on their capital, including capital gains.

The recession in 2007 has brought banking back to the fundamentals of cash flow and profitability. Capital lending has sunk back into the

background and is unlikely to come back in vogue at least for another cycle. There was 20 years between the 1987 and 2007 crashes, just over three economic cycles.

As a consequence of the changed approach, farmers are focused on profitability and debt reduction. However, there is a significant range in returns from different business types. Many farming families have branched out from the farm to enjoy the diversity and insulation that solid alternative businesses can offer. A typical non-land business would be expected to deliver between 25–30 per cent return on capital. Combining the capital with the cash flow business can be a powerful way to increase farming wealth.

## Non-financial issues

It is often as important to simply keep what you have. Generation after generation sees wealth dissipated by the same familiar causes. It is important these issues are recognised and dealt with, avoided or mitigated. They include:

1. Poor business decisions. Family members intending to run the farm have to be trained in business management. A basic ability to understand profitability is essential
2. Education and farm management practices becoming dated. On-going education is essential
3. Over-accumulation of debt. A farming business cannot thrive on a high debt: equity ratio
4. Diversity of income protects the business from cyclical income swings
5. Relationship property divisions. It can take ten years or more to recover from a division
6. Risk of death to a key member of the family. Life insurance is essential between the ages of 25–50 years.

Most families are unable to predict their children's relationships and how they might eventuate. When families hold an asset intended to be passed down to the next generation, it is important for them to consider how it may be passed down so it is protected and causes as little interference with the next generation's relationship as possible.

Relationship property agreements are a relatively easy way to ensure property intended to be separate is agreed to and noted down as such. The Property (Relationships) Act 1976 defines what separate property is and what relationship property is. This gives people in relationships a clear idea of how and what they will share as property and what will remain separate. It also provides certainty to families the family asset can and will be kept separate if passed down.

People need to remember and be aware that once their relationship reaches duration of three or more years, the property they currently hold is at risk of becoming relationship property. One way to avoid this is to have property in a separate trust.

Some relationships won't last, and for children from a previous marriage or relationship who are to receive the family farm or other family asset, a relationship property agreement can keep these assets separate. While a relationship property agreement can keep the asset separate, your other personal documents, such as a will can direct who is to benefit from the asset.

## Audit of your personal affairs

Conducting an audit of your personal documents is a useful way to ensure they are all working together. As time passes and circumstances change, wills, trust documents and memorandums to trustees can become outdated. They can also become outdated by law changes.

In the last fifteen years the whole landscape has changed in relation to trusts, wills and relationship property. During this period, estate duty has been abolished, means testing for superannuation has come and gone, a new relationship property act has been passed and, recently, gift duty has been abolished. Most of these changes have led to a far more flexible environment for estate planning. However, to take advantage of the changes, existing trust deeds need to be reviewed.

A particularly important aspect of personal planning is relationship property and preserving assets intended to remain the property of one person. One of the major changes in relationship property is the power granted to Family Court judges to vary the terms of a trust and provide for trust assets to be treated as relationship property. A trust is not a relationship property agreement in most instances.

Time may erode the terms of your will and memorandum of wishes. Wills must be reviewed when major life changes occur and should be reviewed every five years at least.

Here are some simple rules.

1. Marriage revokes all current wills, unless the will is made in contemplation of that marriage.
2. Joint names on a title means that, except in a business partnership situation, the survivor takes the deceased's share.
3. Life interest wills mean the survivor does not usually control the use of the deceased's assets alone. They must consult the trustees.
4. Without a general power of attorney/enduring power of attorney you cannot sign for your spouse/partner if they are temporarily physically incapacitated or mentally incapable, unless you obtain a court order.
5. A spouse can challenge a will if they are left less than half the relationship property.
6. Relationship property and separate property can be defined by an agreement.
7. A couple will share relationship property equally after three years together either as a de facto couple or husband and wife, and the period starts when they begin the de facto relationship.
8. Multiple relationship property claims are possible but rare.
9. Wills can be challenged by family, most especially spouses or children if they are not sufficiently provided for or are excluded from the will.

In some situations an old trust deed may create some limitations on the flexibility of the trust. These limitations can affect the trustees' powers and the power to vary the trust or list of beneficiaries. In such circumstances it may be appropriate to resettle the trust. This means the trust is resettled in a new trust. The rule of perpetuities cannot be broken, and therefore the distribution date of the trust is to be in line with the original distribution date of the original trust.

A trust requires review from time to time. Trustees in an active trust should also hold trustee meetings annually. All matters relating to the trust fund and beneficiaries should be discussed—including the accounts—and decisions documented to ensure there is a record demonstrating the decisions made for the trust are in line with the trustees' duties and expectations of the settlor.

## Summary

- Fully understand the business structures in place for your family business and question if these fit future needs.
- Make sure all legal documents are up-to-date and appropriate for the family and business.
- Have all legal and financial information relating to the family and business in one accessible place.

# Appendices

## APPENDIX 1

### Decision-making

#### Decision-making styles

**Autocratic.** One person makes the decision with little or no input from others who are affected by the decision. Autocratic decision-making is relatively easy and fast for the decision-maker, so useful if time is short. However, others who are affected by the decision may not support the decision because they feel no sense of ownership for it. First generation business owners generally fall into this category of decision-making.

**Democratic.** In the democratic style of decision-making a vote determines the decision. This type of decision-making works well with large groups. Its weakness is it tends to polarise the group into two factions, those who voted in favour and those who voted against, resulting in there being perceived winners and losers. The democratic style is useful when other styles of decision-making, other than autocratic, fail; voting is the only alternative. Second generation business owners generally fall into this category.

**Consensus.** The consensus style of decision-making is based upon the belief opponents will re-assess their position and move toward the proposed decision when presented with the facts. Third generation business owners generally fall into this category if there are multiple business owners. This style fails to recognise decisions are not based upon facts alone, but beliefs and feelings also play an important part. Consensus decision-making is also time-consuming and may not yield a decision.

**Collaborative.** The collaborative style of decision-making allows time for all those affected by the decision to voice their opinions and explore their differences. Debating the various aspects of the proposed decision allows all parties to recognise its complexity and to synthesize new alternatives. It allows for an exploration of all possible alternatives with no alternative sacrificed for the sake of another. Collaborative decision-making is time consuming, but probably the best for major decisions. Whilst the aspirational target of most businesses, it requires a great deal of emotional maturity to be implemented.

## APPENDIX 2

### Strategic planning

#### Values

Values are the issues on which you will not negotiate and determine how you conduct your business. Core values therefore have a major impact on decision-making so defining them is important. Regardless of whether you are self-employed or an employee, an owner of a family business or a member of a family, there must be an alignment between your values and those of the people you work with before you can achieve results.

When values are identified, decisions become clearer because the focus of the decision-maker is on what is important long-term and can be used in building a team with similar or non-conflicting values to help attain the desired future for the business.

It's not hard  
to make decisions  
once you know  
what your  
values are.

Roy E. Disney

## Exercise: Determining your values

Integrity	Competition	Honesty	Resourcefulness
Honesty	Concern for others	Honour	Respect for others
Loyalty	Connection	Improvement	Responsiveness
Character	Content over form	Independence	Results-oriented
Intelligence	Continuous improvement	Individuality	Rule of law
Perseverance	Co-operation	Inner peace, calm, quietude	Safety
Environment	Co-ordination	Innovation	Satisfying others
Sustainability	Creativity	Integrity	Security
Social welfare	Customer satisfaction	Intensity	Self-acceptance
Animal welfare	Decisiveness	Intimacy	Self-control
Capitalism	Delight of being, joy	Justice	Self-giving
Openness	Democracy	Knowledge	Self-reliance
Truthfulness	Discipline	Leadership	Self-thinking
Honour	Discovery	Love, romance	Service (to others)
Spirituality	Diversity	Loyalty	Simplicity
Accomplishment	Ease of use	Meaning	Skill
Success	Efficiency	Merit	Solving problems
Accountability	Equality	Money	Speed
Accuracy	Excellence	Openness	Spiritual growth
Adventure	Fairness	Patriotism	Stability
All for one and one for all	Faith	Peace, non-violence	Standardisation
Appearance	Faithfulness	Perfection	Status
Beauty	Family	Personal growth	Strength
Belonging	Family feeling	Pleasure	Success, achievement
Best use of time and resources	Flair	Power	Systemisation
Calm, peace	Freedom	Practicality	Teamwork
Challenge	Friendship	Preservation	Timeliness
Change	Fun	Privacy	Tolerance
Cleanliness, orderliness	Global view	Progress	Tradition
Collaboration	Goodwill	Prosperity, wealth	Tranquility
Commitment	Goodness	Punctuality	Trust
Communication	Gratitude	Quality of work	Truth
Community	Hard work	Recognition	Unity
Competence	Harmony	Regularity	Variety
	Health	Reliability	Will to succeed
	Helping		Wisdom

Circle those that appeal to you—ten words for a start. Then from this list of ten, make a list of five. If you could only chose one of the five, which one would it be? These five will be your core values, with the one chosen out of five, the one you will least negotiate on and will not tolerate others who have the opposite corresponding value.

**What are your core values?**

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## Vision

A vision allows business owners to determine the direction they wish the business to take in the long-term, and how they wish this to be achieved. It provides:

- Destination
- Situation
- Inspiration
- Motivation.

It does not provide navigation, but it could provide limitation if your vision isn't big enough. It is the *big picture*. Your vision can include personal aspirations as well as professional, and may include employees and other stakeholders.

A vision may also be called a statement of intent, i.e., a statement of your desired or preferred future. The timeframe for the statement is usually ten years or more, depending on the family and business at the time it's written. The length of time differentiates this statement from goals and objectives, which are usually shorter-term plans.

A vision must include values. For example, how does the family business want to portray itself—with integrity, trust, honesty, respect or as non-caring, deceitful and disrespectful?

To be fully effective, the vision for the family business must be agreed and understood by all involved in the business. If one or more key family or non-family members does not agree with the vision, the likelihood of success is greatly reduced as people head off in different directions and pull the business along with them. This can be distracting at best; destructive at worst.

“Would you tell me please which way I ought to go from here?”

“That depends a great deal on where you want to go,” said the cat

“I don't much care where” said Alice

“Then it doesn't matter which way you go” said the cat”

*Excerpt from Alice in Wonderland*

### Some examples of corporate visions are:

Beef + Lamb New Zealand's vision is:

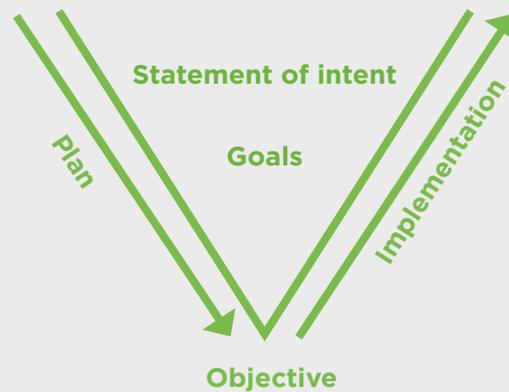
“A confident and profitable sheep and beef industry.”

McDonald's vision is:

“To be the world's best quick service restaurant experience. Being the best means providing outstanding quality, service, cleanliness, and value, so that we make every customer in every restaurant smile.”

In the context of a family business plan, the vision sets the scene, with goals and objectives being undertaken to achieve it, and broken down further into tasks and specific activities, such as doing a budget or meeting key people.

A hierarchical approach would see the vision as being less specific than goals or objectives, which tend to be more detailed.



### Exercise: Writing your vision/statement of intent

Write down your vision and place it somewhere prominent, i.e., on the fridge. Keep checking it until you feel it is right and share it with others. If it helps, think of this as a Christmas letter to yourself ten years from now, describing where you are, who you are with, what you are doing etc. This can take the form of a personal letter or a business—one where you are describing your family business to a friend.

**Vision/statement of intent:**

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## Business drivers

Business drivers are determined by the decisions made on a daily, monthly or yearly basis and drive what happens in the business physically and financially.

Daily drivers are called tasks, monthly drivers are objectives and yearly ones are goals. How these drivers are made is usually based on economic decision concepts such as profitability and/or marginal returns, but not always. These can be driven from a social (family), financial or environmental perspective.

Which drivers are important to the business depends on the nature of the business, the gaps and opportunities. If these drivers are misunderstood, particularly in how they interact with each other and the strategic direction of the business, then efforts to improve business performance may not be effective or could be counter-productive.

When making decisions, consider the opportunity costs and use the decision challenge tool, i.e., whether or not the investment generates sufficient returns compared to the next best alternative.

The key to successful planning in business development is to understand what the technical control points are (income, production and expenses in many cases) and the decisions that will favourably influence the relationship between these points.

## Goals

To progress towards your desired future there must be alignment between your statement of intent (vision), the majority of goals you set and your daily operations. In other words, having alignment between your business drivers and your dreams gives a greater chance of success. This ensures all your efforts are being directed towards a common end point and not wasted through side-tracking. This does not mean your business plan is not flexible, but it must have a certain amount of rigidity to prevent procrastination and/or aimless drifting.

### Goals must be SMART:

**Specific**—what are you trying to achieve?

**Measurable**—how will you know when it has been achieved?

**Achievable**—given your present resources can you achieve it?

**Realistic**—given your present resources can it be achieved?

**Timely**—when will it be achieved?

### Exercise: Forming your business goals

To be focused, you must also have an order of priority to your goals. Which goals are the most important? Why? Write down your goals and list the top five in order of priority.

	Family	Business	Personal
1			
2			
3			
4			
5			

Once you have determined your goals, you must determine your objectives. These are the small steps involved in goal attainment and are generally set at timely intervals within the timeframe set for achieving the goal.

Appropriate objectives are vital to goal achievement, as they become the checks that determine if you are still focused. In other words, they measure progress. For example, if your goal is to have more time off by the end of the current year, an objective might be to put in an automatic weighing system by the end of the month,

to avoid drenching and minimise staffing requirements.

This can easily be checked for achievement within the timeframe set out and if not, appropriate remedial actions put in place to rectify the situation. Without these checks, it is too late to take remedial action when you notice at the end of the year you have not achieved your goal.

When determining the appropriate objectives for each goal, ask how vital they are to achieving the goal. This ensures the relevance of each to the bigger picture.

## APPENDIX 3

### Effective communication

#### Basic communication rules

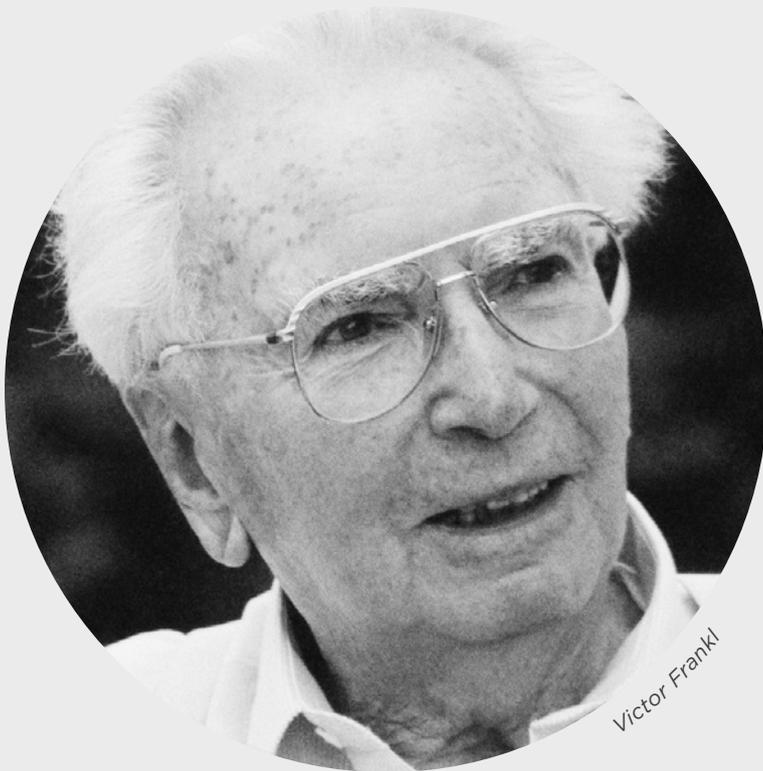
- **Determine what you really want.** Is it to make the other person wrong or to be right? To preserve and protect a relationship? When you know what you really want, which hopefully is to preserve and protect the relationship, then decide how best to get this message across.
- **Make it safe.** People will not communicate openly when they are afraid they will be criticised for what they want to say. By continuing to focus on understanding the issue, and not the emotion or making yourself right, a culture of safe communication can be created. This is especially important where there is a power imbalance such as between parent/child; employer/employee; dominant/submissive spouse. Getting this right will result in mutual respect.
- **Correct misunderstandings.** Reflect back on the message to ensure it is the right one. The words used may have been correct, however if the non-verbal signals are not consistent with this, the interpretation may be far from correct.
- **Create a mutual purpose/goal.** Establish what is common to both parties. Is it a better relationship? Project outcome? Financial return?
- **Ensure mutual respect**
- **Focus on the facts, and agree on them.**
- **Emotions tell us what to say...not how to say it.** When we're angry, the reptilian brain takes over resulting in us having less control over emotions, and the more likely an unintended outcome, such as a damaged relationship, will occur.

#### Impacts on communication

- **Gender.** Men and women communicate differently. After a day at work, most people like time to decompress, which is often solved on the drive home. As this is not often possible for many in family businesses where work is home and vice versa, allowing thirty minutes of decompression time after work is a helpful de-stressor.
- **Generational.** There is much literature on the differences between the generations which can be summarised as:
  - **Silent generation:** Those born 1922-1945 are known as the *war generation*. They can find it difficult to take what they may perceive as precious time away from the workday to discuss or deal with issues they perceive as unrelated to the task at hand
  - **Baby boomers:** Born 1946-1964. This group is surprisingly conflict-adverse, often not realising all they achieve by avoiding conflict is delaying the inevitable. Many parents of this generation are more likely to equate equality with fairness
  - **Gen X:** Born 1965-1980. This generation can come across as moving too fast and being insensitive, which can cause those in the silent and boomer generations to feel intimidated and put upon
  - **Millennials/Gen Y:** Born 1981-1994. The millennials and Gen Y are known for their sense of entitlement, outspokenness, inability to take criticism, technological sophistication and advanced technological ability. In the work force, Gen Y are the most difficult to attract and retain (Trunk 2007) and focus on what is good for them (King 2003)
  - **Gen Z:** Born (1995-2015): Gen Z are technologically minded with digital as their preferred mode of communication. They are environmentally and socially mindful.

- **Personal evolution.** Current and historical situations play a huge role in shaping our communication skills. Those with high emotional intelligence are more likely to be better communicators and leaders than those with low emotional intelligence. Being up-front, loud or direct (bossy, dominant etc.) does not automatically make someone a more effective communicator. Those who genuinely care about win: win relationships are more likely to be effective.
- **Relationship.** The closer we are to people, especially family members, the more likely it is we will have unspoken expectations and make assumptions about them that colour our communication. This is particularly true when we use these to filter what the other person is saying to us, i.e. we hear what we want to hear despite the intended message.
- **Vocabulary.** Frustration and anger can often be the result of an inability to articulate what we want to say. In planning of any kind, communication is the most significant factor to determine the outcome of the plan. The effective communicator takes responsibility for the messages they send and responsibility for it being effectively received and understood. When this is done many issues will resolve themselves and the process of getting on with the plan can occur with a much higher degree of success.
- **Listening.** Also a crucial part of effective communication. There is a difference between hearing and listening. People hear background noise and conversation but listen to thoughts, feelings, perceptions and emotions whether given verbally, through body language, or both. Body language is about what we do and how we say it. Words could be described as the gaps the unspoken word didn't cover.





Between **stimulus** and **response**, there is a space. In that space lies our freedom and power to choose our response. In our response lies our growth and freedom.

## APPENDIX 4

### Conflict and dispute resolution

In any conflict, there is a stimulus (large or small) followed by a reaction or response resulting in an outcome. How the stimulus is dealt with is governed largely by how controlled or uncontrolled we are.

Reacting<sup>15</sup> is defined as impulsive; a knee-jerk reaction and often results in uncensored emotional outbursts. It is an uncontrolled process.

Responding to conflict uses a strategic approach and involves a conscious choice of both the behaviour displayed and the message given. To effectively respond to conflict takes courage and skill. It is a controlled process.

Dealing with conflict can be stressful. Our body's response to stress differs between flight, fight and freeze<sup>16</sup>, each of which is played out in our emotions, thoughts and actions.

In fight mode, our bodies tense up, blood pressure increases, shoulders broaden, our eyes narrow and we take on a threatening stance as we prepare for battle. We may feel angry, irritated or annoyed. Our thoughts might centre around "how dare they" and we spend so long thinking about what we will say back there is little brain power left to consider the other person's view/position.

In flight mode, our eyes dart around and we may look or turn aside. Our leg muscles are mobilised ready to run away fast. We may feel hurt, upset or anxious. Our thoughts are "how can I get away from here?" or "it doesn't really matter" or even "I don't care what they say, I don't want to continue with this".

<sup>15</sup> Adapted from *Everyone can win: How to resolve conflict*.

<sup>16</sup> Cornelius, H. and Faire, S. (1998). *Everyone can win: How to resolve conflict*. Australia, Simon & Schuster 2003





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