



Manitoba Farm & Rural Stress Line (MFRSL)

Farm Debt Mediation Service (Federal Program)

Purpose:

Canada has an Act called the Farm Debt Mediation Act that provides a farmer with the ability to apply for a stay of proceedings in the event of a creditor wanting to realize on security. This Act was brought into effect in 1997 to provide mediation between insolvent farmers and their creditors.

The Act is administered by Farm Debt Mediation Service with an office in Regina, Saskatchewan for farmers in Manitoba. The administrator can be contacted at the address shown on the left.

Information for Farmers

Farming is an unpredictable, high risk business. Farmers often experience difficulties which are outside of their control. This may include weather anomalies such as excessive moisture, drought or hail. It can also involve issues such as disease in animals and volatile commodity markets. If you are facing difficulties in meeting your financial obligations Farm Debt Mediation Service can help. The service is a free and confidential tool to help farmers manage during these difficult times. A financial expert will review your financial situation with you, provide advice where applicable and prepare a recovery plan. A qualified mediator will then assist in bringing together your creditors and facilitating discussions to seek out mutually acceptable options. By taking advantage of this service as soon as you realize there may be problems a lot of extra costs and increased stress can be avoided.

Do you qualify?

A farmer must be insolvent to apply. Only farmers who are unable to meet their financial obligations as they come due, or who have ceased paying their obligations or whose balance sheets show a negative net worth.

How can this Act help you?

Section 5-(1)-(a)

When a farmer receives a *Section 21 – Notice of Intent to Realize on Security* or notice of any other recovery action they can apply for a stay of proceedings. This entitles you to a review of your financial situation and mediation while the stay is in place. While the stay is in place creditors must cease any recovery action. During this time you cannot incur further debt and any expenditures must be pre-approved by written permission.

(continued on next page)

Farm Debt Mediation Service
401-1800 Hamilton Street
Regina, Saskatchewan
S4P 4K7
Phone: 1-866-452-5556
Fax: 1-306-780-7353
website: www.agr.gc.ca/fdms

1-866-367-3276
www.ruralstress.ca

Manitoba Farm & Rural Stress Line
Unit 1, 217 10th Street Brandon MB R7A 4E9



When the application is received, a qualified field expert will meet with you to assess your situation and to assist in the compilation of a recovery plan including projections.

A qualified professional mediator will lead the mediation process. This process is held on a “without prejudice” basis. The proceedings are held in a safe environment to facilitate the development of concrete solutions and mutually accepted agreements.

The stay is initially put in place for a 30 day period and can be extended in 30 day increments for a total of 120 in certain circumstances. **It is unusual for the stays to remain in place after the mediation meeting at day 45. Extensions are justified when they are considered to be essential for the formulation of an arrangement, and that formulation occurs prior to the meeting via development of the recovery plan and financial statement. They could remain after the meeting if all parties are in agreement for a second meeting.**

Section 5-(1)-(b)

A farmer can apply under this section of the Act when you can see difficulties on the horizon but none of your creditors have initiated recovery actions. There is no stay protection during this process.

As with a 5-(1)-(a) application a financial expert is assigned to the case to assist in assessing your financial situation and to assist in the preparation of a recovery plan.

A qualified mediator will lead the mediation process and again assist in the facilitation of agreements between you and your creditor.

Remember

The Farm Debt Mediation Service can be a valuable tool for farmers as they seek to survive, flourish and prosper under difficult circumstances. Participation in the program is free and yet provides a forum for farmers to seek out new ideas and options for their own operations.

Always remember that, in most cases, the sooner you as a farmer recognize a situation developing that has the potential to create financial stress, the better your ability to seek out the solutions required to keep you and your family on the farm. Call the Farm Debt Mediation Service to find out how you can start developing a recovery plan for the future.

Source: The Farm Debt Mediation Act 1997 www.laws.justice.gc.ca/index

Farm Debt Mediation Service
401-1800 Hamilton Street
Regina, Saskatchewan
S4P 4K7
Phone: 1-866-452-5556
Fax: 1-306-780-7353
website: www.agr.gc.ca/fdms

The Manitoba Farm & Rural Stress Line has prepared this 'Fact Sheet' with the most accurate information available to us. However, it should not be considered financial or legal advice and the MFRSL assumes no responsibility toward persons using it as such. Please consult a professional regarding your specific situation.

1-866-367-3276
www.ruralstress.ca





Manitoba Farm & Rural Stress Line (MFRSL)

Bankruptcy

Bankruptcy can remain on your credit rating for seven to 14 years, depending on whether or not this is your first or second bankruptcy. Some farm assets are exempt from bankruptcy liquidation unless the exemption is waived. You will need a bankruptcy trustee.

What is Bankruptcy?

Bankruptcy is a legal process regulated under the federal *Bankruptcy and Insolvency Act*, with certain provincial exemption regulations applying. **A person is considered insolvent if his or her debts exceed the value of his or her assets, and/or if the person is unable to pay debts as they come due.** Bankruptcy allows for the transfer of the bankrupt's non-exempt assets to a bankruptcy trustee, who then arranges the orderly distribution of those assets among the creditors. This process allows the farmer to make a fresh start without the burden of previous over-extended, unsecured debt. **You are eligible for discharge from bankruptcy after 9 to 21 months (first time) or 24 to 36 months (second time).**

Declaring voluntary bankruptcy may be a way out of a financial crisis, but it is not a step that should be taken without proper consideration and expert advice.

Points to Consider

Get expert advice from bankruptcy trustee with experience administering farm bankruptcies. You can also get a booklet on bankruptcy from the office of the Superintendent of Bankruptcy. The amount you pay in a bankruptcy depends on your income and the number of people in your household. The base fee is typically between \$1,400 and \$1,800. Most trustees will complete an initial assessment of your financial situation at no charge.

If you feel that you've been treated unfairly, or if you have concerns about the actions of your bankruptcy trustee, you can refer your concerns in writing to the Office of the Superintendent of Bankruptcy.

If you are considering a consumer proposal, be aware that there may be tax implications associated with the amount of business debt forgiven (ie you may be taxed on the business debt that is written off or forgiven. You must continue to farm after the bankruptcy in order to be entitled to the exemptions.

(continued on next page)

The Office of the Superintendent
of Bankruptcy:
400 St. Mary Ave., 4th floor
Winnipeg, Manitoba
(204) 983-3229
www.ic.gc.ca/eic/site

1-866-367-3276
www.ruralstress.ca

Manitoba Farm & Rural Stress Line
Unit 1, 217 10th Street Brandon MB R7A 4E9



Exempt Farm Assets The following is a list of some farm assets which *may* be exempt from bankruptcy liquidation, although individual cases may vary depending on waivers, mortgages, etc:

- **Livestock**, unless secured by a creditor with a purchase money security interest or a General Security Agreement covering livestock.
- **Essential farm machinery and equipment**, unless secured by a creditor with registered security.
- **Farm tools**, up to a value of \$7500.
- **Seed grain necessary for seeding.**
- **One motor vehicle**
- **One quarter of land** (usually the home quarter. If both spouses are declaring bankruptcy both may be allowed to claim on exemptions)
- **Registered Retirement Savings Plans**

In most cases one or more of your creditors will have a **General Security Agreement** which covers chattels including grain, livestock, and equipment. While the exemptions may prevent the trustee from liquidating your farm assets, **it is important to note that the exemptions do not interfere with the rights of a secured creditor.** If you want to retain the assets you must continue to pay your secured creditors in the ordinary course of business.

The Individual's Responsibilities under the *Bankruptcy and Insolvency Act*

As a bankrupt, you are expected to deal honestly and openly with the bankruptcy trustee. You must reveal all assets and liabilities. You will be required to disclose details of all property sold or otherwise disposed of prior to filing for bankruptcy. You must keep the trustee informed of any changes of address or telephone number. You must attend a minimum of 2 counseling sessions and must provide the trustee with monthly income and expense statements. In certain cases, a meeting of creditors may be held and you may also be subject to an examination by the trustee, a creditor, or the office of the Superintendent of Bankruptcy. Be sure to keep copies of all documents provided by the bankruptcy trustee.

The Trustee's Responsibility under the *Bankruptcy and Insolvency Act*

While you may have selected the bankruptcy trustee, he or she is an officer of the court and represents the creditors, not you. The trustee is responsible for selling a bankrupt's non-exempt assets and distributing the proceeds among the creditors. The Trustee is also responsible for filing all necessary reports and legal documents regarding the bankruptcy, as well as certain tax returns.

If you are contemplating bankruptcy, you should consult a Trustee concerning your specific circumstances.

Sources: • Adapted from Saskatchewan Farm Line *Bankruptcy*
• *The Bankruptcy and Insolvency Act* 1985

The Manitoba Farm & Rural Stress Line has prepared this 'Fact Sheet' with the most accurate information available to us. However, it should not be considered financial or legal advice and the MFRSL assumes no responsibility toward persons using it as such. Please consult a professional regarding your specific situation.



Manitoba Farm & Rural Stress Line (MFRSL)

Collection Agencies

- Collection agencies and agents must operate within the rules described in *The Consumer Protection Act*.
- Always document your dealings with a collection agency/agent.
- A collection agency does not have the right to harass you or your family.
- Complaints regarding a collection agency/agent should be sent to the Consumer's Bureau of Manitoba.

What can Collection Agencies NOT do?

Collection agencies and their agents must operate under the rules laid out in the Consumer Protection Act. Under the Act agents:

- Cannot operate in Manitoba if they are not licensed by the province.
- Cannot try to collect more than the amount owing. Agencies cannot add interest or additional fees to the original credit agreement.
- Cannot call you collect or on a cellular phone, or require that you return their calls. In other words, they cannot require you to subject yourself to long distance or cellular expenses.
- Cannot call before 7:00 A.M. or after 9:00 P.M., or on Sundays and holidays.
- Cannot make statements either directly or through inference, or implication, which are false, and which would be detrimental to you, your spouse or family.
- Cannot release any information to your employer, or to a family member's employer, which could jeopardize your employment, employment opportunities, or your family's employment or employment opportunities. The only exception is legal action such as garnishment.
- Cannot start or continue legal action against you, unless the debt has been assigned to the agency, and the debtor has received written notification of this assignment.

What CAN Collection Agencies do?

Under the Consumer Protection Act, collection agencies and agents;

- Can contact you at your place of work. However, a written request that the agency not contact you at work will normally be honored.
- Can contact your employer for verification of employment, salary and pay period.
- Can contact family members and neighbors to determine your whereabouts.

(continued on next page)

Collection Agencies
(page 2 of 2)

- Can make suggestions regarding the method of repayment of your loan.
- Can initiate legal action against you on behalf of the creditor. Certain legal procedures (e.g. a demand letter or a Statement of Claim) must be followed before any legal action can be initiated.

How To Deal With Collection Agencies

If you are contacted by a collection agency, get them to provide details of their license. Document the calls you receive, including the date, time, length and other details. Having someone as a witness to the calls may be useful and, if the calls are abusive, tape-recording the calls for evidence may be an option.

If you dispute the amount owed, request documentation on the debt. If this does not prove satisfactory you may want to obtain legal advice. You are not required to give out details of your financial situation, and this sort of information should only be provided after obtaining legal advice. If you feel that the collection agent is using unnecessarily harsh collection methods, you should inform the creditor of this.

If you are meeting the conditions of your settlement/repayment schedule (or alternately if you have declared your inability to pay), and the collection agent continues to contact your home, you should inform the agency of this fact, and state that further calls will be viewed as harassment. Sending a letter by registered mail is advisable, since the paper trail provides proof that the agency received the letter. There are legal implications for anything you put in writing so legal advice is recommended before drafting the letter. Having your lawyer handle all the future contact with the collection agency may also be an option.

Who Can I Call for Help?

The Consumer's Bureau handles complaints about collection agencies and their agents. When you contact the Bureau, an investigating officer will explain your rights to you and send a letter to the agency outlining your concerns. The letter can be sent by you, or by the Consumer's Bureau.

If the investigation supports your complaint, the Consumers Bureau has the authority to:

- Issue a warning to the collection agency.
- Suspend, cancel or amend the agency's license.
- Refer the case to the courts for prosecution.

If you are having difficulties with a collection agency, you should consult a lawyer concerning your specific circumstances.

Sources: Consumer Protection Act, Consumers Bureau of Manitoba
Adapted from Saskatchewan Farm Line "Collection Agencies"

The Manitoba Farm & Rural Stress Line has prepared this 'Fact Sheet' with the most accurate information available to us. However, it should not be considered financial or legal advice and the MFRSL assumes no responsibility toward persons using it as such. Please consult a professional regarding your specific situation.

1-866-367-3276
www.ruralstress.ca





Manitoba Farm & Rural Stress Line (MFRSL)

Credit Reporting Agencies

What are Credit Reporting Agencies?

Credit reporting agencies are private companies which collect and sell credit information about people. Lenders such as banks, department stores or credit card companies provide credit reporting agencies with information on the bill-paying performance of their credit customers. The agency collects this information from the various sources and compiles it into a single file for each individual. The lenders can buy information on their existing or potential customers from the credit reporting agencies to help them evaluate credit requests. In addition to credit providing agencies, landlords, insurance companies or any person with a legitimate business need can also acquire an individual's credit report.

There are several credit reporting agencies operating in Manitoba, but the most frequently used ones are:

- Equifax Canada Inc.
- Dunn and Bradstreet Canada
- Trans Union Consumer Relations Centre
- Canadian Credit Reporting Ltd.

What Factors Influence Your Score?

- your payment history
- any collection or bankruptcy
- outstanding debts
- account history
- number of credit enquiries

Your Rights and Responsibilities

You have the right to access any information in your credit file. You can make your request in writing (you will need to provide your name, address and date of birth), or you and a witness can view your file in the agency's office. No one else can access your information without your permission. Usually when you sign loan documents, or other credit applications you are allowing that organization to check your credit history. You have the right to have inaccurate information corrected. There is a common assumption that once a debt is paid, it is removed from your credit file. This is not necessarily the case. Even after a debt is paid, it can remain on your file as historical information. However, proof that the debt has been paid can be added to your file.

(continued on next page)

Credit Reporting Agencies

- Assess your credit risk on behalf of lending agencies.
- Are regulated under the Manitoba Personal Investigations Act.

1-866-367-3276
www.ruralstress.ca

Manitoba Farm & Rural Stress Line
Unit 1, 217 10th Street Brandon MB R7A 4E9



Credit reporting Agencies' Rights and Responsibilities

A credit reporting agency's file on any business or individual may contain the individual's name, address, age, social insurance number and credit information such as accounts in arrears, loans in default, judgments against the individual and bankruptcies. However, since not all lenders use the service of a credit reporting agency, it is possible that one or more of your past or current accounts may not be listed. Most information is removed after seven years, but information on bankruptcy can remain on file for 14 years.

A credit reporting agency can provide information from your credit file to government, lenders, insurance companies or businesses, but only for legitimate business reasons such as:

- An application for an extension of credit
- The collection of a debt
- Housing rental
- An application for employment or insurance; or
- An application for a lease or trade credit.

Credit reporting agencies rate your file according to credit risk, but the lender can also apply its own risk-assessment standards to the information provided by the reporting agency. In other words, your rating with the reporting agency may or may not be the same as your rating with the lender.

Under the Personal Investigations Act, agencies are not allowed to place information about race, religion, ethnic origin or political affiliation. For other exclusions check the Act.

It is important to have a credit history. If you do not have a credit history you can start building one today with the use of a credit card – as long as it is used wisely. When you use a credit card all card activity is recorded to a credit reporting agency. Part of that information includes when payments are made and what the outstanding balance is on the card. This activity builds your credit history.

If you are having difficulties with a collection reporting agency, you should consult a lawyer concerning your specific circumstances.

Sources: Manitoba Personal Investigations Act
Adapted from Saskatchewan Farm Line "Credit Reporting Agencies"

The Manitoba Farm & Rural Stress Line has prepared this 'Fact Sheet' with the most accurate information available to us. However, it should not be considered financial or legal advice and the MFRSL assumes no responsibility toward persons using it as such. Please consult a professional regarding your specific situation.



Manitoba Farm & Rural Stress Line (MFRSL)

Farm Machinery Equipment Repossession

Manitoba has an Act that provides farmers with Warranty and Repossession protection on equipment. The Farm Machinery and Equipment Act is administered by the Manitoba Farm Machinery Board.

The office of the **Manitoba Farm Machinery Board** can be contacted at;
812 Norquay Building, 401 York Ave.,
Winnipeg, Manitoba, R3C 0P8
Phone: 945-3856, Facsimile: 945-1489
www.gov.mb.ca/agriculture

How Are You Protected

The Act sets out:

- the minimum terms of the Warranty you should receive when buying new farm machinery or equipment.
- that repair parts will be readily available.
- the manner in which repossession procedures are carried out.
- provision for the arbitration of disputes concerning the purchase, warranty or repossession of farm machinery and other farm equipment.

Make Sure You Know Your Rights

The Act applies to ALL new farm machinery and equipment that is used in the production of food. The Act states that repair parts must be available for you for a period of 10 years from the date of purchase of a new machine and for the term of a machinery lease. The Act ensures that repair parts must be available within a reasonable time, particularly in an emergency situation such as seeding or combining. The Act states that all new farm machinery and equipment must be covered by warranty and that all purchased repair parts must have a warranty against defective workmanship.

Ensure that you are aware of the contents of the sales contracts and the provisions in the Act if the terms of the contract are not met.

If you are unable to meet the payment requirements of your sales contract your equipment can be repossessed but only with the approval of the Manitoba Farm Machinery Board.

(continued on next page)

1-866-367-3276
www.ruralstress.ca

Manitoba Farm & Rural Stress Line
Unit 1, 217 10th Street Brandon MB R7A 4E9



The Board considers all pertinent information supplied by you and the lien holder. In all cases, a decision is based on the purchase price, depreciation, your equity in the machinery, the interest rate, the amount in default, the length of time you are behind in payments, the condition of the equipment and your ability to pay in the future.

The lien holder must keep the machinery or equipment in safe storage for a period of 10 days to allow you to redeem your equipment.

When a lien holder repossesses farm machinery or equipment they cannot collect any amount still owing on that equipment.

The Manitoba Farm Machinery Board can provide assistance and advice on operation, mechanical and financial problems relating to farm machinery and equipment. If the Board is unable to provide a direct solution it will provide alternate suggestions and resources in order to help solve the problem.

Sources: Adapted from the Manitoba Farm Machinery and Equipment Act “What Every Farmer Should Know”. The Manitoba Farm Machinery and Equipment Act 1998.

The Manitoba Farm & Rural Stress Line has prepared this ‘Fact Sheet’ with the most accurate information available to us. However, it should not be considered financial or legal advice and the MFRSL assumes no responsibility toward persons using it as such. Please consult a professional regarding your specific situation.

1-866-367-3276
www.ruralstress.ca





Manitoba Farm & Rural Stress Line (MFRSL)

Garnishment

Garnishment is the legal process through which a creditor intercepts money being paid to the debtor for the purpose of repayment of a debt. Wages, money from the sale of farm products or assets, private bank accounts and term deposits can all be garnished.

- Garnishment is authorized under the Garnishment Act.
- Garnishment is also available to the farmer if money is owed.

Garnishment is a tool enabling a creditor to intercept a portion of a person's income in order to repay an overdue debt. Garnishment is a legal process. In most circumstances, garnishment money is paid to the court by a third party such as the individual/agency (garnishee) for whom the debtor works. The court then transfers the money to the creditor. However, with the agreement of the debtor and the garnishee, the money can be paid directly to the creditor's solicitor or to the creditor. The most common garnishment situations are:

- Spousal or child maintenance enforcement.
- A business which has extended credit to a farmer.
- A lender which has loaned money to a farmer.

The Garnishment Process

A creditor wishing to garnish a debtor's income must make a statement of claim to the courts and apply to the court office for a Garnishee Summons. This summons must be delivered either personally, or by way of registered mail to both the debtor and the garnishee.

Garnishment of wages, before a judgment has been entered, is prohibited except in the case of spousal or child maintenance.

A garnishment order stays in place until such time that the debt has been paid, the debtor ceases to be employed by the garnishee, or one year passes from the date the order takes effect.

There are some situations in which a creditor does not need a court order to garnish funds, such as:

- Taxes owing to Revenue Canada or the provincial government.
- Overpayment of benefits under the Employment Insurance Program

(continued on next page)

- Payments or arrears due through the Maintenance Enforcement Act
- Wages owing to employees who are subject to The Employment Standards Act

Protect Yourself

If you have been served with a Garnishee Summons or a Statement of Claim, it is highly recommended that you obtain legal advice. A lawyer can advise you of your rights and options. If you disagree with the debt (or the amount of the debt) as particularized in the Statement of Claim, you have the right to contest the claim within 20 days by filing a Statement of Defense.

Sometimes, the creditor is willing to negotiate a settlement on the debt and may cancel the garnishee once a settlement is made.

If a creditor tries to garnish your bank accounts, the bank may have the right to apply your money to its loans before paying out the garnishment, even if your loans with the bank are in good standing.

In most situations 70% of any wages are exempt from seizure or attachment and in no case can the exemption be less than \$250 for a person without dependants or in the case of a person with one or more dependants the exemption shall not be less than \$350.

Limits to Garnishment

Under the Garnishment Act there are limitations to a creditor's right to garnishee.

Wages paid to the debtor can be garnished but not the entire salary. The law allows the debtor to keep a portion of his or her income for living expenses.

All of a debtor's personal bank accounts can be garnished, but not joint accounts unless there is a court ordered judgment against both individuals or it is a maintenance enforcement order. RRSPs and money held in trust for someone else are also exempt.

Certain government cheques can be garnished only after the money has been deposited in the debtor's bank account.

Although some assets may be exempt from seizure as set out in the Judgment Act and the Execution Act of Manitoba, when assets are sold the sale proceeds could be garnished.

If your income is being garnished, you should consult a lawyer concerning your specific circumstances.

The Manitoba Farm & Rural Stress Line has prepared this 'Fact Sheet' with the most accurate information available to us. However, it should not be considered financial or legal advice and the MFRSL assumes no responsibility toward persons using it as such. Please consult a professional regarding your specific situation.



Manitoba Farm & Rural Stress Line (MFRSL)

Intergenerational Farm Transfer

Part One: Business Considerations

- Will you have an adequate retirement income when you leave the farm?
- Will your successor have adequate resources to take over the farm?
- Have you examined all the tax, legal and financial implications of transferring the farm?
- Have you collected all the necessary documents?

There is more to retiring from farming than just moving to town and letting your son or daughter take over day to day farming chores. There is a lot of emotion and money tied up in your farm and the decision to pass the farm to another family member should not be made without considerable planning, consideration and consultation. Ideally, a retirement plan should be made years before the actual event, so that there will have been time to consider all the implications of your retirement. With proper planning, the farm can be passed on to the next generation with a minimum of financial and family disruption.

There are two factors that need to be considered to ensure family harmony during the transfer of the farm to the next generation:

All family members (even those not actively farming) need to be consulted. The goals, priorities, expectations and needs of all family members need to be taken into consideration.

The first step in addressing the business side of intergenerational transfer is to **collect all available financial and other information pertaining to the farm.** Some of the information you will want to collect when transferring the farm to the next generation includes:

- A list of farm assets, including all land assessments and legal descriptions
- The value of the farm today and the amount of outstanding farm debt
- The manner in which farm assets are owned
- An environmental audit
- Livestock and crop records/registrations
- Security for any farm debts (e.g. land mortgages)
- Any leases or similar agreements
- Recent personal income tax returns
- Life insurance policies and wills

(continued on next page)

If you are acquiring rather than relinquishing the farm you will want to collect:

- Recent personal income tax returns
- Details of outstanding debts and significant investments
- Life insurance policies and wills
- An environmental audit
- A list of any caveats or judgments against any assets being transferred

The next step is to **determine your financial needs and goals for your retirement.**

Among the issues you will want to consider are:

- Business arrangements and the method of ownership. The options include sole proprietorship, partnership, corporation, “tenancy in common”, and joint tenancy. The option you choose should depend on:
 - Who wants to exercise control over the farm.
 - The value of the farm.
 - The number of family members with an interest in the farm.
 - Current business and leasing arrangements.
 - The division of profits and servicing of debt.
 - Tax implications for all parties involved in the farm.
- “Life interest”: If you are selling to a son or daughter, you can register a “life interest” in the land with the local land titles office which preserves your interest in the farm and entitles you to use of the property for the remainder of your life. The land could not be sold without your consent.
- Life insurance: A life insurance policy can create a pool of money to compensate the non-farming children for transferring the farm assets to the new farm operator. As well, a policy can be taken out on the farming child with the parents named as the beneficiaries, to ensure their financial security in the event of the farming child’s death or disability. Children may also wish to purchase life insurance on their parents.
- Will and estate planning.

There are a number of different methods for transferring the farm to the next generation. The following are options which can be considered, but it is recommended that you obtain advice from your lawyer or accountant before deciding upon a specific method:

- Outright sale.
- Agreement for sale.
- Rent to own arrangement.
- Transfer by way of a gift.
- Transfer by way of a will.
- Transfer by way of a “roll-over.”

You can get advice on intergenerational farm transfer from any farm management agrolgist, lawyer, accountant and estate planner/financial advisor.

The Manitoba Farm & Rural Stress Line has prepared this ‘Fact Sheet’ with the most accurate information available to us. However, it should not be considered financial or legal advice and the MFRSL assumes no responsibility toward persons using it as such. Please consult a professional regarding your specific situation.



Manitoba Farm & Rural Stress Line (MFRSL)

Intergenerational Farm Transfer

Part Two: Family Considerations

- Will you have an adequate retirement income when you leave the farm?
- Will your successor have adequate resources to take over the farm?
- The farm is a business, but it is also your family's heritage.
- Have you talked over your plans with the whole family?

There is more to retiring from farming than just moving to town and letting your son or daughter take over day-to-day farming chores. There is a lot of emotion and money tied up in your farm, and the decision to pass it on to another family member should not be made without planning, consideration and consultation. Ideally, a retirement plan should be made years before the actual event so that there will have been time to consider all the implications of your retirement. With proper planning, the farm can be passed on to the next generation with a minimum of financial and family disruption.

There are two factors that need to be considered to ensure family harmony during the transfer of the farm to the next generation:

- All family members (even those not actively farming) need to be consulted.
- The goals, priorities, expectations and needs of all family members need to be taken into consideration.

It is important to take the time to think through all the transfer issues carefully and methodically. Writing down your thoughts may help clarify issues. You can begin the process by yourself, but it is important that your spouse/partner and family is involved. Communication is critical to avoid misunderstandings and hard feelings, but sometimes communicating with your family can be difficult. If you have a hard time discussing the issue with your family, there are a number of techniques which can help to improve communications:

- Choose a neutral and safe place for the discussions – a place where everyone will feel comfortable.
- Establish ground rules such as allowing everyone to speak his or her mind without interruption and using respectful language. Anger is not conducive to productive discussions, so be sure to keep emotions in check.
- Start statements with “I” (“I wish”, “I feel”) rather than “you” (“you don’t”, “you never”).

- Listen carefully to what others are saying and when they are finished ask questions such as “Do you mean . . . ?” or “Are you saying . . . ?” until you are sure you understand the meaning.
- In some circumstances, a third party mediator (a friend, minister or professional mediator) may be useful.

Having thoroughly discussed these issues with your spouse/partner and family, you should be able to answer the following questions regarding the transfer of the farm.

Ownership: Are you looking for an interim arrangement or a full sale? Are you and your spouse/partner ready for the change from farming to retirement? Is your successor ready to be a fulltime farmer? Are you interested in working in a partnership with the next generation?

Control: Who is going to manage the farm? Are you ready to let your son or daughter make his or her personal choices in regard to the use of farm income for living and farm expenses?

Security: How much money do you need for retirement income? How much money does your successor need? Should the farm be expanded or downsized?

Living arrangements: Are you moving into town or are you staying on the farm? There are advantages and disadvantages to both situations, so you should discuss this thoroughly with the incoming generation. If the extended family lives nearby (or on the same home quarter), will members respect each other’s privacy? Will the relatives make room for the new farm family members?

Equal vs. equitable treatment of all children: Have all your descendants (even the non-farming ones) benefited somehow from the transfer of ownership? Is the entire family satisfied? Is it fair for farming and non-farming siblings to receive equal compensation? Often the issue is not so much money as the intangible value attached to the farm by your children.

Finally, leaving the farm is a big change. With every change there is some loss, and with loss comes grief. Grief is not a negative emotion but rather a normal way of working through the feelings that accompany change. There are various stages of grief and everyone experiences these stages in a different way and at a different pace. You need to acknowledge the grieving process and accept it as a natural part of the change. You may feel alone and isolated, but remember that you have a large support network of friends and family who care about you.

If you still feel that you cannot get beyond the grief, there are community based agencies to which you can turn for help. Your local health region can provide you with a list of counseling agencies in your area, or you can contact the Farm and Rural Stress Line for a referral.

The Manitoba Farm & Rural Stress Line has prepared this ‘Fact Sheet’ with the most accurate information available to us. However, it should not be considered financial or legal advice and the MFRSL assumes no responsibility toward persons using it as such. Please consult a professional regarding your specific situation.



Manitoba Farm & Rural Stress Line (MFRSL)

Life after Farming

Farming has been your work and passion for your entire life. It is not easy to leave the farm and find a new career, but the ideas and information discussed in this brochure may help you get started.

- Many skills learned on a farm can form the basis for your new career.
- Owning your own business versus working for someone else.
- Opportunities for training or upgrading your skills.

Points to Consider

Take an inventory of yourself

What are your interests, goals priorities, strengths and financial needs? Most importantly, what are your skills? Many skills you developed on the farm can be translated into marketable job skills or used as a basis for starting your own business. For example:

- Keeping the farm books may mean organizational and computer skills.
- Fixing the farm machinery may mean a good understanding of diesel engines.
- A wood working hobby may result in work as a carpenter.

Self-employment

Running your own business is always an option, and you have a wealth of experience from operating the farm. However, business ownership may not be for everyone, so you should examine yourself and your circumstances carefully before deciding to set up a business. Some points you will want to consider are:

- What kind of business will you operate? This will depend not only on your background, experience and interests, but also on markets/market analysis, location, profit potential, competition, government regulation and the amount of personal investment required.
- Do you want to be your own boss? You will need to critically assess your own strengths and weaknesses before making a decision.
- How will the business be organized? Will it be a home business? Retail or service sector? A sole proprietorship, cooperative or corporation?
- Do you have a business plan?

It is highly recommended that you seek professional assistance from a lawyer and an accountant before making any decision on establishing your business. The Canada-Manitoba Service Centre can provide you with information on Government regulations, registration, loans, information checks, market statistics and business plans. Check them out at www.canadabusiness.ca or contact them at 1-888-576-4444.

Network

Talk to “anybody and everybody” to let them know you are looking for work or are starting your own business.

Upgrade your skills

There are a number of institutions and agencies in Manitoba that can help you prepare yourself for a new job or business. Community colleges, universities and the Canada-Manitoba Career and Employment Centres can help with:

- Career Counseling;
- Writing your resume;
- Improving your interviewing and job search skills.

Reading/Math

You may find you need to upgrade your reading/math skills to advance your search for a new career. Your local libraries and community colleges offer tutors, resource material and support to help you improve your reading, writing and mathematical skills. They can also help you prepare for Grade 12 equivalency tests or General Education Diploma (GED).

Educational/Training Options

There are a wide variety of educational and training courses available to you in a variety of formats, ranging from traditional face-to-face instruction, correspondence courses and work based training. The community colleges and Canada/Manitoba Career and Employment Centres can outline your options, which include:

- Grade 12 equivalency (GED), Adult Basic Education (ABE) or high school;
- Manitoba Home Business Advisory Council
- Manitoba Regional Services
- Manitoba Aboriginal Business Service Network
- Manitoba Competitiveness, Training and Trade
- The Universities of Winnipeg and Manitoba
- Private institutions such as business colleges and mediation services
- On the job training with a private business or an economic development board.

Financial Assistance

There are no financial assistance programs specifically for farmers who have left the land, but you may be able to qualify for the generally available assistance programs. To find more information of what could work for you go to www.gov.mb.ca/agriculture or www.gov.mb.ca/fs/assistance or www.gov.mb.ca/employment/jobs_carrers .

Source: Adapted from Saskatchewan Farm Line “Life After Farming”.

The Manitoba Farm & Rural Stress Line has prepared this ‘Fact Sheet’ with the most accurate information available to us. However, it should not be considered financial or legal advice and the MFRSL assumes no responsibility toward persons using it as such. Please consult a professional regarding your specific situation.

1-866-367-3276
www.ruralstress.ca





Manitoba Farm & Rural Stress Line (MFRSL)

Manitoba Farm Mediation Board (Provincial Program)

Manitoba has an Act that protects farmland owners from unwarranted foreclosure on their land without the benefits of farmer/creditor mediation.

The **Family Farm Protection Act** was proclaimed in 1986 during a period of high interest costs. The purpose of the Board is to provide mediation as an alternative to legal action by creditors in situations in which farmers are unable to meet their obligations. If the concerned parties are able to reach a settlement, the Board can assist in developing a written debt settlement agreement.

The Act is administered by the Manitoba Farm Mediation Board which can be contacted at:

812 Norquay Building
401 York Avenue
Winnipeg, Manitoba
R3C 0P8

telephone: 945-0357
facsimile: 945-1489
toll free: 1-800-282-8069
website: <http://web2.gov.mb.ca/agriculture/programs/index.php?name=aaa25s01>

Objects of the Act

The objects of the Act are to

- provide protection for farmers against loss of their farming operations during periods of tough financial times.
- to ensure the sustainability of agriculture in Manitoba during difficult economic circumstances.
- to assist farmers in seeking alternate options for management and marketing during periods of financial difficulties.
- to preserve the family farm in Manitoba.

How Can this Act Help You?

There are two different parts to the Family Farm Protection Act. They are as follows:

Part 3

Very simply put, a creditor cannot foreclose on farmland until the concerned farmer has had the opportunity to go through the mediation process. When a creditor feels the need to foreclose, due to non compliance with loan agreements, they are required to obtain leave of the court. This leave can only be obtained after the

1-866-367-3276
www.ruralstress.ca

Manitoba Farm & Rural Stress Line
Unit 1, 217 10th Street Brandon MB R7A 4E9



Manitoba Farm Mediation Board has had an opportunity to assist in finding solutions for the difficulties and submitting their report to the courts. In preparing its report the Board may consider any and all circumstances deemed relevant to the application which may include:

- whether an agreement between the applicant and farmer is feasible.
- whether the farmer is likely to receive any financial assistance from any other creditor or other source to satisfy financial obligations
- any factors beyond the control of the farmer which may have caused the financial stress such as weather conditions, commodity prices, high cost of productions etc.
- the ability of the farmer, including management, and the viability of the operation to meet debt servicing requirements
- whether the farmer is making every effort to meet his or her obligations
- the impact of the loss of farmland on the farm's viability, the farmer and the farmer's family and the community the farm is in.

Part 6

The Act also provides the opportunity for a farmer to make a voluntary application for a peer review by a Peer Advisory Committee which consists of any number of active or former farmers. Any farmer or creditor of a farmer may make application to request the committee in reviewing the financial situation between a farmer and any or all of the farmer's creditors. This is for the purposes of bringing about changes in credit arrangements or in farm practices to improve the viability and sustainability of the farming operation.

Remember

The Manitoba Farm Mediation Board under the authority of the Family Farm Protection Act can be a valuable tool for farmers as they seek to survive, flourish and prosper under difficult circumstances. Participation in the program is free and yet provides a forum for farmers to seek out new ideas and options for their own operations.

Always remember that, in most cases, the sooner you as a farmer recognize a situation developing that has the potential to create financial stress, the better your ability to seek out the solutions required to keep you and your family on the farm. Call the Manitoba Farm Mediation Board to find out how you can start developing a recovery plan for the future.

Source: The Family Farm Protection Act

The Manitoba Farm & Rural Stress Line has prepared this 'Fact Sheet' with the most accurate information available to us. However, it should not be considered financial or legal advice and the MFRSL assumes no responsibility toward persons using it as such. Please consult a professional regarding your specific situation.

1-866-367-3276
www.ruralstress.ca





Manitoba Farm & Rural Stress Line (MFRSL)

Selecting a Professional

As the business of agriculture grows more and more complicated, producers are obliged to turn to professionals (lawyers, accountants, business consultants) for technical or managerial expertise. Selecting the professional (s) with whom you will work is one of the most important decisions you will make. Since you are entrusting the professional with your farm's future, it is important that you feel comfortable with the person you have chosen and that there is a clear understanding of what each of you expect from the other.

- You select the professional – not the other way around.
- Work closely with the professional to ensure both of you are fully informed about your case.
- You can disagree with your professional.

Finding a Professional

Many farm groups and organizations employ the services of professionals. Depending on the circumstances, an organization may be willing to advise you regarding professionals with whom they dealt in the past. Some may even be willing to provide you with recommendations. Friends, neighbors and family members may also be willing to discuss their past experiences with professionals.

It is important to shop around before settling on a professional. Every professional has his or her own style and it is important to select a professional who understands you and is able to represent your interests. You may want to interview several professionals before selecting one.

The Interview

Have a clear understanding of what you want done before you sit down with the professional. You may want to take a family member or friend with you when you interview the professional so that you can “compare notes” after the visit. A second set of ears and eyes is always helpful and your companion may pick up on subtleties which you overlooked in your efforts to explain your situation clearly. This contact is an opportunity to ask questions and to gauge your confidence in the professional's abilities. Some of the issues you may want to investigate are:

- Knowledge of farming: Does the professional have a basic understanding of farming?
- Accessibility: Will the professional be available to you on short notice when you need him or her?

- **Conflict of interest:** Does the professional (or his or her partners) have business dealings or other clients which may compromise his or her ability to represent you?
- **Fee for service:** How will you be billed and what is the anticipated cost of the services being provided? Will he or she provide an itemized billing? This information will enable you to do some comparison shopping.

Working with Your Professional

Once you have selected your professional, it is important to work closely with him or her and to keep yourself well-informed about your case.

Do some research on your own: No one is expecting you to become an expert, but taking the time to do a little research will make you more knowledgeable on the subject and better able to explain your situation to the professional.

Keep in regular contact with your professional.

Request copies. Keep your own personal record of all correspondence and documents handled by the professional for your case. You will find these documents valuable in reviewing the progress of your case and in determining your course of action.

Communicate in writing. Sometimes it helps to put your thoughts in writing in order to communicate clearly. Use these notes as the basis for your discussions with the professional.

Co-counsel status. If you hire a lawyer, you can request “co-counsel” status in some cases. This entitles you to receive copies of all documents and correspondence transmitted between your lawyer and the other party. This may help keep you up to date on your case.

Take an active role. It is valuable to review correspondence and documents before they become public. Remember: the professional is working for you, and you must be satisfied with his or her work on your behalf.

Listen carefully to advice. The advice may not be what you want to hear, but it may be your best option. Listen carefully, discuss the option with your family and trusted friends who understand your situation, and make your decision only after careful and thoughtful deliberations.

Disagreeing with Your Professional

If you lose confidence in your professional or decide that the person is not suited to represent your case properly, you are free to change professionals. When dismissing a professional, you will be required to settle the bill in order to get all your papers and documents returned.

Source: Adapted from
Saskatchewan Farm Line
“Selecting a Professional”

The Manitoba Farm & Rural Stress Line has prepared this ‘Fact Sheet’ with the most accurate information available to us. However, it should not be considered financial or legal advice and the MFRSL assumes no responsibility toward persons using it as such. Please consult a professional regarding your specific situation.



Manitoba Farm & Rural Stress Line (MFRSL)

The Provincial Ombudsman and You

The provincial Ombudsman is an individual appointed by an all party committee of the Manitoba Legislature to investigate complaints against agencies, departments or corporations that are part of the government of Manitoba.

The office of the Provincial Ombudsman

750-500 Portage Ave.

Winnipeg, Manitoba

R3C 3X1

1-800-665-0531

1-888-543-8230

603 Scotia Towers

202 - 1011 Rosser Ave.

Brandon, Manitoba

R7A 0L5

www.ombudsman.mb.ca

Government and its related agencies and Crown corporations represent a huge institution which affects the lives of Manitoba residents on a daily basis. Dealings between government and the public it serves go awry, and when that happens, the sheer size and complexity of government can be an obstacle to the individual trying to get his or her complaint addressed. Many departments and agencies have their own internal process to review complaints from the public, but what do you do if you disagree with the review's conclusions? The office of the provincial Ombudsman may be able to help.

The Ombudsman reports directly to the legislature (as opposed to the government) and thus can provide impartial and independent judgment on the provincial government's actions. The role of the Ombudsman is to find out what happened and why. It checks to see if the government has followed the law and that the department has adhered to its rules or policies. It also reviews government decisions and actions to determine if they are fair and reasonable. The Ombudsman will recommend to the government actions or changes to resolve the situation, but it is important to note that the Office of the Provincial Ombudsman is not a court. The provincial government usually acts upon the Ombudsman's recommendations, but it is not legally required to do so. Should it not, the Ombudsman can refer the complaint directly to the Legislature or raise it publicly.

Laying a Complaint: What Happens

If you wish to lay a complaint through the Office of the Manitoba Provincial Ombudsman, contact the office. This action will connect you with a complaint analyst who will ask you to describe your complaint, what happened and what you have done to try to solve the problem.

1-866-367-3276
www.ruralstress.ca

Manitoba Farm & Rural Stress Line
Unit 1, 217 10th Street Brandon MB R7A 4E9



The complaint analyst will confirm whether or not this is an issue which the Ombudsman can investigate. The office cannot investigate complaints against non-governmental agencies or the federal government, but it may refer you to services which can.

Assuming your complaint is accepted, the Ombudsman will either launch a full investigation, or it will ask you and the agency to try to resolve the matter through an internal process. The Ombudsman will not initiate an investigation until all the internal appeal processes have been exhausted. If a full investigation is warranted, you will receive written notice giving you the name of the investigator handling your case. The provincial government agency will receive a similar notice.

The investigator will then meet with you to take down all the details of your complaint, and will have the agency review the information you provided. The investigator will interview all parties involved in the complaint and will review all relevant laws and rules. He or she will try to mediate a solution to the problem while conducting the investigation. The investigator will prepare a report on your case, and will give you the opportunity to contest the conclusions before delivering it to the ombudsman.

A Report is Presented

The Ombudsman will examine the report and make a decision on what should be done. At this point, the government agency will be advised of the decision.

If the decision does not support your complaint, you and the agency will be told why.

If the decision supports your complaint, the Ombudsman will recommend ways for the problem to be resolved.

Source:
www.ombudsman.mb.ca
The Ombudsman Act
Adapted from
Saskatchewan Farm Line
“The Provincial
Ombudsman and You”

Remember: It is unusual, but not illegal for the agency to ignore the Ombudsman’s recommendations. Also remember, the Manitoba Provincial Ombudsman deals only with provincial government agencies, departments and corporations in Manitoba.

If you are requiring further information, you should consult a lawyer concerning your specific circumstances

The Manitoba Farm & Rural Stress Line has prepared this ‘Fact Sheet’ with the most accurate information available to us. However, it should not be considered financial or legal advice and the MFRSL assumes no responsibility toward persons using it as such. Please consult a professional regarding your specific situation.