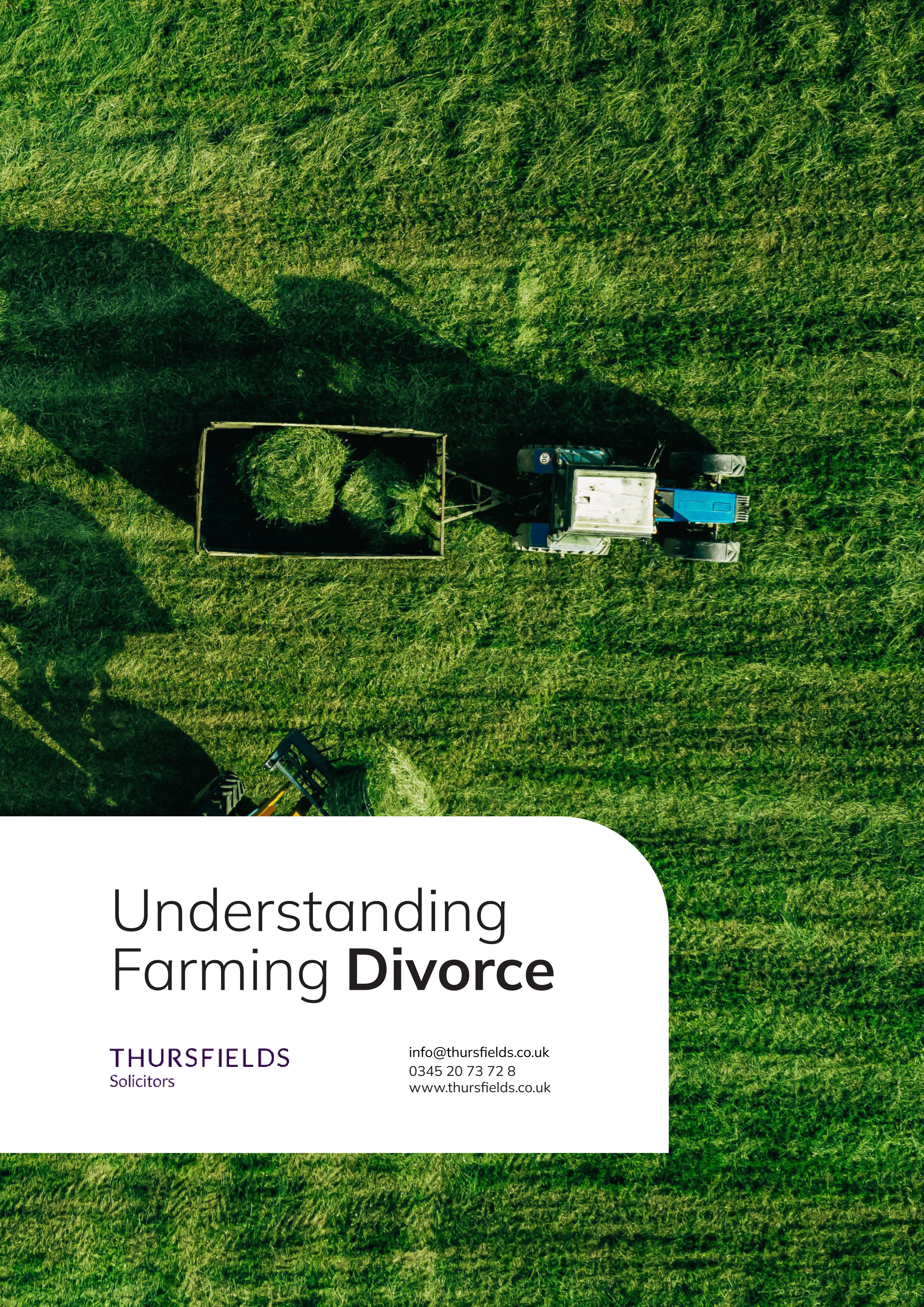

Understanding Farming **Divorce**

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Introduction

Because every farm operates differently, farming divorces can be extremely complex. As is the case with many marital splits, you will usually need to address potentially stressful topics such as the welfare of children, financial plans, and living arrangements. However, the nature of agricultural life means you might also need to tackle succession planning and the vested interests of extended family members.

There are a broad range of practical considerations to be taken care of during the farming divorce process. These include the need to value and divide possessions, define matrimonial assets, consider tax implications, and more. If separation is not on the horizon but you want to safeguard your assets, there are also a number of useful ways to give your estate better protection in the future.

The nature of farming enterprises means they are often seen as being much more than 'typical' businesses. Many have stayed within families for generations, which often makes divorce a highly-sensitive subject. If you are going through separation, it's important to understand what is required of you, the challenges you could face, and your available options.

In this comprehensive guide, we will explore the intricacies of this subject in detail. Whatever you're hoping to achieve, we hope that the following insights, strategies, and advice help you to make informed decisions that work in your best interests.

Why Rural Divorce can be So **Complex**

Farming divorce cases are often complex because assets and intricate corporate structures demand full consideration. Additionally, farms are often passed down from generation to generation as part of a succession strategy. This means that a great deal of sentimental value is attached to these businesses, so retaining them is a core objective for many.

One of the main challenges with farm divorce settlements is that they don't always follow a regular business structure. Farming businesses are often set up as partnerships or through a limited company with several shareholders. A rural enterprise may also be the subject of a last will and testament or be tied up in a trust. As a result, it can be extremely difficult to identify who owns what and how easily the business can be divided.

The most complex factors in a family farm divorce often include:

Liquidity

As lifestyle businesses, it's common for much of a farm's overall value to be tied up in assets, with minimal liquid income. This means that livestock, crops, equipment, and the land itself might need to be valued.

Inheritance

Even if you inherited the family farm, this does not exclude it from being classed as a matrimonial asset. If both partners have worked on the business, it can be even more difficult to address.

Trusts

Farms are often placed in trusts for tax purposes. This type of arrangement might sometimes include other family members, or even multiple separate owners, which can further complicate inheritance rights.

Tax

Dividing assets is an important feature of divorce in farming families. However, doing so can have tax consequences. For added security, this should be addressed by a law firm that uses tax specialists.

What Goes into a Farm Divorce **Settlement?**

Farm divorce settlements usually require the valuation of agricultural assets such as crops, livestock, equipment and machinery, as well as any income generated from the farming business. Tax implications associated with dividing assets must also be factored in at an early stage. The division of property and development of a farm business plan are essential to ensure that the settlement is fair to both parties.

A farm divorce settlement is commonly reached following the conclusion of some key steps. The main ones are:

1 - Valuing the Farm

Agricultural companies will most likely be assessed using the net asset model rather than on a profit earnings basis. This is because a farm will often only produce a modest income, while the main bulk of their value comes from assets such as buildings, livestock, and machinery.

The valuation process is often extremely thorough as there are several different factors which need to be taken into account. Examples of these include the market demand for assets, water rights, zoning restrictions, and conservation easements. Independent appraisers are used to ensure both parties can be confident of having a true valuation ahead of the divorce settlement taking place.

2 - Determining Income

Getting a clear idea of income is essential for farming divorces. The business can generate money from a variety of methods, such as the sale of livestock, produce, and subsidies from the government — so it's important to have a thorough understanding of all the financials if a fair settlement is to be reached.

3 - Considering Tax Implications

The division of farming assets can also incur tax obligations. Transferring items such as livestock and machinery could trigger gift or estate taxes, while capital gains tax may apply if agricultural land or property is sold as part of the settlement. It's therefore vital to consult with a tax specialist to ensure everything is taken care of.

4 - Negotiating a Settlement

While some farming divorces will be handled by the courts, couples who decide to split amicably may decide to use mediation services. This can save a lot of time and money in the long run.

Farm Valuation and **Division**

Valuation is a necessary part of most family farm divorces. Key assets such as property, land, buildings, and machinery will all need to be valued. Intangible assets like trademarks, intellectual property, and commercial leases must be taken into account too.

Types of Assets

There are a broad range of assets you might need to consider as part of a farm valuation. Some will be classed as fixed assets, while others will be classified as intangibles. Fixed assets are physical, long-term possessions that are essential to daily operations. Intangible assets, while not physical items, may still hold significant value.

Fixed Farm Assets

- Farmland
- Farm buildings, such as barns, silos, and stables
- Farming equipment and machinery
- Livestock
- Farm vehicles, ie trucks and trailers
- Fencing and irrigation systems
- Crops (for long-term use only)
- Sustainable infrastructure, such as wind turbines

Intangible Farm Assets

- Goodwill, ie a positive reputation among customers
- Intellectual Property (I.P) such as trademarks or patents
- Long-term contracts and agreements
- Established relationships with suppliers and customers
- Intellectual capital, ie unique insights and/or innovative methods

Methods of Valuation

Methods of valuation vary from farm to farm. The approach you choose will rest upon your factors like location and profitability, and if the business is a Limited Company or Partnership. It's common for a combination of the following methodologies to be applied to get the most accurate picture of a farm's true value:

Market-Based

This approach uses sales of similar farms in the region to calculate an approximate valuation. It is one of the most popular options for valuing farmland.

Asset-Based

The Net Asset Value approach is another common methodology. It aims to calculate a farm's net worth by subtracting liabilities from the total value of assets.

Income-Based

Projected earnings are used in this approach. Capitalisation of earnings and Discounted Cash Flow are used mainly for highly profitable or complex farming operations.

Methods of Division

Once the farm has been valued, there are a few ways to divide it. These include:

Outright Sale

Putting the farm on the market and deciding how the proceeds will be split once the sale is finalised.

Transfer of Ownership

One party could transfer ownership of a plot of land to the other.

Buy Out

To retain control, one spouse might choose to buy out the other's share. Alternatively, they can 'trade' other high value assets to buy the other party out.

Ownership

The two spouses may decide to manage the estate jointly through a partnership or limited company.

Matrimonial Vs Non-Matrimonial **Farm Assets**

During any divorce, assets can be classed as either matrimonial or non-matrimonial. Matrimonial assets are regarded as being jointly-owned, whereas non-matrimonial assets most commonly consist of items that significantly predate the relationship, or land which is held in a trust — thereby making them ringfenced. It's important to note that this is not a hard and fast rule, so much will depend upon personal circumstances.

One of the biggest factors in how a court chooses to divide assets is the length of the marriage. With longer relationships, there is more time for finances to 'mingle', meaning the most significant assets are more likely to be regarded as being jointly-owned. As a result, it can sometimes be easier to classify possessions as matrimonial or non-matrimonial in shorter marriages.

Although these vary from one relationship to the next, here are some broad examples of what usually constitute matrimonial or non-matrimonial assets:

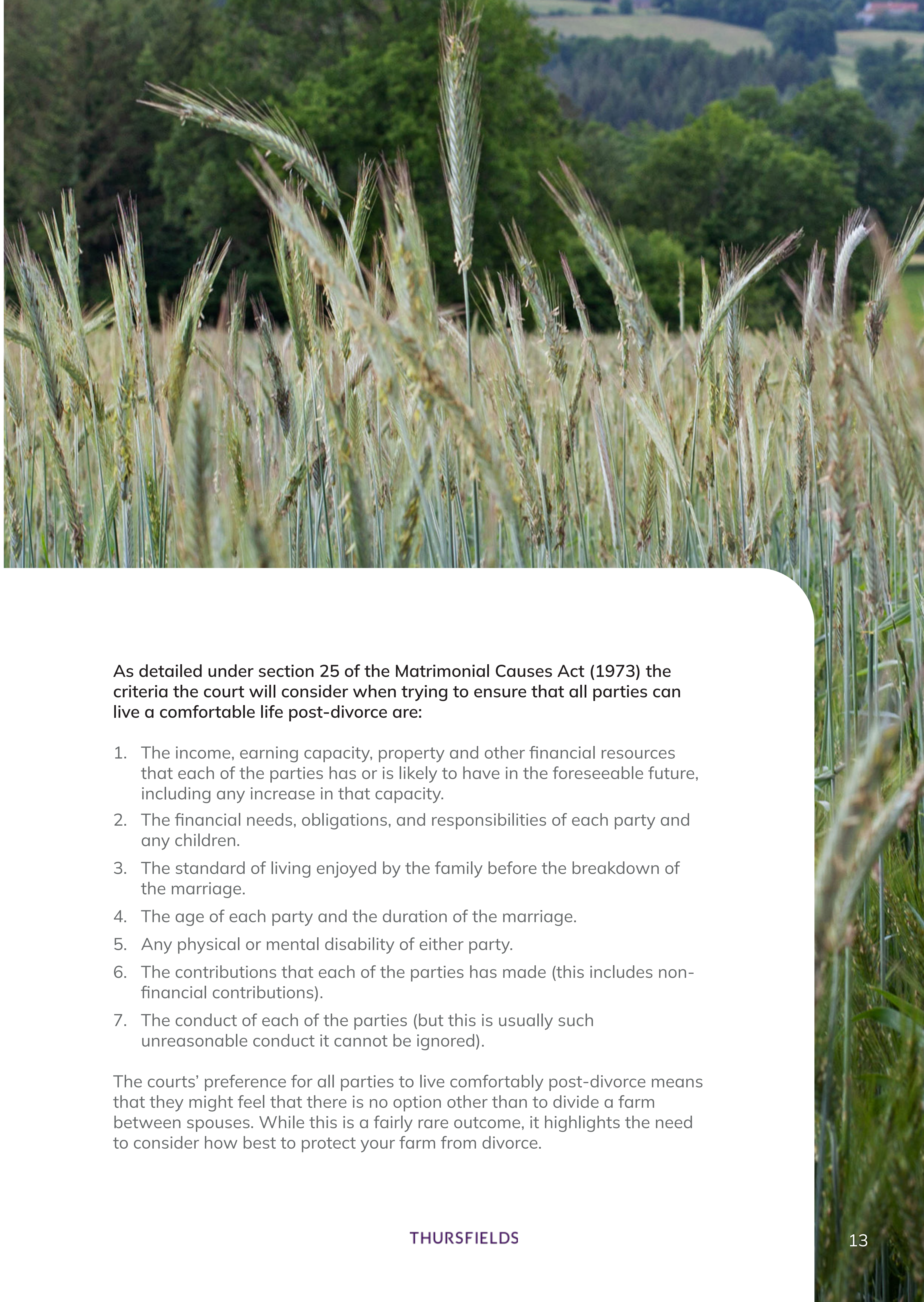
Typical Matrimonial Assets

- The family home
- Pensions and savings
- Investments
- Furniture
- Vehicles
- The farming business or partnership

Typical Non-Matrimonial Assets

- Land held in a Trust
- Gifted assets
- Pre-acquired assets

This being said, the overarching principle of the courts is to reach an outcome that is fair for all parties, and one which meets their needs. Therefore, while there would be a reluctance to divide inherited assets such as farms, it could happen.



As detailed under section 25 of the Matrimonial Causes Act (1973) the criteria the court will consider when trying to ensure that all parties can live a comfortable life post-divorce are:

1. The income, earning capacity, property and other financial resources that each of the parties has or is likely to have in the foreseeable future, including any increase in that capacity.
2. The financial needs, obligations, and responsibilities of each party and any children.
3. The standard of living enjoyed by the family before the breakdown of the marriage.
4. The age of each party and the duration of the marriage.
5. Any physical or mental disability of either party.
6. The contributions that each of the parties has made (this includes non-financial contributions).
7. The conduct of each of the parties (but this is usually such unreasonable conduct it cannot be ignored).

The courts' preference for all parties to live comfortably post-divorce means that they might feel that there is no option other than to divide a farm between spouses. While this is a fairly rare outcome, it highlights the need to consider how best to protect your farm from divorce.

Ways to Protect a Farm From **Divorce**

To the people who own them, farms are so much more than just a business. Often passed down from generation to generation, they are widely seen as a fundamental feature of a family's history and cultural heritage. Many farming families see themselves as the custodians of an historical estate, making it essential to safeguard the rural lifestyle for generations to come.

There are a number of ways in which you could plan to protect your farm from the uncertainties of the divorce process. However, prior planning and careful consideration are crucial to ensuring that you have the best possible chance of securing a positive outcome. The different methods of protecting your family farm include:

Partnership Arrangements

Thanks to their relative flexibility and simplicity, partnership agreements are one of the most common ways to structure a rural business. They can be especially useful for negotiating farm divorce settlements, as they lay out in writing which assets belong to the company and which ones belong to individual partners.

Setting up your business in this way makes clear the distinction between personal and company assets. This makes the division of assets more straightforward and protects the essential items a farm needs to sustain itself going forward.

Trusts

Another way of protecting your most valued farming assets is through a family/discretionary trust. The trust would technically own assets such as the business, farmhouse, and any investments. Because of this, the assets should then be ring-fenced, giving you peace of mind that they will be excluded from divorce proceedings.

Trusts are not only a useful means of safeguarding prized family possessions from divorce — they can also be used to reduce tax liabilities. They should be considered as part of a wider strategy to pass on assets to younger family members, and preserve wealth that has been accumulated over the generations.

It's worth pointing out that, ideally, a trust should not be considered when divorce is already a concrete possibility. This is because a court could infer that the trust was deliberately set up to avoid the division of farming assets, causing problems down the line.

Nuptial Agreements

Both prenuptial and postnuptial agreements can be used to protect such essential assets as land, crops, and livestock from divorce. They can minimise lengthy hearings about the division of assets and present the courts with a clear picture of how the separating couple planned to divide their possessions. Additionally, they often cover succession planning, ensuring the kind of seamless continuity that is so essential to rural living.

Prenuptial Agreements

Prenuptial agreements take place before a couple enters into marriage, with the aim being to clearly set out what should happen if the relationship ends. A farmer should find these particularly useful as they can be an important step in ensuring that the farm's operational assets are fully protected. A prenuptial must be entered into freely and transparently for it to be approved.

Postnuptial Agreements

Postnuptial agreements are made during the course of the marriage. They are often used when the relationship is on the verge of breaking down, so that everything important is taken care of.

Although nuptial agreements aren't currently legally-binding, the courts are paying more and more attention to them. This means that they should be given proper consideration when trying to reach a financial settlement.

Safeguard the Future of Your Farm With Thursfields' **Agricultural Specialists**

At Thursfields, we realise that the agricultural landscape is complex and ever-shifting. Based in the West Midlands but supporting rural businesses nationwide, our skilled team takes care of everything from trusts and estate planning, to commercial property and dispute resolution. We have a comprehensive understanding of the industry's opportunities and challenges, and use our experience to better serve our clients' need.

Because no two divorces are quite the same, we specialise in creating bespoke strategies that are most likely to get results. This means we're equally effective dealing with limited companies as we are safeguarding the future of your estate. Although we prefer a more collaborative approach to divorce, we understand that this might not always be practical, so can offer robust representation when necessary.

Whatever your goals might be, our solicitors are adept in all aspects of agricultural law. For a service that is built around you, get in touch with us today.

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