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"Getting it Sorted" - a guide to avoiding and
dealing with disputes for participants in the 50/50 ment
Sharemilking Agreement

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A guide to avoiding and dealing with disputes

For participants in the 50/50 Sharemilking Agreement

by

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Getting it sorted

A guide to avoiding and dealing with disputes

For participants in 50: 50 Sharemilking agreements

Introduction

Sharemilking is unique to dairy farming in New Zealand. It is an excellent form of employment for less experienced dairy farmers with the main objective of building up a strong asset base relatively quickly while not having to purchase land. For dairy farm owners that want to free up capital yet retain a reasonable income from the property employing a sharemilker often is the best way to achieve these aims.

In order to put this guide together I have talked to many sharemilkers, farm owners, consultants and legal personnel in order to get a broad perspective from across the industry. These ideas regarding avoiding disputes are theirs.

The idea of this guide is

- to help you avoid disputes by being proactive before the contract is signed and during the term of the agreement
- to outline some of the least understood Clauses in the 50/50 agreement
- to ensure that you know what options are available to you if a dispute arises

Within this guide you will find information pertaining to the Waikato Federated Farmers agreement (1994 edition) which is the most widely used New Zealand.

A. Before the contract is signed

1. Do your homework

Remember that the sharemilking agreement is a contract of partnership. It is important that before you go into business with anyone that you check them out thoroughly. Advise the other party that you intend to do this and ask for names of employers, employees, other sharemilkers who have worked on the property or other farm owners. If the other party have any objection to you doing reference checks then explain why you are interested and suggest that they do some checking of their own.

You need to find out whether you can work together and whether this person is a sound choice as a business partner.

Ask questions about:

Personality

- What sort of person or people are they?
- How do they deal with difficult situations?
- How good are their communication skills?

Farming philosophy

With what type of farming system are they most comfortable?

Will they be willing to listen to alternative ideas?

Do they employ professionals eg farm adviser or consultant regularly?

Financial situation

Do they pay bills on time?

Is their financial situation a concern for them?

Are they wise spenders of money?

There will be other areas you may want to assess so write a list of questions in consultation with your partner and preferably a third party. They will probably be the same sort of things you will be assessing at the interview.

You will not get concrete answers to all of these questions but you will gain a better and more accurate knowledge of your potential business partners than you gained from your first impressions.

Above all, ensure that you are thorough, the more people you ask the better.

Remember to let the other party know that you are going to do this.

2. Be honest with yourselves

Ask yourselves and your financial and farm advisers if necessary whether this is a safe financial move.

Are you putting yourselves or your prospective business partner or partners at risk?

Can you cope with this debt level?

Sit down and do the budgets as honestly and accurately as possible.

Many disputes arise from financial pressure.

3. The contract

This document is extremely important as it outlines the terms and conditions of your working relationship. The sharemilking agreement is a legal document so this is what an arbitrator will refer to if any dispute goes to arbitration for resolution.

Make sure you understand FULLY what you are signing.

Ensure that

- you run the final draft past your legal adviser
- any changes or annotations on the document are initialled by all parties including the witness
- that all parties know exactly what is being signed ie. run through each page before signing
- that the final copies are signed and dated in front of a witness

Points to note about the 50/50 agreement (Waikato version)

Most of the agreement is self explanatory however there are a few points that can be overlooked.

Farm management clause (Clause 22)

This states that the owner retains overall management of the property as long as

- a) the sharemilker is consulted
- b) there is no detriment to the stock or implements of the sharemilker
- c) Recognised farming practise is observed

Feed at end of contract (Clause 21)

Be aware that the feed that must be left by outgoing sharemilker will need to be reviewed if cow numbers or farming policy change. This is particularly important in conversion situations.

If the feed is not available at the end of the contract then this feed must be purchased for the incoming sharemilker by both the farm owner and the outgoing sharemilker.

If there is surplus feed on hand then this can be sold by the outgoing sharemilker to the incoming sharemilker and the farm owner retains his half share.

Rearing of extra young stock (Clause 6)

This needs to be discussed between the parties. Sharemilker can either rear extras on whole milk powder or make a payment to the farm owner on a per calf reared basis for the milk used to rear the calf. Grazing off the extra calves after weaning is to be paid by the sharemilker.

Death of party (Clause 27)

Not something anyone likes to think about but you need to know where you stand in the event of a death of either party.

If the farm owner dies during the contract then the contract expires at the end of the following May (or whenever in the year the contract is deemed to be renewed).

If the contract is with a sole sharemilker and the sharemilker dies then the contract terminates immediately. Any money owed, after payment of outstanding claims, is payable to the estate of the deceased.

If the contract is with a sharemilking partnership then the surviving partner or partners may elect to terminate the agreement immediately or continue until the end of the season. However, the farm owner may re-negotiate the agreement one month after the date of death.

Prior termination (Clause 28)

The farm owner can terminate the agreement if the sharemilker is not performing ie completing work specified in the contract. The owner must advise the sharemilker in writing and allow the sharemilker fourteen (14) days to rectify the problem. If the sharemilker ignores the instruction then the contract can be terminated.

The sharemilker can also terminate the agreement if the farm owner is not performing ie completing work specified in the contract. The sharemilker must advise the farm owner in writing and allow the farm owner fourteen 14 days to rectify the problem. If the Farm owner ignores the instruction then the contract can be terminated.

The contact can be terminated early by mutual agreement.

Time limit on claims (Clause 31)

The other party then has a further 20 days from the time the claim is known to them to make a counter claim.

Withholding milk cheque (Clause 24)

Farm owner may request the dairy company to withhold from the sharemilker all or part of the sharemilker's milk cheque as long as:

- a) he or she instructs the sharemilker in writing
- b) the money is paid into the trust account of the owner's solicitor.

There may be other clauses that you do not understand. Make sure that you do understand them before you sign the contract.

Many disputes arise from misunderstanding of rights and obligations.

B. During the time of the contract

When sharemilkers and farm owners were asked for constructive ways to avoid disputes some of their responses were.

Attitude is important. Remember that you are in business together and that the decisions you make and follow through on are going to affect another party.

Treat each other with courtesy and respect. Respect each other's abilities and strengths and be prepared to listen to and learn from each other.

Communicate! In order to minimise any misunderstandings that could be blown out of proportion you need to keep communication channels open.

Many disputes are caused by misunderstandings and miscommunication

Keeping the communication channels open**Some ideas that were popular**

Discuss early in the relationship how often both parties wish to communicate and what about. Some farm owners for example are not interested in staff movements while some sharemilkers will not be interested in soil test results.

Offer a regular invitation to walk around the farm - alone or with a consultant - is a good way to discuss what is happening in a more relaxed environment

Ensure that all proposals to change farm policies are discussed openly and at the most opportune time. Do not for example expect a positive response if the sharemilker announces in August that he intends to milk an extra 100 cows this season!!! A monthly or bi-monthly meeting or telephone call to discuss progress and ideas for the future work well.

If farm owner or owners are not on the property draft up a report monthly and ensure they get it.

C. *Where do things go wrong?*

Of the surveyed sharemilkers and farm owners that had been involved in disputes, the primary reasons for the dispute were.

The figure in brackets refers to the percentage of survey respondents (sharemilkers and farm owners) who gave the response outlined.

1. Feed on hand at end of contract (55%)

Disagreement with amount set down in contract

Refusal by sharemilker to pay his percentage of bought in feed

Refusal by farm owner to pay his percentage of bought in feed

2. Management clause (19%)

Farm owner not happy with sharemilker's management, etc.

Sharemilker not following "recognised farming practice"

3. Fertiliser (17%)

Farm owner not putting on specified amounts of fertiliser

Payment for Nitrogen in high analysis fertilisers such as DAP, Crop 15.

4. Weed and pest control (5%)

Sharemilker not maintaining level of infestation.

Farm owner expects sharemilker to eradicate all weeds from a weed infested property

Stopping milk cheque of sharemilker for non payment of invoices (56%)

Farm owner withholds sharemilker's income from the dairy factory if he/she is owed monies

Sharemilker feels stopping of cheque is unfair

There are a number of other causes of disputes; these are merely the most recurrent according to those surveyed.

D. *Methods of dispute resolution*

The agreement outlines the two methods of resolving your dispute:

- a) Mediation or Conciliation
- b) Arbitration

There are advantages and disadvantages to each of these methods of dispute resolution. These are listed in Table 1. Of those surveyed this is how their sharemilking disputes were resolved.

Informally - no outside help	12%
Mediation	30%
Arbitration	44%
Court Proceedings	14%

Summary of Alternative Forms of Dispute Resolution

Characteristic	Mediation	Mini-Trial	Arbitration	Court Adjudication
Participation	Voluntary.	Voluntary.	Voluntary - but may be mandated under contract.	Compulsory once initiated.
Control over Inputs/Definition of Dispute	Parties control inputs Focus is on parties' perceptions and concerns.	Parties and their legal advisors control inputs.	Tends to be legalistic.	Dispute must be framed to fit legally recognised cause of action. Lawyers have large measure of control over presentation of argument.
Procedures	Flexible. Parties can tailor procedures to suit dispute. No discovery.	Flexible. Procedure can be adapted for particular dispute. Usually involves some discovery.	Varies with context, but tends to be formal. Rules of evidence apply unless parties otherwise agree.	Formal. Rules of evidence apply.
Publicity/Privacy	Private. Confidentiality of sensitive information can be protected.	Private.	Private.	Public.
Control over Outcome	Parties control decision-making.	Parties control decision-making.	Arbitrator decides.	Judge decides.
Nature of Solutions	All gain. Tends to preserve or restore relationships. Can take account of both commercial and legal concerns.	All gain. May preserve or restore relationships. Can take account of both commercial and legal concerns.	Win-lose. Focus is on which side will prevail.	Win-lose. Tends to polarise parties. Focus is on legal issues. Establishes a binding precedent.
Speed	Parties control timing.	Parties control timing.	Can be speedy - unless procedures or award challenged in court proceedings.	Slow.
Cost	Usually significantly less expensive than litigation - from 10% to 50% cost of trial.	Significant cost savings compared with litigation.	Varies. In complex cases, may be as or more expensive than litigation.	Expensive.

Table 1. From Canterbury University.

a) Mediation or Conciliation

This is usually the first step in the resolution process. It basically involves you and the other party sitting around the kitchen table and discussing the issues. A mediator is present but is only there to help you come up with a solution that is acceptable to both parties. The mediator can summarise and offer direction to your discussion but cannot provide a decision or outcome. The decision must come from the parties involved.

Mediation is excellent in situations where

- both parties want to find a solution
- both parties want to continue having an amicable relationship
- the dispute has arisen during the term of the contract

The idea of mediation is to find a "win-win" solution. This is a solution that may require some concessions from both parties but is ultimately acceptable to all involved.

Mediation works best where both parties are fair minded and want a quick and lasting solution.

A mediator can be appointed by either party as long as he or she is acceptable to the other party. If you do not know of one or can not agree on one then Federated Farmers can appoint one for you or provide a list of mediators in your area.

The cost of the mediator is shared between both parties.

b) Arbitration

This is the process used when the dispute cannot be resolved by mediation. It involves a more formal setting, usually on "neutral ground". It involves a hearing of both sides of the story by an arbitrator or umpire who will provide the final decision. Like a trial in a court of law, the arbitrator will find in favour of one party and against the other.

You can either have a sole arbitrator to decide the case and present your own case or appoint an arbitrator each and an umpire to decide the case.

You must let the other party know in writing that you are proceeding to arbitration and have elected an arbitrator.

If you decide to use a sole arbitrator then you must agree on one. If one party appoints an arbitrator the other party must appoint one within 7 days or the appointed one will act as sole arbitrator.

If you both appoint separate arbitrators then the arbitrators must choose an umpire for the arbitration within 7 days. If this is not achieved then the Court or a panel consisting of Federated Farmers, Institute of Agricultural Science and Society of Farm Management provincial chairpersons will elect one.

As the sole arbitrator will be assessing the case on the basis of what is written in the contract you will need to ensure that

- time limits on claims and counter claims were met
- you have collected evidence or witnesses to support your claims.
- you have discussed your case with your solicitor

The sole arbitrator or umpire can charge interest on money withheld at a rate up to 4% per month. The amount charged is discretionary.

The umpire or sole arbitrator will make a decision (called an award) which is made known to the parties within 30 days of the hearing. If the case is complex the arbitrator may request an extension of up to 30 days.

If the outcome of the award is not acceptable you may within 30 days of receiving the award notify the other party that you wish to take action. You must at this time pay money owed into a solicitor's trust fund. If you do not comply with this then you cannot take further action.

The major drawback of arbitration is cost. Most sharemilking arbitrations are expensive (\$10,000 to \$70,000) and costs, in most cases, are to be paid by the party found against in the award. In order to cut some cost it is preferable to use a sole arbitrator.

Think seriously about resolving your dispute via mediation if the amount you are claiming is not large. Make sure you get quotes from arbitrators if you are concerned about cost. Their hourly rate varies greatly (\$90-\$600 per hour plus travel etc).

The major advantages of either arbitration or mediation are

- time taken to find a solution - court proceedings can take years
- confidentiality of proceedings and outcome - not a matter for public record

Most disputes in sharemilking agreements are resolved by arbitration or mediation. Where these processes are used successfully, the points in dispute can be resolved quickly and quietly allowing the participants to continue their roles within the dairy industry.

In Summary

Choose your business partner carefully. Ensure they are the sort of people you can work closely with over the term of the contract.

Understand your rights and obligations in the contract you are going to sign then ensure that the document is completed correctly.

Communicate frequently over the time of the agreement regarding farm management, farm policy and future planning.

If a dispute arises, attempt to talk it through with the other party. Do this as early as possible ie as soon as you think there may be a problem.

If discussion fails to resolve the problem, find the dispute resolution process that best fits your situation.

Mediation will work well if you are still communicating and want a quick, lower cost resolution

A mediator will help you come to a win-win resolution.

Arbitration is a more time consuming and costly form of resolution but less time consuming than court proceedings.

An arbitrator or umpire acts as a judge would and hands down a binding decision.

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