

MANORIAL RIGHTS AND AGRICULTURAL PROPERTY RELIEF

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Under the Land Registration Act 2002 (“LRA 2002”), a number of rights over land are described as “overriding interests” to which a landowner’s interest is subject, even if the rights are not mentioned in the land register.

Among the rights which constitute overriding interest, are rights to mines or minerals (which are usually manorial rights) and (as far as the Land Registry is concerned) the right to enforce liability in respect of chancel repairs.

The LRA 2002 seeks to limit the number of overriding interests and to replace as many or them as possible with register entries. Its overall objective is to make the register as complete a record of title as possible. (See further Land Registry Practice Guide 15.)

Section 117 LRA 2002 provides for various rights to lose their status as overriding interests after 12 October 2013.¹

As time has marched towards 12 October 2013, there has reportedly been a marked increase in the number of overriding interests being asserted and in the number of investigations being undertaken to determine whether, for example, historic chancel repair liabilities exist and can be noted on the register.

Mineral rights are among the most significant manorial rights. It has been widely reported in the press that large landowners have been asserting rights to minerals which have become separated from the land under which they may be found; and affected landowners are being provided with draft provisions describing the extent of rights which will be registered by third parties who are asserting ownership.

In some cases mineral rights may be claimed or asserted because of their nuisance value. The rationale is that certain affected landowners are keen to have a clean title to their land and will often pay a premium for the surrender of the mineral rights by the person claiming to own them.

In other cases, the mineral rights may have present or potential innate value.

In some cases the claim in respect of mineral rights is being made not only to minerals which are deep under the surface of the land, but also to surface minerals.

In the context of agricultural land, the exercise of mineral rights could have potentially adverse effects on agricultural property relief (“APR”) for inheritance tax (“IHT”) purposes as explained below.

APR is available both to owner-occupiers and to owners who let their land to third parties who farm it.

In all cases, the purpose for which the land is occupied is fundamental to the availability of relief; and the occupation for the relevant purposes must be continuous.

HMRC’s own Manuals describe the position as follows:-

“IHTM24070 – Occupation: Introduction

A requirement for the application of agricultural relief is that agricultural property (IHTM24030) that is occupied for the purposes of agriculture (IHTM24060) must have been either

- *occupied by the deceased/transferor for the purposes of agriculture throughout the two years preceding the transfer,*
- *or owned by the deceased/transferor throughout the seven years immediately preceding the transfer and the property must have been occupied (IHTM24071) throughout the period for the purposes of agriculture (IHTM24060). The identity of the occupier does not matter, but the continuity of such occupation is vital... [s.117 IHTA 1984]*

HTM24071 – Occupation: The occupation condition

To satisfy the first alternative condition in IHTA84/S117, *throughout the two years immediately before the transfer*

- the deceased or transferor must have occupied (IHTM24070) the property, and
- the deceased's or transferor's *occupation of the property must have been for the purposes of agriculture* (IHTM24060).

IHTM24100 – Ownership: Introduction

To satisfy the second alternative condition in IHTA/S117, the deceased/transferor must have owned the property concerned *throughout the seven years immediately before the transfer* and the property must have been *occupied* (IHTM24070) *throughout the period for the purposes of agriculture* (IHTM24060). The identity of the occupier is not material, but the *continuity of such occupation is vital...*" (my italics)

It is quite common for provisions relating to mineral rights to refer both to entry onto land for the purposes of investigation and surveys and to entry onto land for the purposes of extraction.

If the exercise of mineral rights prevents the occupation of land satisfying the purposes prescribed by IHTA 1984, APR will be either be lost or the relevant periods of time will stop and will be re-started on resumption of occupation satisfying the prescribed purposes. Depending on the facts and the duration of the exercise of the mineral rights, there is the risk of loss of APR resulting from cessation of the occupation for relevant purposes or from the re-starting of the period which is then not of adequate length. Relief would be lost if, for example, the 'clock' was re-started and the landowner (who may previously have accrued APR) died before the end of the new qualification period (in circumstances where there was no surviving spouse or civil partner in whose ownership the land could continue to accrue APR).

Surface investigations and/or surface extraction could clearly affect the availability of APR because of the impact on the occupation of the land for agricultural purposes.

Even where the rights permit no access to minerals from the

surface, but the rights refer to surface minerals, the extraction of the surface minerals could, in theory, be undertaken from below the surface and APR could be adversely affected.

Workings which are carried out exclusively underground may not adversely affect the occupation of the land and availability of APR, but might do so, depending on whether the land could continue to be used continuously for agricultural purposes.

Current landowners may be unable to control the time at which mineral rights may be exercised and, accordingly, cannot assume that exercise will take place at a time that will not have adverse effect.

Accordingly, in circumstances where APR is considered to be available or is a factor in a commercial decision to buy or retain land, it is vital for landowners to consider seriously the existence and potential impact of asserted rights. Landowners may seek to challenge the existence of the rights or to seek to limit the scope of the mineral rights asserted and registered by third parties: they should at the very least do some digging.

Endnotes

- 1 In the case of land which was registered before 13 October 2013, unless the rights are protected by notice in the register, a person who acquires the registered estate for valuable consideration by way of registerable disposition after 12 October 2013 will take free from the relevant overriding interest.

An owner of land whose interest exists before 12 October 2013 and whose interest continues after that date will continue to be bound by the relevant overriding interest even if notice of it has not been entered in the land register.

In the case of unregistered land, the legal owner of the land will be bound by manorial rights up to the time of first registration of the land. On first registration the legal owner will hold free of the relevant rights unless they are protected by notice at the time of first registration (see generally the Land Registry's Practice Guide 22).