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## **What does the future hold for manorial rights?**

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**Property analysis: A report by MPs on the controversial registration of manorial rights is examined by Paul Stafford, of Ten Old Square.**

### **Original news**

Justice Committee stresses importance of manorial rights review, LNB News 22/01/2015 127

*A report by the Justice Committee has concluded that a review should be carried out by the Law Commission to assess whether changes need to be made to the law relating to manorial rights. Such rights include rights to mines and minerals, sporting rights such as hunting, shooting and fishing, and rights to hold fairs and markets. They were not required to be detailed on the register of title, but they remained overriding. This was changed by the Land Registration Act 2002, which sought to increase the transparency of such rights by removing their overriding status and requiring registration by October 2013. Around 90,000 registrations were made unilaterally by the deadline, with many landowners finding out for the first time that their properties were subject to manorial rights. Following complaints and calls for either abolition of the rights or a review of the law, the committee examined problems with the registration process, and its report suggests improvements that could be made and also deals with the implications of abolition legislation, including human rights and compensation issues.*

### **What impact did the registration of manorial rights have on landowners who discovered their properties were subject to rights owned by a third party?**

It all depends on the people and the circumstances. For the freehold owner of a modest home, whether urban or suburban or rural, the discovery that someone else claimed rights over or under their land was bound to come as a surprise or shock. They may not have appreciated that the claimant to those rights could probably not exercise them without the landowner's consent. What made matters worse was that the discovery invariably came in the form of a letter from the Land Registry in language that non-lawyers would have found difficult, if not intimidating. Worse still was the fact that for some homeowners the registration of third-party rights caused difficulties when selling or with lenders on remortgaging. At the other end of the scale, large landowners could find that land they believed had development potential was subject to third-party rights which could potentially reduce its value or, which was just as problematic, that it was unclear just how much of their land was subject to those rights.

### **How was the registration organised? What level of proof was required to register a manorial right?**

In the 12 months before 13 October 2013, when manorial rights ceased to be registrable as overriding interests, the Land Registry received some 90,000 applications to register manorial rights, including mineral rights, from third-party claimants. Those applications would normally be for the entry of a unilateral notice on the charges register, and the Land Registry would complete the registration before telling the landowner. Only at that point could the landowner become aware of the registration and seek to have it removed. The

burden of proof for the registration of a unilateral notice is set low and normally requires no more than an assertion that the claimant is entitled to the rights claimed. There is no rigorous examination of the claim at the unilateral notice stage.

### **Are manorial rights open to challenge? If so, on what grounds?**

Manorial rights very often can and should be challenged. All such rights derive ultimately from title to the lordship of a manor. Since no new manors could be created after 1289, and the vast majority of them became extinct in the centuries that followed, there is a reasonable chance that the person asserting the rights cannot show that he derived them from a surviving lordship. The grounds for challenge are many and varied, and first it is necessary to identify whether the challenge is to the lordship or to rights derived from the lordship or both.

Lordships come in different forms: lordships attached to land and lordships in gross, and the key issues here are whether the lordship still exists and whether it has been lawfully vested in the person asserting ownership.

Manorial rights are for practical purposes those defined in the Law of Property Act 1922, Sch 12. Rights can always be challenged on the ground that their owner cannot trace title back to the date when they were exercised as part of a surviving lordship. However, the challenging party is likely to require not only detailed legal advice but also a significant historical investigation into the title and its rights.

### **Would the recommendations of the report alleviate some of the problems concerning manorial rights? Could or should more be done?**

The report's most important recommendation was an end to the use of unilateral notices as the primary means for registering manorial rights so that the burden of proof is shifted towards those claiming the right. This would make it more difficult to register a manorial right because, in the absence of a unilateral notice, the claimant could only register his interest by agreement with the landowner (which he is unlikely to get) or by persuading the Land Registry that he has good title. Changes to Land Registry practice along these lines could be made and would spare many landowners the anxiety of third-party claims.

Whether more could or should be done was a question the report leaves open. The committee noted that it had received little evidence about problems being caused by the exercise of manorial rights, while it received a great deal of evidence to the effect that manorial rights were, in principle, indistinguishable from any other property right and as such were protected by the Human Rights Act 1996, Protocol 1, art 1, so that their abolition could not be achieved without adequate compensation. I think the committee found that rather surprising. The report left open the question of whether manorial rights should be abolished. This is significant because it was demand from disgruntled homeowners for abolition and review of the law that prompted the parliamentary inquiry and report.

### **What is likely to happen next following this report?**

The report's further recommendation was that the Law Commission should carry out a review of manorial rights law to see what changes should be made and whether all or some categories of right should be abolished. However, in their evidence to the committee, neither the government nor the Law Commission thought that change was necessary. In what will be its 13th Programme of Law Reform, the Law Commission may revisit the subject of manorial rights, but the programme is unlikely to be determined until 2017. So whatever does happen is unlikely to happen soon. There are competing priorities for government and Law Commission time, and manorial rights are not at present near the top of the agenda.

### **Is there a possibility of Parliament ever taking the view that manorial rights are anachronistic and abolishing them?**

Yes, but that is unlikely to happen in the near future. There is a political angle to this because those who are not lawyers may instinctively associate the concept of manorial rights with inherited wealth, privilege and feudalism. Indeed at Welwyn Garden City, where a lot of people found their properties subject to notices

registered on behalf of the Hatfield Estate, there was some justification for that view. But it would be absurd to think that a freehold created say, in the 14th century should be abolished because of its antiquity. Manorial rights are a particular kind of property right which have commercial value and may be bought and sold. As such, they are no different from any other kind of right, and this point was accepted in the report. The problems which they create arise because for centuries they have existed as overriding interests and may take the unsuspecting freeholder unaware.

### **What should lawyers do now?**

First, recognise that manorial rights and historic lordships have the potential to affect land ownership and property transactions and remember that there have been reported cases where lawyers who failed to examine them properly were the subject of successful negligence claims. Second, read the report.

*Interviewed by Robert Matthews.*

*The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.*