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RESIDENTIAL CONVEYANCING

PROFITS À PRENDRE: AN OVERVIEW

Chloe Lake considers the intricate legal concept of Profits à Prendre in her insightful article. Providing a comprehensive overview, she navigates the complexities of this legal framework, shedding light on its implications and applications.

Introduction

Lesser-known than easements or covenants, profits à prendre are a form of right over land. However, their uncommon nature certainly does not render them unimportant – particularly when dealing with agricultural land or



large estates.

What is a profit à prendre?

A profit is the right to take something from someone else's land that is both capable of ownership and a product of nature – the literal translation being French for 'profit to be taken.' Common examples of profits include fishing rights, grazing rights, or hunting rights, which may also be referred to as sporting rights.

Classifying profits

A profit can either be several/sole or it can be a profit in common.

A 'several,' or 'sole' profit, can only be exercised by the person to whom the profit is granted. This means that unless the owner of the servient land has reserved the same right, they are prohibited from also being able to exercise the right conferred.

A profit in common benefits more than one party, including the owner of the servient land. Unlike in the case of a several/sole profit, no such express reservation of rights is required in these circumstances.

Profits can exist 'in gross,' or can be 'appurtenant.'

Rather than benefiting land, a profit can be held 'in gross,' meaning that it benefits the individual personally and is not contingent on land ownership. Due to their personal nature, profits in gross (provided that there is no express provision prohibiting such dealings in any deed granting the right) can be transferred or assigned totally independently of the land in question.

Profits appurtenant, however, are connected to the land concerned – much like with an easement, they exist for the benefit of the owner of land adjacent to the servient land in question.

Profits v. easements

There are some key differences between profits and easements to be aware of.



An easement gives permission to use land in a specific way – such as rights of access, or rights to use service media – whereas a profit provides the grantee the right to physically remove something from the land concerned – subsequently conferring ownership of the product taken. The item being taken must be capable of ownership – so for instance, a profit cannot be granted over water flowing from a natural stream.

Unlike with an easement, a profit in gross need only be registered against the title to the servient land.

Registrability

If a profit à prendre is expressly created over registered land on or after 13th October 2003, then it is registrable, meaning that the profit will not take effect at law until registration has been effected.

If a profit has been granted over registered land prior to the 13th of October 2003, or over unregistered land, then registration of the same is not compulsory.

Having said that, in cases where a profit can be registered, we would advise the profit holder to do so to ensure that Land Registry records accurately reflect the situation as it is on the ground. Having an accurate record may also prove useful in dealing with any potential issues in the exercising of a profit.

HM Land Registry has produced guidelines in dealing with registrability of Profits à Prendre in Practice Guide 16. If a profit is freehold, or is held for a term of years, then an application for registration at HM Land Registry can be made. This is essentially completed in the same manner as a first registration of unregistered land.

If an application for the registration of a profit is successful, the profit will be granted its own title, and a notice will be entered into the charges registers of the land affected by the profit.

The Importance of Profits à Prendre

As before, whilst profits are lesser-known rights


than easements, landowners and prospective purchasers should certainly be aware of their existence.

Though some profits can exist purely personally, some are capable of being transferred or assigned and could therefore hold further value for the holder of the profit above and beyond merely being able to exercise the right.

In a similar vein, a landowner who is considering selling should be aware of any profits relating to their land – either in gross or appurtenant – in order to be able to fully disclose to a potential buyer. Of course, this is where having accurate Land Registry records is useful, as notice of a registered profit would be contained in the title register of the land being sold.

Reform

The Law Commission has acknowledged that this is an outdated area of law, that gives rise to complexities. Whilst the Government has expressed in recent years, that it intends to address and reform the law on restrictive covenants, it remains to be seen whether this reform will also include reform to the law on profits and easements – despite recommendations from the Law Commission as to the same.



Meet the editor

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Chloe is a Trainee Solicitor in the Commercial Property Team. She assists senior fee earners on a wide range of matters from land acquisitions and developments as well as business leases, sales and purchases, lease renewals and extensions, through to larger commercial property transactions.

Chloe received a First Class LLB from De Montfort University. She completed her LPC at Nottingham Trent University and will graduate in Summer 2024. Chloe was Leicestershire Law Society's Trainee/Paralegal of the Year in 2023.

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