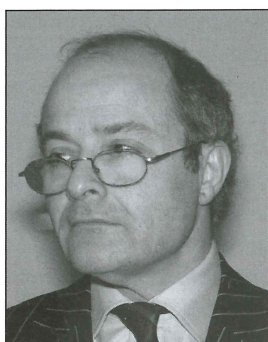


Deadlines for manorial title holders

Paul Stafford looks at the registration requirements introduced by the Land Registration Act 2002



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'The position before the LRA was that registration of manorial rights was significantly incomplete in terms of identifying the existence and location of lordship titles.'

The Land Registration Act 2002 made the preservation of manorial rights after midnight on 12 October 2013 dependent on registration. For lords of the manor who are owners of landed estates with lordship titles, or are owners of lordship titles without landed estates, the consequence has been that they cannot protect their interests unless they can show that the source of their rights is valid, their content identified and that the land said to be affected really is subject to them (see 'Title challenge' by Paul Stafford, *PLJ*262, 24 January 2011, p18). Details of how the registration process will operate were explained by the Land Registry in a Practice Guide of November 2008 (no 66), and it is clear from that explanation that the process may intensify conflict between lords of the manor and those whose land may be subject to their rights.

LRA and manors

The LRA significantly changed the position concerning registration of manorial rights. Before it came into force on 13 October 2003, registration of lordship titles, which carried those rights, was voluntary. The LRA prevented registration from the date of its commencement and categorised manorial rights as overriding interests, so that a purchaser of freehold or leasehold land takes subject to them even though they are not registered. But this will no longer be the case after midnight on 12 October 2013, when these rights will lose their overriding status (see ss11, 12, 29, 30, 117; para 11 Sch 1; para 11 Sch 3; r2 LRA 2002 (TP) (no 2) Order 2003). They will then need

to be noted on the register if they are to bind purchasers of the land. In March 2003, Land Registry Practice Guide 22 made three points in relation to these changing registration provisions. First, the owners of manorial rights have a duty to disclose those rights on all first registrations or dispositions of registered land. Second, such owners can apply for the existence of manorial rights to be noted on the register of a title that is subject to them (a subject title), and will have the burden of persuading the Land Registry that such rights exist. Third, if the land subject to the rights is not registered, then the rights can be protected by caution against first registration (para 4.3 'Manors' Land Registry Practice Guide 22 (March 2003)).

The LRA's revised system of title registration aims to make the register a complete and accurate reflection of the state of a title to a registered estate at any given time. The particular problem that the registration process poses for the owners of lordship titles appears to be as follows. The failure to have manorial rights noted on the register against a subject title before 13 October 2013 will leave those rights unprotected (and ineffective) in respect of that title if its owner later disposes of it without there being a notice in place. The notice does not guarantee that the lord's interest it protects is valid or that it even exists; it will only ensure that the priority of that interest will not be postponed on the registration of a subsequent registrable disposition for valuable consideration. A lord may still apply to register a notice against a subject title after 12 October 2013;

but from that date his interest will no longer be protected as an overriding interest and he will be at risk of his rights being postponed behind those of a registered disponee (para 4.1 'Overriding interests losing automatic protection in 2013' Land Registry Practice Guide 66 (Nov 2008)).

It is therefore incumbent on a lord who wishes to protect his interest in respect of a subject title to apply for a notice. The Land Registry does not have to inform the owner of the subject title before approving the lord's application; but it will always notify him once the application is completed (see para 4.5). The lord's application must be made with sufficient evidence to satisfy the registrar that the claim to manorial rights is valid (see para 4.6.2). However, once the owner becomes aware that manorial rights are noted on the register of his title, he may contest the existence or validity of such rights. If the Land Registry cannot resolve the contest, it may be referred either by the parties or by the Land Registry itself to a process of formal resolution by the Adjudicator to the Land Registry, or, alternatively, it may be referred by the parties to the court.

Content of manorial rights

The Land Registry explains that, for the purpose of the LRA, the term 'manorial rights', which will lose their overriding status after 12 October 2013, has a precise meaning. The rights in question were listed in detail at paras 5 and 6 of Schedule 12 to the Law of Property Act 1922. These were rights preserved by the 1922 Act in respect of former copyhold land and include: the lord of the manor's rights to mines and minerals; his sporting rights; his rights to hold markets and fairs; and the lord's or tenant's liability for the construction and upkeep of dykes, ditches, canals and other works.

Manorial rights and manorial waste

Are the lord's rights to or in manorial waste included within the term 'manorial rights'? The rights listed in Schedule 12 to the LPA 1922 were all rights that had previously existed in copyhold land enfranchised by virtue of the 1922 Act: since waste was not copyhold land, it seems unlikely that a right to or in waste would be amongst those manorial rights to lose their overriding status after 12 October 2013.

In principle, waste, like other land, will either be registered at the Land Registry or unregistered. If registered, and with the lord as owner, the land may be used as the lord wishes subject to third-party rights. If registered, but with someone else as owner, the position would appear to be the same as with copyhold land enfranchised in 1926, ie manorial rights will need noting on the register if the lord's interest is to be protected. With unregistered land there are two possibilities: either the lord may claim the land in right of his lordship and seek first registration; or he may enter a caution against first registration. If the claim fails, or if the caution is entered without reasonable cause, the lord may be liable for damages or costs or both.

What land is affected?

The position before the LRA was that registration of manorial rights was

failed to do so. The introduction of the notice procedure in relation to subject titles was clearly intended to identify all land affected by manorial rights. The Land Registry advises that to establish the validity of a claim for the purpose of the notice the lord will normally need to adduce evidence under each of four heads:

- 1) Evidence that the land in question was previously copyhold of the manor (usually by producing a copy of the deed of enfranchisement or compensation agreement).
- 2) Evidence that it was the custom of the manor in question that the lord had the rights claimed, for example by evidence from the court rolls.
- 3) Evidence that the rights in question survived enfranchisement (usually by producing a copy of the deed of

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significantly incomplete in terms of identifying the existence and location of lordship titles, as well as in terms of identifying the land, in subject titles, which was affected by those rights. Registration of lordship titles was always voluntary and most title owners did not seek to register their title. Where titles were registered, the Land Registry kept an index of them; each registered title has an individual register containing the name and address of the current proprietor. However, as the Land Registry explains, 'because of their nature, lordship titles do not have title plans and we do not hold any definitive record of the extent of the original manor' (para 2.1 Land Registry Practice Guide 22 (March 2003)).

The LRA attempted to clarify this situation. The owners of lordship titles were encouraged to register those titles before 13 October 2003, when the Act came into force, in the knowledge that subsequent registration would be impossible. They were also encouraged thereafter to identify subject titles in the knowledge that their rights could, and probably would, be rendered ineffective (and ultimately extinguished) if they

enfranchisement or compensation agreement).

- 4) Evidence of the lord's title to the particular manorial rights claimed (usually consisting of an abstract or epitome of title showing the lord's title to the lordship of the manor and that the rights have not been severed from the lordship) (para 4.6.3.2 Land Registry Practice Guide 66 (Nov 2008)).

These requirements are stringent and they will involve providing documents from the period 1922-26 for heads (1) and (3), and from earlier centuries in relation to heads (2) and (4). In some, or perhaps many cases, not all of these documents will be readily available. It will then be a matter for historical research to locate them (in private, local or national archives), or to provide the best evidence possible. For lords who want to protect not only their title but also their rights, it is necessary to follow the notice procedure and, where appropriate, the caution procedure. This may be difficult and expensive but there is little time to lose. ■