

the briefing

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A FIELD FOR GRAZING OR A MINEFIELD?

I have always shared the view of Ian Fleming that, a horse is dangerous at both ends and uncomfortable in the middle. Perhaps that should be amended to “expensive in the middle” as they have a voracious appetite and need for grazing land. However, with a pony-mad daughter I became cautiously involved in helping her keep horses and then, inevitably and more comfortably, advising clients on equine matters and Grazing Agreements.

When letting land for grazing for horses a decision needs to be made as to whether a horse owner is given an exclusive right to the land under a Grazing Tenancy or, when a Landowner allows horses of other owners to graze the land, then a Profit of Pasturage Agreement is recommended.

When an exclusive right to graze is granted care needs to be taken as to the form of the Tenancy Agreement, which will depend on the terms of the tenancy, the nature of the use of the land and whether the land is let to an individual or a business. There are three types of tenancy:

- Common Law Tenancy
- Farm Business Tenancy under the Agricultural Tenancies Act 1995
- Business Tenancy under the Landlord and Tenant Act 1954

These three types of tenancy are crucial for the Landowner to be able to recover possession of the land. A Common Law Tenancy (known as a Grazing Agreement) is for grazing for purely private or recreational purposes. It must be for private use by an individual and not a Club nor for a business or trade and the Agreement should prohibit such use.

Where land is just let for grazing but this is done in connection with a trade or business then a Farm Business Tenancy will be required, even if the trade or business is non-agricultural, provided that the non-agricultural use is not on the land. It is therefore important to restrict the use of the land to grazing only.

However, where the land is let for grazing and it is also used for a non-agricultural purpose, in connection with a business, such as for the training or exercising of horses or the land is used for a commercial Riding School, then this will need to be a Business Tenancy. A Business Tenancy can



confer a greater degree of security of tenure (unlike a Farm Business Tenancy) on the tenant.

Finally, there may be occasions where a Landowner may allow horses of one or more owners to share the grazing on the land. There can be no tenancy of the land since no one person has exclusive possession of the land. This would need a Profit of Pasturage – Non Exclusive Grazing Agreement. Under this Agreement one or more graziers are given a right of pasture for a fixed term but the Land Owner is still regarded as being in possession of the land and having the land “at his disposal” and to be responsible for keeping the land in good agricultural and environmental condition by observing the cross-compliance obligations under the BPS Scheme.

The above letting arrangements should be distinguished from Contracts of Agistment whereby a Land Owner takes in another’s animals to graze or for pasturage but for payment. No tenancy is created. The Land Owner or “Agister” is obliged to take reasonable care of the animals and to supply them with food and water. However, sometimes the Agister could be a tenant of the land but that is another story!

In essence therefore, the letting of land for grazing can be a legal minefield. Please do not hesitate to contact me with any query relating to this article, I feel with my own experience there’s a lot riding on it!

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