

**Chapter 10****Acquisition and Financing of Coal Reserves**

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**§ 10.01. Introduction: Coal Reserves Are Real Estate.**

Coal rights are real estate interests which “are attended by all the attributes and incidents peculiar to the ownership of land or real estate.”<sup>1</sup> Thus, many of the transactional practices and legal requirements associated with acquisition and financing of coal rights are much the same as those applicable to other commercial real estate transactions. However, they are not identical. “Mining agreements and leases ‘form a distinct class of instruments, creating special and peculiar legal rights and relations and requiring special rules of interpretation . . . .’ ”<sup>2</sup>

Coal reserves are areas where a number of tracts of coal have been assembled. These areas are generally large enough to support the operation of at least one coal mine.

**§ 10.02. Coal Reserves as Distinct from Other Real Estate.**

While the legal requirements pertaining to coal reserves are occasionally different from ordinary commercial real estate,<sup>3</sup> it is the transactional practices that are most distinct. These transactional distinctions arise from the fundamental differences between the coal industry and other commercial real estate holders. Understanding these differences is critical to the proper structuring of a coal reserve transaction. Coal reserves have an extraction value – the value of extracted coal after conversion to personal property – much higher than their value as real estate. Reserves often contain a very large number of tracts of land and consist of an extraordinary variety of real property interests. Title standards for coal reserves differ from ordinary real

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<sup>1</sup> Ill. Law and Prac., Mining, Oil and Gas, §7, 2008 *citing* Failoni v. Chicago & N.W. Ry. Co., 195 N.E.2d 619 (1964). *See also* Williams’ Administrator v. Union Bank & Trust Co., 143 S.W.2d. 297 (Ky. 1940), stating “It has long been the law of this State that minerals in place are real estate . . . .”

<sup>2</sup> American Law of Mining §130, Judicial Interpretation of Mining Agreements, quoting Fremont Lumber v. Starrell Petroleum Co., 364 P.2d 773 (Or. 1961).

<sup>3</sup> *See* § 10.09[1] *infra* regarding special Uniform Commercial Code provisions regarding creation and perfection of “as- extracted collateral,” including coal.