

Chapter 16

Restraints on Alienation in Coal Leases

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§ 16.01. **Introduction.**²

Coal leases are the lifeblood of coal producers, for without access to property – and hence reserves – there could be no mining. In most instances, it is not practical for mining companies to acquire all the property they intend to mine. Consequently, companies turn to landowners to obtain authorization to mine the owner’s property.

Understandably, certain landowners have reservations about the mining of their coal (or the surface estate overlying the coal). Perhaps the most common concern is the identity of the company performing the mining operations. Not surprisingly, some operators are better known, better capitalized, and more reputable than others. If the identity of the mining company is important to a landowner, it has an incentive to limit the parties who are authorized to mine by including a provision in a lease that prohibits

² Legal analyses or conclusions set forth herein are solely attributable to the authors as individuals and are not necessarily the same analyses or conclusions of Rhino Resource Partners, LP. The authors would like to express their gratitude to Jessica Harvey, summer associate, Wyatt, Tarrant & Combs, LLP, for her help in researching this chapter.

the assignment or other transfer of the leasehold estate. Such a provision creates restraint on alienation of the coal lease.

Coal leases are of many different vintages. Consequently, the rights the lessee has to transfer the leasehold estate may be critical when a lessee desires to transfer the lease to another party. Whether the landowner's consent is required before operations may be performed by an operator not an original party to the lease becomes among the most important considerations in transactions involving the sale or other transfer of leased properties.

§ 16.02. Background on Restraints on Alienation.

[1] — A Brief History on the Policy Favoring Alienation.

At the very root of American property law is the concept of alienation, or the right of an owner of property to freely transfer real property. Some of the earliest cases in American jurisprudence support this notion: "It is a first principle of the law, that he who has a right to property, has the right to dispose of it, whether by grant or devise, as he may deem proper . . ."³ The importance of the ability of property owners to freely alienate property was perhaps described best by the Pennsylvania Court of Common Pleas in *B. C. & H. Corp. v. Acme Markets, Inc.*,⁴ wherein the court noted that "[o]ur society, built as it is upon the private ownership of property, prizes as a basic right and social value the freedom to transfer private property without restriction."

American courts universally recognize that restraints on alienation of real property are disfavored in law,⁵ and this modern-day policy can be traced to the early English common law.⁶ In eleventh-century England, real property was held under the feudal system, in which the Crown was

³ *Barnard's Lessee v. Bailey*, 2 Harr. 56 (Del. Super. Ct. 1836).

⁴ *B. C. & H. Corp. v. Acme Markets, Inc.*, 19 Pa. D. & C.3d 419, 428 (Pa. Com. Pl. 1980).

⁵ *See, e.g., United States v. Evans*, 844 F.2d 36, 42 (2d Cir. 1988) ("Property law disfavors restraints on alienation and dead-hand control by prior owners.").

⁶ For an in-depth discussion of the evolution of the modern-day policy, *see* Martha Wach, "Withholding Consent to Alienate: If Your Landlord Is in a Bad Mood, Can He Prevent You from Alienating Your Lease?" 43 *Duke L.J.* 671, 674-76 (1993). *See also* Thomas E. Meng, "Limitations on the Right to Transfer Mineral Leases," 9 *E. Min. L. Inst.* 12-1, 12-2 (1988).