



Cooperative Extension Program

An Outreach Education Program Serving Limited Resource Individuals, Small Farmers, Families, and Communities



Mineral and Air Rights

Alvin Wade, Associate Professor

Real property rights are not limited to the surface of the earth; they also include the space above the earth's surface (air rights) and the space below it (mineral rights).

Originally, a landowner's real property interests were conceptualized as pie-shaped, beginning at the earth's center and extending through the surface boundaries indefinitely into outer space. In modern thought, the property rights associated with the surface of the land, minerals that exist under the land and airspace above the land are often separated among several owners. Similarly, the rights to water that may flow over the land or adjacent to the land are sometimes considered separately from the land itself.

Today, ownership of airspace is limited to a reasonable distance above the earth's surface. Obviously, an airplane flying over a property at an altitude of several thousand feet rarely interferes with the owner's use or enjoyment of the land. But when aircraft fly so low that a reasonable use of the land is prevented (for example, near a lengthened airport runway), the owner of the land may be entitled to compensation.

Mineral rights and air rights may be owned by someone other than the owner of the surface. It is common, for example, for a surface owner to sell to a third party the rights to any oil, gas, coal, and other minerals that may be located below the surface. The air rights, likewise, may be transferred to persons other than the owner of the surface. For example, office buildings and park-

ing decks have been constructed over the tracks of railroads, with the owners of the buildings and decks owning only the air rights.

A developing area of real estate law concerns a landowner's right to sunlight. This right has become especially important to those who depend on solar energy. People have questioned the legality of building a tall structure on a lot if that building will partially or totally block the adjoining landowner's use of sunlight. This matter is currently unresolved and, in many jurisdictions, undoubtedly will be the subject of future litigation and legislative attention.

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This *Community Resource Development* Fact Sheet is part of a series prepared by the Cooperative Extension Program at Tennessee State University.

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