

Fee Simple (freehold) Title

Technically the term freehold land refers to land free of any encumbrances such as mortgages. However common usage over time now means that Fee Simple and freehold are terms which are used interchangeably.

The concept of freehold land (estate in fee simple) has its origins dating back to feudal times. Fee Simple is considered to vest in the private citizen the greatest group of rights in the use, enjoyment and alienation (i.e. the power to dispose) of the land allowed by law. In other words it is the highest form of personal ownership of land allowed under the New Zealand legal system.



Fee simple ownership has many practical advantages. Provided it is permitted by the Local Authority by way of the district plan, homeowners have the autonomy to make extensions and/or additions to their dwellings without changes to the title, and without the consent of neighbours. These activities are a particular problem with other title types.

Fee Simple owners can also bind subsequent owners of a property through registering positive or restrictive covenants upon the certificate of title. For example an owner might sell off part of a property but place a restriction on the incoming owner and subsequent owners to preserve a view by limiting the height or location of any new dwelling to be built on the alienated land.

New Zealand's Land Registration System

Land ownership in New Zealand is based on the 'Torrens System' of land registration. The system was first developed in South Australia by R. Torrens in 1858. It was introduced to New Zealand in 1860. The Deeds System and Torrens System of land registration ran concurrently from 1860 until all land dealings finally came under the current system by authority of the Land Transfer Act 1952.

The Torrens system provides a public register recording all material facts relative to the title. Once as registration is accepted the state guarantees what is called an 'indefeasible' title.

The major advantage of the system is that anybody dealing with land in New Zealand is saved the effort of investigating back to the root of the title, and is able to rely on the details on the face of the register.

This is a distinct advantage over the old Deeds System, which is still in use in the US, UK and elsewhere. Under the Deeds System you could lose your land rights if somebody popped out of the woodwork with a valid claim of prior ownership. Thus dealing with land transfer under the Deeds system is a much lengthier and expensive process where it is incumbent on the lawyer acting on behalf of the purchaser to research the deeds and various previous transfers and interests, to ensure the above does not occur.

Limitations to Indefeasibility of Title

Where a title has written on it 'Limited as to Parcels' or 'Limited as to Title' or both, it means that when the land was brought into the system under the Land Transfer Act 1952, the Land Registrar was not satisfied with some aspect of the transfer.

Limited as to Parcels means that an aspect such as the physical coordinates, area or boundaries of the land were uncertain and therefore not fully guaranteed. Usually this limitation can be removed upon completion of a resurvey.

Limited as to Title means that the proprietor's ownership is not guaranteed. This arises when the Land Registrar was not satisfied that the proprietor was in possession of the land when it was brought under the Land Transfer Act 1952. This limitation can be removed with the surrender of all outstanding instruments affecting the title together with a statutory declaration of ownership.

When the above limitations have been removed then a fully guaranteed 'indefeasible' title can be issued.

Doctrine of Eminent Domain

The crown retains the Allodial Estate or absolute ownership of all land to which the ownership rights of individual citizens are subservient. This Allodial Estate is expressed by the Crown's power to resume privately owned land under the Doctrine of Eminent Domain. The Crown sometimes exercises this right under the Public Works Act where privately owned land is taken for public uses, although unlike in feudal times, fair compensation is now paid and they rarely burn villages or make off with the livestock to speed up the process.

Co-Ownership (tenants in common & joint tenancies)

There are two main forms of co-ownership being (i) joint tenancies and (ii) tenancies in common. In neither case does the tenant have an exclusive claim to any specific part of the land owned in common, although this has been somewhat modified in practice in cross lease developments where the land used exclusively by one owner is delineated on the flats plan with the lease stating the occupation rights.

(i) Joint Tenancies

These are between statutorily related parties, for example a married couple. The main feature that defines a Joint Tenancy is the right of survivorship. Upon the death of a joint tenant, the joint tenant's shares devolve to the survivor. If during his/her life a joint tenant disposes of his or her interests to another person then that person receiving a share of the land becomes a Tenant in Common with the other joint tenants.

(ii) Tenants in Common

Tenants in common hold the land concurrently with other owners and have an undivided but defined share. The tenant in common can deal with his/her interests separately by disposing of it by will after death or by transfer when alive.

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