

Leasehold Land

A leasehold interest vests in the lessee certain occupation rights in land for a defined period of time. The rights are created by contract between the owner of the land (lessor) and the occupier (lessee).

Remember if you purchase a dwelling or commercial building located on a piece of leasehold land – you **DO NOT OWN** the land component.

Perpetually Renewable Leases

These are commonly found with some of the older residential leasehold arrangements. They are often referred to as ‘Glasgow leases’. They are typically renewed either every 7, 14 or 21 years, depending on what is specified in the contract. They may be renewed indefinitely, as long as the lessee adheres to his or her part of the contract.

Typically the ‘ground rent’ is renegotiated at renewal date. The most common way to establish the new rental figure is to link it to the land value. This percentage of land value is sometimes defined in the contract and other times it is not. In the latter instance rents are renegotiated at a rate dictated by the market.

It is considered that the lessee in a perpetually renewable situation has a saleable interest in the land. This can be calculated mathematically. Refer to the Leasehold Interest Calculator. [Lessees Interest Calculator](#)

WARNING: some new apartments are now being established with ground rents in place. If you buy into one of these, always ensure that future rental increases are defined by formula in the leasing agreement, otherwise you could be in for an unpleasant surprise.

Terminating Leases

These ground leases have a defined termination date, at which time the lessee is required to vacate the site. Whether the lessee can remove the buildings at that time will depend on the terms contained in the lease agreement.

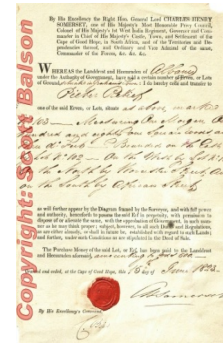
All Maori ground leases (including pastoral leases) have been transformed from perpetually renewable arrangements and all are now terminating leases.

Terminating Lessees Interest

Remember at the termination of the lease, you have no further occupancy rights. The value therefore will depend on whether you can legally and physically recover any of the assets attached to the land. Some buildings might be of a nature where they cannot be transported, while others can be relocated.

A terminating lessee’s interest would have an interest similar to the present value calculation above (without the interest in the right of renewal).

However the value of any buildings would need to be discounted back depending on what can be recovered at lease end.



The values of property on terminating leases reduce substantially as lease end approaches.

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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