Cross-Lease Guide

Cross-leases – what are they and what implications do they have?

Historically, cross-leases were a popular form of dividing land for landowners because they could avoid certain subdivision restrictions and gain similar results to a formal subdivision, but at a fraction of the price.

However, when the Resource Management Act 1991 was introduced, it made significant changes to the existing subdivision laws and practices, which meant that cross-leased properties were deemed to be a subdivision and were no longer a way to avoid subdivision requirements and costs for landowners. As such, we are seeing the slow sifting out of cross-lease properties across New Zealand in favour of fee-simple titles where possible.

What is a Cross-Lease?

A cross-lease is where multiple individuals own an undivided share of land and a lease for part of the land/buildings. For example, if the property is divided into three separate segments, the owners will usually own an undivided 1/3 share in the land. Each owner of the land may then erect a building on their allocated segment of the land. This building will then be leased back to them (often for a term of 999 years) and recorded on the certificate of title.

The leases that are created for the owners will record a right of exclusive use and enjoyment for each building and often the associated yard. This affords the owners of the relevant building under the lease the right of exclusive use of that segment of land and the building without interference from the other owners.

Along with these rights of exclusive use, the lease specifies rights and responsibilities in respect of common areas (such as driveways, shared lawns or parking spaces) which apply to all owners.

Unlike a fee-simple property, how you maintain and develop a cross-lease property is restricted and connected to the rights of the other owners. The level of restrictions can vary depending on the lease and/or any variations made to it. A common example of the restrictions other leasehold owners can impose are limitations on alterations to the external dimensions of the dwellings or structures on the property.

Therefore, you must seek written agreement from all other leasehold owners before carrying out work that changes the outline of your building.

If you own a cross-lease property, it is beneficial to maintain a good relationship with the other cross-lease owners, as there is no guarantee their permission will be given freely to any proposed work.

Buying a cross-lease

When buying a cross-lease property, you need to weigh up the limitations of the lease against your intended use and/or development of the property and buildings to ensure you can fulfil these obligations.

With a cross-lease property, it is also important to clarify the boundaries for the exclusive use and common areas on the property. While most exclusive use and common areas are well marked on the flat plan and by fences or grass/concrete, some properties are not so clear, or all grounds/yards are shared, which can be the cause of disputes between owners.

Selling a cross-lease

If you are selling your cross-lease property, you should be aware that if the dimensions of the dwellings on the property do not accurately reflect those recorded on the flat plan attached to the title, a purchaser can raise an objection. This is called 'requisitioning the title'. If you do not agree to amend the title, the purchaser has the right to cancel the sale and purchase agreement.

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What is a Cross-Lease? *A layperson's guide – you may wish to seek legal advice*

A cross-lease is a well-established method of having two or more homes or flats on one piece of land. It is said that cross-leasing was originally a means of circumventing the minimum section sizes allowed when subdividing land and reducing high service costs and set-up charges. It has since become a common form of land use in New Zealand and all lawyers are regularly dealing with the conveyancing of such properties.

The land is Freehold and shared. The buildings are Leased to each other (hence 'cross-lease'). The size of the land and the set-out of the buildings will be shown on the Flats Plan attached to the title.

Some people worry about the use of the word 'lease', believing it denotes a lack of ownership, but you can be reassured it is a standard property arrangement that your lawyer will be able to explain clearly to you.

A cross-leasing estate allows two or more people to own a share in freehold land. This share is usually expressed as an undivided ½ share (two sites) or 1/3 share (three sites). The land is not always exactly and evenly divided into two or three areas, hence the expression 'undivided share' (e.g. one share may be 350 m2, the other 300 m2). The buildings are leased. The buildings are owned by the lessees who each join in the long-term leasing of one unit to each other. If, say, there are three buildings, each owner cross-leases with the other two.

As an example, imagine a collection of two flats. The owner of each will have an undivided ½ share in the land (freehold) and a leasehold of one dwelling. Each owner leases their flat to the other for a long period (usually 999 years).

All the owners in a cross-lease arrangement hold a separate certificate of title.

Owners of the units are bound by the terms and covenants contained in the deed (or Memorandum of Lease (MOL)). These terms and covenants will be explained clearly to you by your solicitor.

Each owner is allowed free use of their part of the grounds (e.g. their own back and front yard) by way of restrictive covenants on the lease. Common land (e.g. a driveway) is enjoyed on an equal rights basis and is also clearly shown on the title.

There are some restrictions; owners cannot change the external shape of their building (i.e. extend it) or add buildings, swimming pools etc. without the approval of the other owner(s) and the local Council. If those changes are approved and made, they must be recorded on the Flats Plan attached to the title. Alterations and other improvements don't occur very often as the smaller land size does not lend itself to being altered or added to.

Sometimes extra buildings are added and the Flats Plan is not updated. Many owners elect not to update the Flats Plan as there is a cost involved but, in this event, a special clause should be written in any Sale and Purchase Agreement.