

## What is Leasehold Land Tenure?

You can get the legal description from the legal beagles, but here's what it means as far as buying (or selling) real estate in Hawai'i.

Way back after World War II, there was an influx of new residents wanting to live in Hawai'i. At the time there were still only a few major landowners in the Islands and not many homes available. The landowners wanted to develop their holdings and build homes for those returning to make Hawai'i the destination and strategic key to the Pacific that it is today. (I can tell you a funny about one landowner. All his relatives were lawyers and business owners downtown, and thought he was nuts to take his ranch land and put it into developments, as "there's no future in real estate development"...well, look who's family is worth millions upon millions today!! You gotta know your market!)

So they developed the properties, built houses on the land, sold the houses and leased the land under the houses for a monthly rent for periods of up to fifty years or so. Time passed and many of these landowners became paper rich and cash poor as the value of their lands soared with the development of the modern Islands, and the corresponding increase in value of every square inch of land (for you Econ 101 students, land in Hawai'i equals finite supply).

Time passed and some of the leases were coming to an end. There is a renegotiation period before the end of the lease to set terms and conditions of the new lease. In some cases, the landowner did not wish to continue leasing the land as redevelopment would be more profitable, or the new lease amount and terms were not to the lessees' liking. Either way, if the lease is terminated, the land and "all improvements thereon" revert to the landowner. "All improvements thereon" means your house and or condominium building, pools, special trees – anything put on or in that land.

Well people were losing their homes. Our society still has roots in the plantation system, so our lawmakers are prone to step in when the workers need protection. So various processes occurred and a new law was passed allowing condemnation of single family leasehold land and forcing the landowners to sell the land in fee simple (you own the land). Some landowners fought the conversion and some started offering the fee under their terms rather than being forced to do so by the courts. Some lessees could not afford the price but most over the next few years did purchase their fee. There are some leasehold single family properties in the islands but they are now the exception and not the rule as it was back in the 60s and 70s.

Now, what wasn't included was condominium leaseholds. As the value (and corresponding prices) of single family homes increased, more and more bought smaller condominiums, waited their three to five years and sold them to move up to the next property. Problem is, now many of those condominiums are like single family homes were thirty years ago. The leases are held by large (ok, sometimes small or individual) landowner trusts who either need to renegotiate the leases to current (very much higher) values or the property location is such that redevelopment is going to bring much more to the bottom line. Needless to say, this issue is in the legislature's hands and a condo condemnation package almost passed last year. It will pass in some form soon, but who knows when for sure.

Not only are the leases beginning to expire or reach their renegotiation dates, but the buildings are older also and have needed upgrades and other issues which translates into a need for higher fees to cover upcoming maintenance and repairs (that's a whole other article about the laws to protect you from inadequate reserves). The actual cost of purchasing a leasehold condominium can be more than if you purchased a like unit in fee, as you are receiving diminishing equity as the lease moves towards expiration.

So what does that mean to you who are interested in real estate in Hawaii?

1. If the lease has less than thirty-five years remaining, you will not be able to get a conventional 30 year mortgage. In addition, there are restrictions on loans and terms depending on type and size of the unit, lease terms, and any additional landowner conditions.
2. There is no guarantee that the lease will be renegotiated nor what the new lease amount will be. Some newer leases have step up amounts defined in the renegotiation process; some do not.
3. It may be cheaper up front, but more expensive in the long run as you are basically paying the landowner to build his equity not yours. If the cost of your mortgage less the tax benefits and plus the lease payments are less than what you would pay for rent, then this scenario might work for you.

My advice? If you are the average home buyer coming to Hawai'i, don't do it. Even buying the fee simultaneously when you purchase the home can cost you. That's what the FA means in listings – fee available for purchase. It is two escrows and two title fees, and usually two loans all with separate fees and very tricky as involves a third party and their lawyers in the transaction. If you're lucky and the condo conversion law passes in the near future, you'd still have to come up with the additional funds to buy the fee. And you're already in a new mortgage. And the mortgage market is tightening as we speak. (That's another article too.)

Solutions for you? Work with a qualified realtor to find fee simple property that will build equity and meet your needs. Get pre-qualified with a local lender. Local lenders understand our unique market and land laws. They can both tell you what you have to work with now and what you need to do to prepare to purchase a home in Hawai'i. Be flexible and willing to buy smaller, hold and build equity for three to five years, and then buy up.

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