

## Buying a Leasehold property in BC



Leasehold denotes a fixed term of occupancy (i.e. 60 years in False Creek or 99 years at UBC or SFU) with no ownership of the land, while freehold denotes perpetual occupancy and ownership of the land.

Leasehold properties in BC break down in to several categories:

1. **Private:** freehold is owned by an individual or private company.
  - a. Lease is filed in the BC land titles registry;
  - b. Transfer is by assignment of lease;
  - c. Usually requires consent of the landlord;
2. **Public:** freehold is owned by a city, province or other government institution such as a university.
  - a. Lease is filed in the BC land titles registry;
  - b. Transfer is by assignment of lease;
  - c. May require consent of the landlord;
3. **First Nations:** freehold is usually owned by the Federal Crown, but the right to occupy and lease to third parties have been transferred to various bands.
  - a. Lease is filed in the BC land titles registry OR
  - b. Filed in the First Nations Land Registry in Ottawa (FNLR) OR
  - c. Filed in both registries;
  - d. Requires consent from the landlord;
  - e. Usually attract Property Transfer Tax (either from the BC government or the band, pursuant to their land code)
  - f. Need to use the First Nations CBA/REABC contract of purchase and sale as closing can be complicated when FNLR is involved;
  - g. Contact the band office for their assignment protocol which will be band specific;
  - h. Title insurance is suggested on all FN lease assignments;

These can be further broken down into:

1. **Prepaid:** the “base rent” to the developer or owner has been prepaid to the end of the term. Monthly fees for maintenance are payable (akin to strata fees).
2. **Non-prepaid:** the base rent is set for fixed periods (i.e. 10 or 20 years) and renewed at those junctures. Monthly fees for maintenance are also payable.

Need an estoppel certificate from the landlord (or band on First Nations land) to confirm pre-paid status and good standing of lease. This document is usually provided for in the lease.

Renewal options and/or buyout options are also provided for in the lease, so it's always advisable to review it prior to making an offer (or at least as a subject condition to one).

Leasehold properties are inferior investments to freehold in the long run, as at the end of the lease, the leasehold owner's investment is either nil or very minor (in some cases he may own an interest in the depreciated building), whereas the increased value is always in the land. In the odd case where the lease is further renewed, the leasehold owner has to re-buy the new term at the current market value. Usually there is no guarantee that the lease will be renewed or that the term of such renewal will be substantial. Leasehold properties are theoretically discounted to freehold when they are first sold for these reasons, although in our experience the prices of newer freehold properties are fairly comparable to freehold.

Some lenders will not finance leasehold or FN leasehold properties, although that could change as more FN leasehold properties come to market (i.e. Tsawwassen Shores or the proposed 11,000 unit development near the Burrard St. Bridge.)

Always approach a leasehold property with some caution, as the transaction is more complex than that of a freehold purchase.

Questions? Call Kenneth Pazder or Melissa Valana at PAZDER LAW CORPORATION anytime for a free consultation.



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