

Cross Leases

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If you are contemplating dividing up your large property, cross-leasing is one of the two principal alternatives available to formal subdivision.

The cross-leasing of the site creates two legal estates whereby multiple owners own the freehold land undivided in common with each other and lease the buildings on it, or to be erected, to each other. The covenants in the lease typically give each owner the exclusive use of a flat and a defined area of the land. There is usually provision for the use and maintenance of any common areas created.

Cross-leasing was originally devised to avoid the subdivisional restrictions of the Municipal Corporations Act 1954. The Resource Management Act 1991 did away with the subdivisional distinction between cross-leases and other subdivisions.

There are still some advantages in carrying out cross-lease development:

- There is no need for the creation and service of mutual rights of way by easement between cross-lease owners;
- They can sometimes provide the opportunity for a greater density development and hence lower land cost for each unit developed;
- Some local authorities offer advantages in the assessment of the financial contributions for cross-leases;
- The survey definition required on a flats plan is not as great as for a subdivision and survey costs may be less.

There are, however, several disadvantages:

- There can be delays in the issue of composite certificates of title as surveys cannot be completed until building construction is well advanced;
- There can be delays in obtaining local authority approval and issuing of the required certificates under the Resource Management Act, particularly when an older existing building is on the site;
- There can be security documentation which needs to be replaced;
- Any changes to the exterior dimensions of buildings require a new flats plan and /or cross lease variation;
- A flats plan can only be changed if all the owners and their mortgagees consent to such variation. Often this can be a time consuming and expensive exercise;
- Failure to keep the flats plan in line with "as built" dimensions can lead to sale difficulties;

- Problems can arise in completing staged development cross-leases when third parties are required but fail to co-operate as part owners of the freehold estate i.e. as co-lessors.

If you are considering cross-leasing or purchasing a cross-lease property you should get legal advice at an early stage. Please contact Michael Hofmann-Body.