

The Long Term Lease

Applicable on the Waterfall Country Estate & Village

General

The company called the Waterfall Country Estate Wuqf (Proprietary) Limited owns the land on which the Waterfall Country Lifestyle Estate & Village reside. For residents on the new estates, the ownership structure is based on a long term lease rather than full title, sectional title or fractional title etc. Purchasers are thus buying limited right to the land and have the right to occupy the stand as per the lease agreement for the period prescribed in the agreement (ie. 99 years) and in perpetuity to extend the lease term. Although not a common form of asset ownership in South Africa until now, the long term lease is a viable and proven form of residential property ownership used throughout the world.

Nature and effect

The lease agreement is signed for a specified amount (ie. lease consideration) which is a once off payment from the lessee to the lessor for the right to occupy the land as per the agreement for a term of 99 years from the date of registration with the option to renew or extend the lease.

The lease is registered (in the office of the Registrar of Deeds in Pretoria) in the form of a notarial deed against the title of ownership by the lessor (the person letting the property) in favour of the lessee (the person to whom the property is let). This awards a great deal of protection for the lessee because he/she is ensured of a legal entitlement to enforce his undisturbed right of use and enjoyment over the property within the rules and regulations set by the home owners association.

Should the lease consideration payable to the lessor be financed, it can be done through a financial institution of the lessee's choice. To ensure the rights of the bank (as they are initially funding your purchase), as well as it's clients, are protected, we've consulted with the bank panel of South Africa and negotiated various conditions contained in the agreement.

Any permanent improvements to the land form part of the land and thus the lease agreement.

What happens when you want to sell the property? Like any asset, it can be exchanged for compensation. In this case, like any form of property, it's dictated by market value or what someone is prepared to pay for it on any given day. Whether with the assistance of an agent or privately done, once a price is negotiated (including the renewal fee of 3.5%) and paid to the seller, the purchaser (new lessee) takes registration of a new 99 year lease. On that transfer, the 3.5% is paid to the Lessor, being the Waterfall Country Estate Wuqf (Proprietary) Limited. The benefit of this arrangement is that transfer duty (between 5% & 8% as of 2010) is not applicable to the deal and thus allows a more favourable purchase price to be negotiated by both parties.

Hypothetical Scenarios

*Should the lessee sell the leasehold rights earlier than 3 years after the first registration of the lease agreement, the purchaser of the leasehold rights will not pay the renewal fee and will retain the balance of years remaining on the agreement? Example: I sell my property 2 years after the first registration; the buyer will not have to pay the 3.5% renewal fee and will be entitled to the remaining 97 years on the lease.

*Should the lessee leasehold rights after that initial 3 year period, the purchaser will take ownership of a 99 year lease. Example: I sell my property after 10 years, I will negotiate the selling price with the buyer to include the 3.5% renewal fee. The buyer will take ownership of the leasehold rights for a 99 year period.

*Should the leasehold rights be disposed of pursuant to a testamentary bequest ie. A will, the heir will take ownership of the leasehold rights without having to pay the renewal fee and will retain the balance of years remaining on the agreement. Example: I pass away after 30 years and the property is passed down to my son as per my will. He will not have to pay the 3.5% renewal fee and will be entitled to the remaining 69 years on the lease.

*The leasehold rights can be sold at any stage in the 99 year period but if the 99 year period comes to an end, the entity owning the leasehold rights will have to renew the lease by paying 3.5% of the fair value of the property and will be entitled to a lease for another 99 years. Example: I buy the leasehold rights in my family trust, after the property has been handed down through, let's say 3 generations, my great grandson owns the leasehold rights in 99 years time. He will have to renew the lease agreement with the lessor by paying 3.5% of the fair value of the property at the time and again extend the lease to another 99 years.

*No renewal fee is payable if the leasehold rights are transferred to a spouse in terms of an order of court in divorce proceedings. Example: I purchase the leasehold rights and live comfortably with my wife in the property for 10 years. We divorce and the court rules that the leasehold rights are to be transferred to my wife. The leasehold rights are transferred to her name without the 3.5% renewal fee being payable, she will be entitled to the remaining 89 years on the lease.

Please feel free to contact our knowledgeable Sales Consultants below if you have any queries.

Regards,

Century Property Developments