FREQUENTLY ASKED QUESTIONS IN RESPECT OF A LONG TERM LEASE OVER LAND OR BUILDING

|  |  |  |
| --- | --- | --- |
| No. | QUESTION | ANSWER |
|  | What is a Lease? | In general terms a lease is an instrument which forms a contractual agreement by which the legal and beneficial owner of the property or asset (the “Lessor”) vests the right or interest over that property/ asset in consideration of rent (for a specific period of time) or for a lease premium to the Lessee and is subject to the fulfillment of certain conditions contained in the Lease. |
|  | What is the difference between a lease agreement with a tenant and a long term lease? | A long term lease makes the lessee the true legal owner.  A lease to a tenant of the land for the lessee to use allows the lessee to enjoy exclusive use  for a specific number of years but the landowner/landlord is still the owner and they have not transferred the title or interest in that property to the tenant. The tenant simply leases the land for a specific period of time, in exchange for rent and adherence to the covenants and conditions provided and when the lease lapses, expires or is not renewed, the land reverts back to the landowner/landlord who can thereafter sublet to someone else. |
|  | What does it mean to have a long term lease over an Apartment or Land? | A long term lease over Land or an Apartment divests certain rights and benefits from the Lessor to the Lessee who holds the Lease such that the Lessee is entitled to the exclusive use and quiet enjoyment of the Land or Apartment for the term of the Lease.  The Lease (or sub-lease as it is sometimes referred in the case of Apartments) shall be a title over the Apartment and the ownership inures to the Lessee over the Apartment but not the Land over which the Apartment is erected or the common areas within the building.  By virtue of the registration of the Lease, the Lessee steps into the position of the Lessor and becomes the legal and beneficial owner of the Apartment.  Upon registration of a long term Lease over land, a Certificate of Title and Lease shall be issued to the Lessee and which title shall be indefeasible evidence of ownership. |
|  | What are the terms in a Lease? | Generally, the terms in a lease shall be as agreed between the parties. i.e. the Lessor and the Lessee as long as they are not inconsistent with the law.  Key terms may also include:   1. Description of the Property/ Asset 2. Duration of the Lease 3. Permitted User 4. Covenants 5. Rent/Service Charge payable 6. Forfeiture/ Renewal   Covenants and obligations to be honored by both the Lessor and Lessee and which are stipulated in the Lease, failure to which actions for breach may arise.  Some of the implied covenants are also guided by the Land Act No. 6 of 2012. |
|  | Must a long term lease be registered? | Long term leases must be registered in order to give them validity and give effect to the transfer of Title from the Lessor to the Lessee. |
|  | Does the Lease over land include the buildings erected on it? | The basic principle is any transfer by virtue of a Lease over the land also includes any and all buildings, fittings, fixtures on the land. This means a person purchasing the Leasehold interest over the land, ownership of the building thereon shall vest in the owner as well unless there is an agreement to the contrary. |