

THE BARE FACTS



The pros and cons of Leasehold

JIMMY HAOUA, PARTNER AT BIN SHABIB & ASSOCIATES, THE LAW FIRM

The Dubai Government's Law No. 7 of 2006 sheds some light on foreign ownership of properties in the UAE. It has made reference to freehold and leasehold rights.

Leasehold is defined as 'the right to hold or use property for a fixed period of time in consideration for a lump sum price without the right to transfer such rights or indeed the ownership of the property'. In other words, leasehold rights give one a right of use only and not an ownership right.

The tenant of the property usually owns everything within the four walls, from the floorboards to the ceiling. The structure, the external walls, the common parts of the building and the land it stands on are owned by the developer.

The leasehold contract sets out the obligations of the two parties - what the tenant is contracted to do, and what the developer is bound to do. The tenant's obligations include payment of the costs of maintaining the building.

Leaseholders are not entirely free to do whatever they want with the property

The contract will probably place certain conditions on the use and occupation of the property. The landlord will usually be required to manage and maintain the structure and common areas of the property and to collect contributions from all the tenants.

The wording in a leasehold contract is legal jargon language and can vary from developer to developer. It is advisable for leaseholders to get legal advice before signing a leasehold contract to make sure that the rights and obligations provided in the lease are acceptable. It will be difficult to change the conditions after the property is bought.

The disadvantage of leasehold contracts is the limited freedom. Leaseholders are not entirely free to do whatever they want with the property.

Certain things cannot be done without the landlord's consent, for example,

making alterations or to sub-let. The tenant is expected to adhere to the common rules like keeping the inside of the property in good condition, paying the costs of maintaining the building, behaving in a neighbourly manner, etc.

Another hot topic is the service charge. What can (and cannot) be charged by the landlord? Who will control any dispute? These are some of the many points that the expected bylaws should clear.

The advantages of the leasehold is the right of peaceful occupation of the property for the term of the lease; ensuring all leaseholders comply with the rules; centralised maintenance and repairing the building and managing the common parts (the entrance hall, lifts, and staircases, repairs, insurance of the building, lighting and cleaning of common areas, etc).

Another advantage is that, depending on the bylaws, you may have the right to be consulted on major works or on long-term agreements before being done. The bylaws are expected to clear out many uncertain points like what are the leaseholders' rights and who will uphold it for them.

They are expected to solve matters such as what happens if the leaseholder does not pay, or challenge, the service charges. It should also explain the right to organise a tenant's committee to manage the building and the right of first refusal (in case the landlord wants to sell his interest in the building, he must offer it first to the tenants). In other jurisdictions there are special tribunals to hear such claims and disputes.

A buyer should ask himself if he should buy a property on leasehold or freehold basis. The answer is not simple. Some real estate areas can only be acquired on the basis of leasehold.

Although freehold is seen as a 'higher' status than leasehold, this should not be a concern as long as you know and appreciate your rights and obligations. With a well-written leasehold contract and a properly managed building, a leasehold property should provide a perfectly good home and a secure investment that matches - or surpasses - the freehold property.