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## **Life Lease (A form of Home Ownership)**

**By Ronald Crane**

You may have heard about a form of home ownership described as a life lease. The documents creating the life lease arrangement may be not be labeled as a “Life Lease”, but may be called a “Right to Occupy” or “Equity Agreement”. The important issues are not the labels that attach to this form of property ownership so much as the rights and responsibilities that go with the arrangement. You may also be interested to know, while life leases are relatively new in North America, the purchase of a long term right to occupy has been used as a form of ownership in Europe for hundreds of years.

For the purposes of this discussion I will simply refer to this type of property ownership as a “life lease”, because the terms “right to occupy” and “equity agreement” really are more descriptive of the characteristics of the arrangement. I’m not even sure where the term “life lease” started, but, it is now a generally accepted term to describe a form of property ownership. The most common form of life lease entails the right to occupy a residential unit for as long as you live and the right to the equity in the unit at the end of your occupation, whatever the reason for termination.

There are two very important ingredients to this arrangement, firstly the exclusive right to occupy the unit and secondly the right to equity when the right to occupy is terminated for any reason.

There are many variations on the theme, just as there are many variations on other types of property ownership. You may occupy a residential unit pursuant to a month to month lease, a lease for a set term of months or years, by owning a condominium unit or by owning what is described in legal terms as the “fee simple” right to the property. “Fee Simple” is the legal term used to describe so called full rights to the property.

I think it is helpful in understanding these different types of property rights to compare the rights and obligations attached to them rather than focus on the labels that are attached.

The fact that we own the fee simple or highest form of land rights does not necessarily mean that we can do with it as we like or that it responds to all our needs. What makes anything valuable to us and to others is what we can do or not do with that asset. If we buy a piece of raw land, what we can do on it depends on many factors. Some are physical such as location, availability of services, topography and size. Some are regulatory such as zoning, environmental rules, and building code requirements. The value of that fee simple owned property depends on all of the factors that effect our use and how those factors impact on what the “market” is willing to pay for those rights. As many people have found out, the fact that you have the highest form of ownership doesn't mean you are going to get more money for the property or even be able to sell it. It doesn't even mean you can do what you want with the property in the meantime.

As anyone who has bought land to develop in a particular way, either for profit or their own use, has found out, there are literally hundreds of rules, regulations and other factors that reduce your right to determine what you do with the land. Ultimately what a lender decides the property is worth for a loan and what a buyer thinks its worth to buy may not be what you as an owner think or even what you have already invested into the property. Value is determined by market. Market is simply what a willing buyer is prepared to pay a willing seller. We all know what has happened to real estate values in the last few years and realize the label you put on a type of ownership has very little to do with value.

I think it is helpful in understanding life leases then to examine the rights and obligations and to see that it is just one of many forms or variations on property ownership that may be right for you or someone you know in particular circumstances.

There are people who rent all their lives, some because they can't afford to buy, but others, because for whatever reason simply chose not to own. These people may in fact pay as much money over a lifetime as if they bought and have no equity at the end. On the other hand people may buy a property and not be able to do with it what they planned and in the end the market may dictate they can't sell it for what they paid for it. What the right form of home ownership is for you depends on more than just labels. Some of the factors you should consider are lifestyle, physical design, sense of community, whether you can or want to do maintenance, the opportunity to participate in ownership, the ability to influence the lifestyle and your present or anticipated need for additional services.

There are many variations of life leases, just as there are different forms of other types of ownership. The most common form is the purchase by the resident of the exclusive right to occupy a residential unit for as long as the resident wants or is able, in exchange for the payment of the purchase of that right and a monthly fee. That monthly fee covers the resident's share of all of those common costs which are part of any type of ownership, taxes, insurance, maintenance and repairs. The initial costs and the monthly fees are

usually quite similar to those of other comparable accommodation. As well as having the right to occupy a unit the life lease owner, or their estate, has the right to the equity in that right when either they decide to terminate the arrangement or some event causes the termination. In that event it is the “market” that will determine what that right is worth.

Lets look behind the life lease and examine just how it is put together. Someone has to own the fee simple in the property and in the case of a life lease project that is almost always a not for profit or charitable organization such as a Church group, community based group or an ethnic group which will own and manage the project (the “Sponsor Group”). The Sponsor Group in turn grants the life lease to individual residents, pursuant to a written agreement which details the cost, rights and obligations of the parties, and the regulations governing the use, termination and rights to equity.

If a project is well designed and run, the right to occupy one of those units will be desirable to the market and it will command a reasonable value both initially and when it is time to resell the right.

What makes life leases attractive is the sense of community, the ability to become directly involved in the Sponsor Group and the availability of additional services, in a setting allowing the mixture of independence and support that responds to changing needs.

Most projects provide that all residents become “members” of the Sponsor Group, which makes them voting participants in the project. Residents are, in a very real sense, collectively the owner and individually the resident of the project.

In a single family home you may control your own domain but you have little influence on the surrounding community and no influence on who are going to be your neighbours. In a life lease community the residents may become part of the Sponsor Group, participate in interviewing new residents and help plan and maintain a lifestyle shared by like-minded neighbours. They can feel secure that a Sponsor Group, in which they are members, is there for only one purpose, that is to create and maintain a quality lifestyle while someone lives there and ensure the best possible value when the right to occupy is resold.

Life leases have been around for many years in Ontario, but are spreading rapidly now because they respond to the needs of an ageing population that may be quite independent today but may have more needs for support tomorrow. These people want to age in place, and not have to move every time their needs for some assistance, such as housekeeping, meals or medical support change. They also want value for their money and the ability to obtain market value for their investment when it is time to dispose of that investment.

We know that for some people a single-family house is no longer viable or desirable. Its either too much maintenance to handle or the design itself, size, stairs or other barrier to accessibility, make it no longer a viable option to keep.

There's always a condominium, but that only provides a temporary solution for some. There is no community in most condominiums, little flexibility and very seldom a project designed for ageing in place, with additional services available organized by the project. For the most part, once a condominium is registered it is almost impossible, on a practical level, to change either the physical building or the way it is operated. The life lease form of ownership takes advantage of an exception to the Planning Act of Ontario, the legislation that governs the subdivision of land, which allows for long term leases of parts of buildings without having to get Planning consent. Combining this exception with the ownership by a Sponsor Group and a building designed and managed for the benefit of a specific target group makes a life lease project the choice of an increasing number of seniors.

The specific design of the project, the economics, and contractual arrangements have as many variations as single-family homes or condominiums. Just like other forms of ownership, its value to you and to others ultimately depends on the physical characteristics of the unit, the bundle of rights and obligations that attach to the unit and what the market is. No matter what its worth to the market, the accommodation may no longer meet your needs.

Life leases are a form of ownership or a bundle of rights and obligations in property, that have been created to respond to the needs of a sector of the market in a way that other forms of ownership do not. A life lease arrangement is not a strange or unusual arrangement to be feared or avoided because it is different. Any form of property right should be examined with caution to determine its risks, value and appropriateness for you. Look at your own circumstances, the physical characteristics of the project, the price, the Sponsor Group, the maintenance costs, the contract and all of the other relevant circumstances. Seek your own advice from someone familiar with life leases. You may well conclude that a life lease provides you with the right mix of rights, obligations and price to suit your current and expected needs for now and the future.

A recent study by C.M.H.C. recognized the widespread existence of life lease projects and reviewed the experience of projects across Canada. The study recognized that any form of housing has advantages and disadvantages but life lease projects, sponsored by non-profit groups, are becoming an increasingly popular form of housing model. It is up to the individual to decide what's best for them, but a life lease community may be the right choice for you.