



THE ORIGIN OF THE FEE SIMPLE ESTATE

YVONNE BOX
The **Real Estate Coach** Ltd

THE ORIGIN OF THE FEE SIMPLE ESTATE

Have you ever wondered why the standard REINZ/ADLS Agreement for Sale and Purchase of Real Estate uses the term ‘fee simple’ rather than ‘freehold’? Aren’t they the same thing.

Actually, no. They’re very closely related, however. You could even say that one is the parent of the other. Let’s go back in time and learn a little land law trivia.

When William met Harry

We’re not talking about two dashing young princes who routinely make media headlines. For this William and Harry, we need to go back to the year 1066. William of Normandy (France) expected to be successor to the English crown of Edward the Confessor. Harold of Wessex also had the same idea. It’s a long story – real soap opera stuff, so let’s skip all but the most important details.

William crossed the English Channel and engaged Harry in what became known as the Battle of Hastings. William won. He subsequently had himself proclaimed King of England. He promptly confiscated most of the land, redistributing it to those who had served him. However, the distribution was not transfer of outright ownership – no, William was too clever for that! He granted ‘estates’ in the land in exchange for certain services, such as the provision of food supplies, or maintenance of an army. Each of these services was known as a *tenure*, which is a term still used in land law today. Thus, the estate holders were *tenants* of the king, their *landlord*.

The holders of the large estates were known as ‘tenants in chief’, because they reported directly to the king. The land would remain in their control for the duration of their own lifetime, and that of their legitimate heirs. Because these estates were granted over very specific parcels of land, for an indefinite time period, they were known as ‘freehold’.

The tenants in chief usually issued subsequent grants of parcels of land from their estates to ‘sub-tenants’. Thus, every holder of land had one or more obligations to their immediate landlord, and all but the lowest person in the hierarchy was landlord over a lower tenant.

Over time, changes were made that allowed for land to be transferred in exchange for money, and the tenants’ obligations became monetary-based rather than service-based.

Three offspring

From the original freehold estate, three subsequent estates were developed:

- Fee simple
- Estate for life
- Composite estate

According to Land Information New Zealand (LINZ), there are approximately 1.66 million fee simple estates in New Zealand. The term '*fee*' reflects the right that the landholder has to use and profit from the land, provided the tenure obligations to the Crown are met. '*Simple*' (which is derived from the Latin '*simpliciter*', which means plain or straightforward) denotes that the land can be passed on to any person or persons chosen by the estate holder. It may be sold, disposed of by will or gift, and so on.

By contrast, there was a *fee tail* estate, which provided that only a certain class of heirs could take over the property. This usually related to something as specific as the eldest son having first right of inheritance. While there were a few fee tail estates in New Zealand, these were converted to fee simple following the passing of the Property Law Act 1952.

Estates for life are relatively uncommon in New Zealand. They are normally granted for the lifetime of the recipient. For example, Doris, an elderly widow, may transfer ownership of her home to her three children, subject to her retaining a life estate, which enables her to live there until the end of her days. She continues to have a number of obligations, including maintaining the property in good condition, paying land and property taxes, and so on.

Composite estates, such as the cross lease, which we'll discuss in another article soon – *Crossed wires over cross leases* – are a blend of freehold and a long term lease.

Who really owns the land?

Let's be honest – we all consider ourselves to be land owners. With the exception of land which is held under Māori sovereignty, freehold land in private ownership is not really 'owned' in the true sense of the word. All we have is an 'estate'. Under current New Zealand law, we're still in much the same situation as William's subjects.

You can demonstrate that to anyone who questions it by explaining the basics of how the Public Works Act operates – this is legislation that gives the Crown (or a Crown-authorized 'requiring authority') the right to compulsorily acquire land, if it is to be used 'for the public good', such as the construction of motorways or other infrastructure, etc. That's because the Crown has ultimate, underlying ownership of the land.

Why is this important?

The fact that we hold an 'estate' in land, rather than having outright ownership, is likely to have little or no impact on people's day to day lives. The fee simple title offers fewest restrictions on what can be done – provided we stay within the rules of legislation and local body requirements.

But if we're going to promote ourselves as knowledgeable members of a profession, we need to know such issues, because people do sometimes ask questions. Such as, 'If you're selling me a freehold property, why does it say 'fee simple' on the agreement form?' Now you've got the answer!

Where to in future?

The current situation, steeped in almost a thousand years of history, has lost much of its relevance in modern society. Much of the terminology of land law is founded in Latin, making it difficult for anyone without a law degree to understand.

One day, possibly in the not too distant future – I'm talking decades here, unless we cut ties with the British monarchy and become a republic – we will probably see a number of significant changes in land law. I predict that freehold ownership will become exactly that: ownership, rather than merely an archaic estate. This will not significantly alter the current provisions for the taking of private land for public purposes, because that is sometimes a critical element in modern society.

If you'd like to read more of Yvonne's articles, please visit the Library section of her website:
<http://therealestatecoach.co.nz>

If you like this article, feel free to share it with others. The only rules for doing so are:

- *The article must be replicated exactly (no textual changes permitted)*
- *If you wish to provide links or references to your own products or services, these must be entirely separate from the article.*
- *At the end of the article, you must include the following:*

*© The Real Estate Coach Ltd, 2014.
All rights reserved.
Article written by Yvonne Box.*