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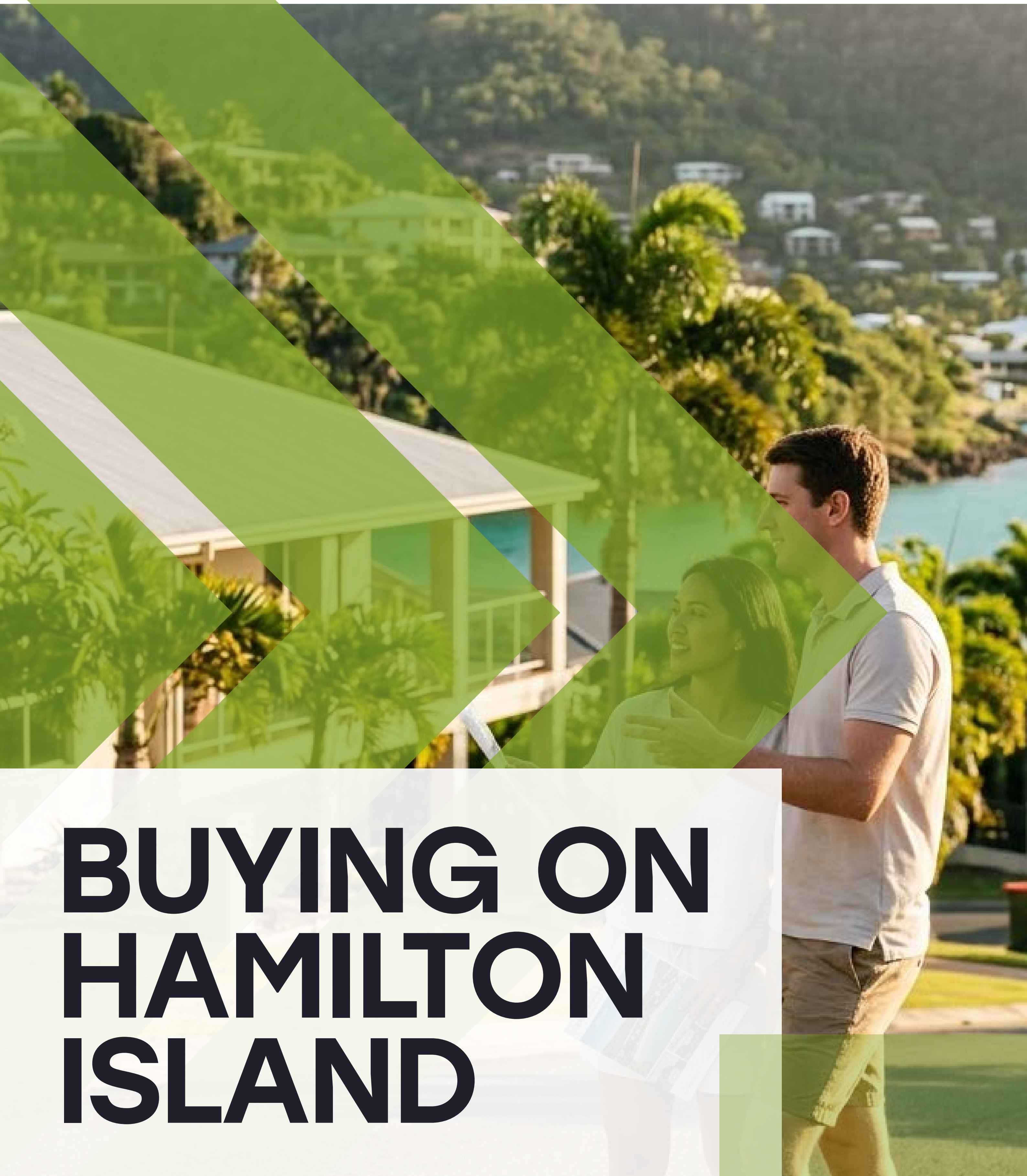


BUYING ON HAMILTON ISLAND

THIS GUIDE COVERS THE BASICS OF BUYING AND OWNING LEASEHOLD PROPERTY, ON ONE OF AUSTRALIA'S MOST ICONIC ISLAND DESTINATIONS - HAMILTON ISLAND.

PD Law, July 2024

ISLAND LIFE - TAKING THE PLUNGE

Diving in – what's different?

While many are familiar with buying and owning freehold title property like vacant land, houses or units, the concept of leasehold title is different. In practice though, for property holders on Hamilton Island, the difference is not significant.

Title to all property on Hamilton Island (units and land) is *leasehold*, stemming from a *Perpetual Crown Lease* from the State of Queensland (the Crown) in favour of Hamilton Island Enterprises Ltd (HIE). This is known as the Head Lease, and *perpetual* means just that – the lease has no end date, as long as HIE continues to comply with its conditions, such as using Hamilton Island for the right purpose of a tourist destination and paying Crown rent.

I'm after a Unit – what should I know?

Because Queensland's *Body Corporate and Community Management* Act doesn't apply to Crown leasehold land, HIE, and all developers on the Island, have settled on a practice of establishing a quasi-body corporate structure with every set of units, apartments and other community title styled developments constructed.

Basically, a company (Pty Ltd) is formed to hold, administer and manage all of the common property in the relevant unit development for instance. It usually holds the common property as a sublessee, like unit owners would hold their unit. In a number of earlier developments, a second tier of sub- subleases exist, in which case this 'body corporate' management company holds all of the units as sub lessee from HIE, and then sub subleases them to owners.

In brief, here's how they operate:
- In addition to buying their sublease, or sub-sublease, owners take a share (or a bundle of shares) in the management company when they buy a unit;
- those shares are only transferable with the corresponding unit sublease, or sub-sublease;
- the management company's constitution generally mirrors the objects and bylaws appropriate for a body corporate, thus creating a similar result without the legislative framework.

If it's not freehold will my bank lend against it?

Although not a traditional form of security like freehold land, all major lenders recognise leasehold property on Hamilton Island as a standard and reasonable form of security.

Generally, banks will require first ranking security in the form of mortgages and charges over:
- the sublease or sub sublease that is being transferred into your name; and
- any shares that you hold in the quasi-body corporate company that manages the unit development you're buying into.

TIP: In our experience, it's smart to discuss this with your bank manager early: frequently, although banks do lend on this product, because it is an unusual transaction, the process is less well known to some lending staff who usually deal with freehold. Delays can affect your rights under your contract.

When am I bound?

Under Queensland law you have a 5 working day cooling off period, starting on the day that you, or we, received your contract, signed. This enables you to terminate the contract for no reason, and have your deposit returned.

The seller can claim a 0.25% penalty (this is usually deducted from the deposit) if you do exercise your right to terminate under the cooling off provisions.

Island Rules and Regulations – just as binding

HIE has developed a set of rules and regulations by which all residents and guests must abide, as if they were conditions of their sublease. These cover a variety of topics including buggy/vehicle ownership, use of resort facilities, construction guidelines as well as penalty provisions.

LOOKING AHEAD

WHAT SHOULD I KNOW?

Although you do pay “rent” under your lease, in this context it’s more like what you would have to pay by way of local authority rates and charges, if you owned a freehold home or unit, rather than rent to a landlord

HIE and its related service company Hamilton Island Services, fill the dual roles of local authority and utility service provider, providing all utility infrastructure and services to all owners such as water, power, sewerage, gas, waste management and roads.

As such, subleases typically provide that owners pay:

- ✓ **Rent** – calculated depending on the type of property you buy (villa site or apartment). These are similar to a local council general rate
- ✓ **Outgoings** - an equitable proportion of utility infrastructure charges for the provision of services to all Island residents and users, similar to local council service charges (such as sewerage and garbage levies)
- ✓ **Service Charges** – for your actual service consumption like water, power and gas
- ✓ **‘Body corporate’ levies** - where applicable, these are much like admin and sinking fund levies found in a regular community titles setting.

THE PAPERWORK

Plain English please

Although the purchase contract can be daunting up front, we've acted for a great many buyers and developers on Hamilton Island for over 20 years. As such, we know our way around, and can explain what it all means so it's not an unwelcome chore for you.

The transaction process

A sublease or sub sublease can only be transferred with the consent of:
- ✓ the Crown; and
- ✓ HIE as sub lessor to each sublessee (lot owner); and
- ✓ any mortgagee of HIE registered on HIE's Head Lease

The above consents are procedural but crucial for the transfer of clear title, and HIE will apply for these various consents as part of the transaction process.

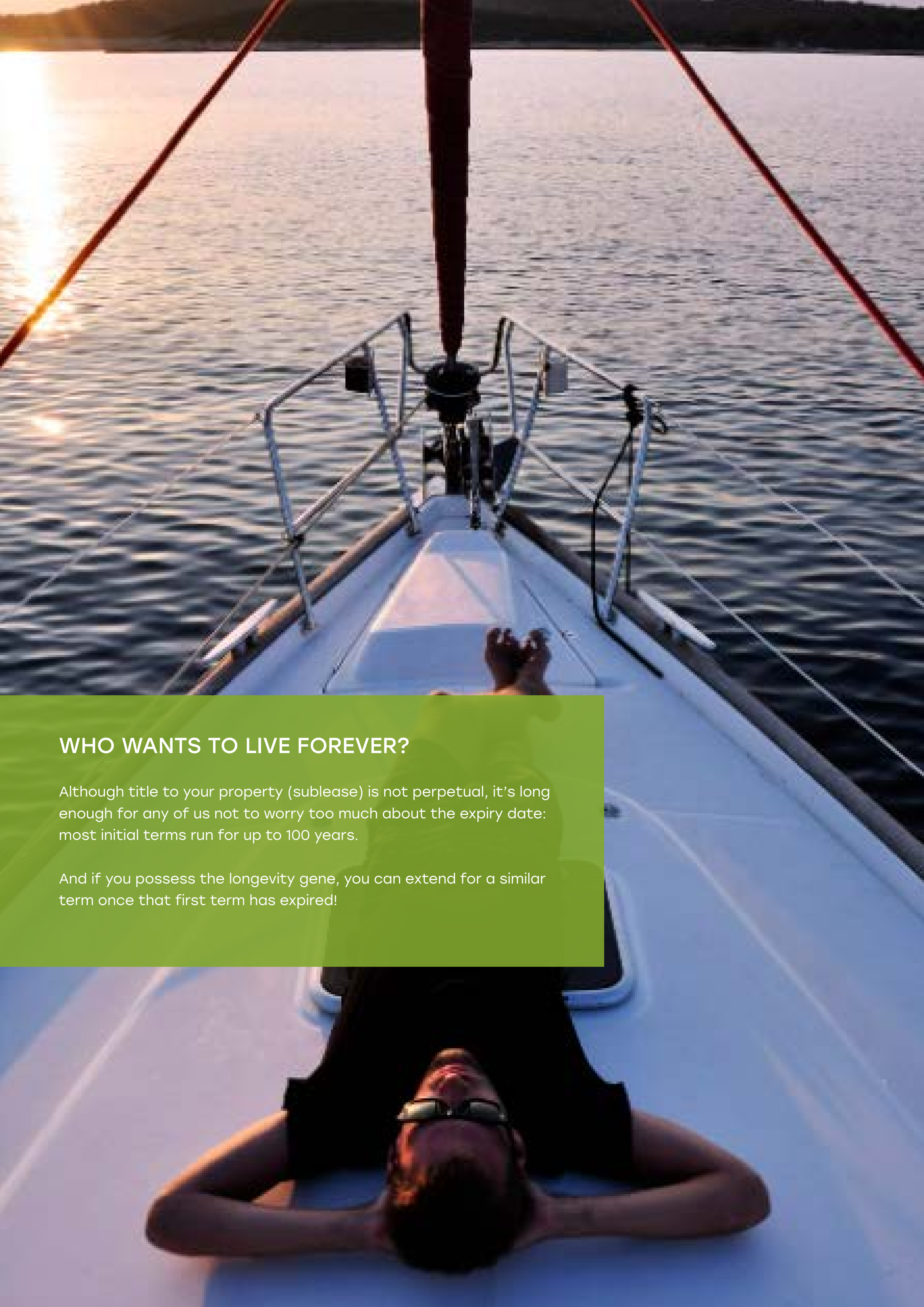
Settlement is then triggered a set number of days following those above consents being obtained.

We then arrange for the transfer of the lease into your name, in concert with your bank (if you are using one).

On and from the settlement date, you become responsible for all of your outgoings as you would in a freehold situation. You similarly become entitled to any income earned from any holiday or permanent letting arrangements you make.

I'm getting a buggy – what's involved?

Consider these like any other motor vehicle transfer but more fun, and with a couple of small differences:
- ✓ your sub-lease will determine whether you can actually have a buggy, as you need a buggy park to form part of your sub-lease
- ✓ the name that you take your unit or other property in needs to be the same as the name of buggy owner
- ✓ registration is limited – you can only use it on the Island
- ✓ you need an annual roadworthy certificate from Hamilton Island to continue to use it



WHO WANTS TO LIVE FOREVER?

Although title to your property (sublease) is not perpetual, it's long enough for any of us not to worry too much about the expiry date: most initial terms run for up to 100 years.

And if you possess the longevity gene, you can extend for a similar term once that first term has expired!

CONTRACTUAL ‘PLAIN SAILING’

Suggested Conditions

This is a substantial transaction and should be given substantial consideration.

Typically, contracts on Hamilton Island are subject to finance, and pest and building inspections. On this basis, a buyer would need to obtain finance on satisfactory conditions, and obtain reports from builders and pest control operators on the improvements (house or unit) to ensure that these are also satisfactory.

Note: Unlike typical freehold land contracts, some Island contracts provide that, if you don’t notify the seller that you are satisfied or not with your pest and building inspections by the relevant date in the contract, then you are deemed to be satisfied. Take particular care here of your time frames.

The Management Company (aka the ‘body corporate’)

Less frequently, but equally importantly, contracts can be conditional upon buyers being satisfied about the affairs of the ‘body corporate’. This requires physical attendance at the body corporate manager’s office, reviewing all of the minutes of the body corporate for the last three years (for example), and checking on the quantum of the sinking fund (which is effectively the capital expenditure fund) to make sure it can maintain common property assets going forward.

As to whether this is an option you’d take really depends on the type, and in particular the age and location of the unit development you are buying into: it follows that the older the development, the more maintenance may be required.

Insurance and risk

What happens when I sign up?
Depending on the nature of the contract, risk in the property you are buying may pass to you on signing of the contract, so it’s critical that you talk to your broker about putting some insurance cover in place straight away. Although the seller has to take reasonable care of the property between the contract date and the settlement date, you can’t force them to repair any accidental damage that might occur during that period.

What about my unit?
Generally, the body corporate will be responsible to insure all common property assets and improvements to both replacement cost and public liability. Insurance for all improvements within your lot will be your responsibility.

As to whether the exterior of your unit needs to be insured by you or by the body corporate will depend on the makeup of each lot in that development. We can let you know more about this when we see your contract.

Can I haggle?

On the Contract? Absolutely.

On your sublease and other associated documents the answer however is no. Given that these are effectively ‘title’ documents, the ability to negotiate changes is almost zero.

Having said that, you ought not be concerned with the content of the sublease in particular. Leasehold terms on most subleases and sub subleases are very similar if not identical throughout the Island and ought not be considered of any concern once you’re satisfied with the concept of owning leasehold property.

TRANSFER DUTY – DOES IT APPLY ON HAMILTON ISLAND?

Whether usual transfer duty applies to your transaction at usual rates depends on the type of property you are buying.

The law in Queensland provides:

- ✓ A buyer must pay transfer duty on any Dutiable Property being transferred;
- ✓ shares in companies are not dutiable property, but other assets like units, houses and land are.

If the value of the asset you're buying attaches to a bundle of shares being transferred, then the duty you pay will be nominal, if at all. If the value of the asset you are buying attaches to a sublease or sub-sublease, then transfer duty will apply at the applicable rate as it would in any other land or unit transaction.

BUYING OFF THE PLAN...ON THE ISLAND

What's it mean?

More of an industry term than a legal one, it refers to all types of units and land being offered for sale before legal title actually exists. In the context of Hamilton Island, legal title would be a sublease, and the off-the-plan contract you sign would be an Agreement to Lease.

As each developer uses a different lawyer, these contracts are typically hybrids, although there are some common conditions including:

- ✓ a minimum number of pre-sales will be needed by the developer before it will commit to proceeding;
- ✓
- ✓ all necessary development approvals need to be on terms acceptable to the developer;
- ✓ settlement will occur when the development is complete, all relevant authorities are satisfied, and usually between 14 and 30 days after the sublease to the particular unit or parcel of land you're buying issues.

A major attraction of buying off the plan is that you do not need to come up with the money immediately, but rather only when the project is complete, and this can be anywhere from a few months to several years.

As such, you can lock in property at today's prices, and pay for it later. This is especially beneficial when there is a strong rising property market.

Selling before you settle – a high wire balancing act

Sometimes speculators try to capitalise on a rising property market, signing a contract with no intention of settling, but rather finding another buyer to sell to for a higher price, and retaining the uplift. This is risky, and may not be for everyone, or as profitable as it would first appear. This only works when the product is over-subscribed and in fact some developers prohibit this, by contractually requiring the Buyer to offer the property back to the developer at the original price.

Before considering this as a viable strategy, do your numbers:

- ✓ **Tax** - Any uplift or profit may be subject to capital gains tax or income tax at marginal rates
- ✓ **Agents commission** - If an agent was involved in the resale, then you may be liable to pay commission
- ✓ **Transfer Duty** – unless you bought under an option, you may be liable to pay transfer duty on your first transaction, regardless of the fact that you may only own the property for a moment in time
- ✓ **Binding contract** – you remain bound under your original contract, so if your buyer fails to complete, the developer may still hold you to your obligations under your contract.

Top tips for buying off-the-plan

Here are our top pointers when considering any off the plan purchase:

- ✓ the developer – if it is not HIE, what's their track record like?
- ✓ Staged developments – what will the effect be on the value of your unit if subsequent stages don't proceed?
- ✓ Schedule of finishes – How clear is the list? Are you getting "quality stone bench tops or similar"? What is "similar"?
- ✓ Resales – if you intend to sell before you settle, do you know how much you need to sell for before you will turn a profit? Have you considered capital gains tax, transfer duty and agents commission on any resale?
- ✓ Tax and entities – have you spoken to your financial advisor about how to best structure your purchase?
- ✓ The sunset dates – is the developer able to hold on to your deposit, until they have exhausted all potential avenues, to get presales even if the development cannot possibly be completed within the contract's time limits? You may have found an alternative investment, but your deposit is "tied up". Make sure you have some control over your deposit if this is likely.

LAST WORDS

Don’t worry

People think they will be charged the very moment they call a lawyer. Although that may be the case in some firms, (and TV dramas), it’s not here. We’d much rather hear from you beforehand, when we have time to make suggestions and help, rather than afterwards, when it may be too late, or more expensive to try to fix.

When compared to a few days holiday, or having your car serviced, or buying a new home theatre system, the value for money in one of the most important transactions of your life, and peace of mind in engaging PD LAW is exceptional.

With literally decades of experience on Hamilton Island matters, we know what we are doing, and we’re professional.

So benefit from our experience.

ABOUT PD LAW

PD LAW is a dynamic, progressive law firm offering a broad range of business and personal legal services.

We’re dedicated to ensuring:

- ✓ our service is prompt
- ✓ our advice is clear, straightforward and
- ✓ represents excellent value
- ✓ you’re a client of ours for life.

We look forward to working with you

Disclaimer: We think this article is very accurate, but it’s intended as a general guide. Call us for specific advice before relying on the contents of this guide, as everyone’s circumstances are different.

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