

Leasehold versus Freehold

by Jim Davidson

People in the freedom community generally are motivated to be owners of their own homes, masters of their own destinies. However, the method by which actual ownership is typically manifested is through the mechanism of subdivision and freehold.

What does that mean? In practice, it means that a property owner or owners either sell their land to, or work closely with, a real estate developer. The land is planned for streets, home sites, and amenities. Then the earth moving begins. In subsequent months as streets go in and lots are graded and provided with utilities, home builders buy these lots, build finished homes and sell them to home owners.

Often built into the mix are certain common facilities, such as a club house, golf course, community swimming pool, horse stables, bridle paths, drainage ponds, and the aforementioned streets connecting the lots to the world outside. As with all commons, there is the prospect of tragic results.

To limit the difficulties in some ways, at the cost of increasing them in others, the typical real estate development company establishes a home owners association (HOA). This outfit then manages the administration of deed restrictions and covenants, may impose rules for the neighbourhood about cutting lawns, not growing food plants in the front yard, leashing pets, and on and on.

Suddenly, in the search for home ownership and destiny mastery, the freedom enthusiast finds a whole new level of government has been created. Homeowners associations collect fees, employ enforcement agents, hold meetings to object to all manner of trivial activities, come up with new rules, and establish a bureaucracy that lasts forever. Enforcement of association rules can be political and capricious, and enforcement agents - the most notorious example being the BTK Killer - can be violently dangerous to the home owners themselves.

Notwithstanding that the streets were built privately by the real estate developer, and might be managed by the new homeowners association, it is typically the case that the streets are turned over to city or county government for further mismanagement and additional levels of bureaucracy. Perhaps the homeowners retain control over some service, such as garbage collection, but this control may be removed from their control by city or county ordinance or by state law in order to satiate the political interests of a labour union or to fulfil actual bribes of county commissioners by a particular garbage collection company.

Worse, instead of decentralising their approach to providing water, sewer, power, and other utilities, the real estate developer typically contracts with established utility monopolies. Costs increase, choices diminish, and homeowners have additional burdens. Instead of a resilient community with many water sources, local treatment of sewage for useful fertilisers, and distributed power generation, everything is forced into a rigid and centralised system. As with all centralisation, the resulting system is more fragile. Your home's roof could provide significant solar power, your land may have a natural gas field not far below the surface, but one transformer failure and the power line to your home goes dead, and you suffer in the heat or cold.

Is it possible for it to get any worse? Yes! The entire conception of the real estate development, as a subdivision of homes or as a shopping city, or for some other purpose, represents the land use vision of

the real estate developer prior to the time the development begins. Land use requirements may change, and the vanishing economic interest of the real estate developer, who has sold off the various home sites and left a home owners association in charge of the remaining commons, includes no ongoing examination of the economic possibilities of the area. Responding to new economic conditions by changing the land use pattern may be prohibitively expensive, requiring the buying out of all of the land owners in order to consolidate their various deeds and then nullify the deed restrictions.

To "address" the matter of land redevelopment, the authoritarians have a concept called "eminent domain" which compels supposedly free land owners who are allegedly masters of their destiny under the subdivision and freehold model to sell their land. In a recent case in Connecticut (*Kelo v City of New London*) it was determined by the United States supreme court that the momentary economic interests of a redevelopment scheme are sufficient to justify the forced sale and coerced relocation of all land owners. No one with any sense of reality could call the existing system peaceful, just, nor freedom oriented.

The 999 Year Lease

When I first got involved in real estate development in Texas, the above model was very close to the exact approach taken by the real estate developers with whom I worked. The finished value of the homes on the hundreds of acres developed by Ayrshire and by Altair real estate development companies is now in the billions of dollars, and by all signs the home owners are reasonably happy with their communities, including amenities such as lakes, community centres, swimming pools, wooded hiking paths, golf courses, fountains, plazas and so forth. The subdivision and freehold model has many adherents and represents a profitable, economically viable path. It is not, however, the only way.

My introduction to the alternative paths forward came from my work with Michael van Notten and his colleague Spencer MacCallum. Michael and I worked from 1995 until his passing in 2002 on projects in East Africa involving the prospective development of a free port, a toll road, a fishing fleet, educational facilities, utilities, and homes. Spencer presented the many arguments in favour of long term leasing, where ownership of the land would never be subdivided.

As it happens, that approach was culturally consistent with the Somali traditions about land. In their pastoral and nomadic culture, land territory is held as a clan property, not belonging to an individual family. Our proposals to not purchase land but to lease land and only take possession of the fruits of its use (its usufruct) were very agreeable to the elders of one of the clans. Other geopolitical and historical events interfered with our ability to pursue those plans in that region. My interest in leasehold as a path to build successful freedom communities remains very strong.

During my work with Michael, he suggested that I look into the 999-year leases that had recently been renewed in London and in Amsterdam, among other places. It seems amazing that a business arrangement could last for a thousand years, and work so well that both landlord and tenant would want to get started on another millennium of working together. Obviously, the heirs and assigns of the original landlords and those of the original tenants were involved in the renewals. Perhaps in the future with longevity treatments, a person may individually live to renew such a long term lease. Meanwhile, it speaks to the multi-generational stability of the approach that such leases have been renewed.

Several books on this topic are worth reviewing. Briefly, these include *Citadel Market and Altair*, by Spencer Heath, *The Art of Community* by Spencer MacCallum, *The Law of the Somalis* by Michael van Notten, *The Liberty Project* by Chris Boehr, and *Being Sovereign* by Jim Davidson. Information on the first two books can be found at <http://scienceofsociety.net/>

The concept of leasehold leaves the common areas and nearby properties in other hands. A person might lease a home, or a business might lease a building, with the landlord taking ongoing responsibility for community features such as roads, a hospital, community defence against crime or invasion, and any other amenity one might name. Private judicial and dispute settlement services might be identified in the lease agreement and be parts of competitive industries in these areas. Land use would continue to be embodied in the property interests of property owners rather than in the expedient or corrupt political interests of politicians, bureau-rats, or influential cronies of the government.

Since a large property is kept in the hands of one owner, the governmental trick of changing assessed values and targetting the comparatively helpless individual freeholders is met by more sophisticated and effective responses. Fees for subdivision are avoided. Changing economic conditions can be rapidly met by the land owner with new development, upgrades, or by exercising buy-out provisions in the lease if any such provisions are included. In summary, leasehold has many advantages.

The American Dream

A brief summary of the American dream as it is often imagined might be stated as follows. A hard working individual creates a new business enterprise, builds it up, thrives, and expands the business. Soon he has a large team working with him on greater success. He buys a home, marries, the happy family have children, and all is right with the world. Many very merry Christmases and other holidays ensue.

The actual experiences of Americans vary, of course, but a great many find that their brilliant ideas are thwarted by actively hostile political and economic vested interests. Their business starts boldly but becomes the target for abusive lawsuits, false arrests, active persecution, and it is soon gone. Or their business grows for a few years or decades and then the health inspector demands a payoff, followed by the fire chief, followed by a visit from the patrolmen's union. Soon, all the profit is going to paying off corrupt officials, the business barely gets by, and a crisis occurs forcing it to close.

The home that was purchased is lovely until a nasty neighbour moves in next door. Then gardens are poisoned, attack dogs threaten viciousness, junk cars appear on the street, drug sales commence, violence is threatened, and happiness is gone. Or a new homeowner's association official persuades the association to greater fees and more regulatory impositions at a sparsely attended meeting with carefully chosen members. Soon a host of officers has arisen to eat out the substance of the home "owners" who become owners-in-name-only. Or a national emergency is declared, tyrants abound, and nobody can walk down the street without wearing a masque (to be part of the masquerade), small businesses are shuttered, big businesses are the only ones allowed to operate, a national coin shortage forces a switch to a "cashless" society with social credit scores, and dissidents begin to be liquidated.

Relying on government to keep things safe has proven to be a terrible idea. Safety is an illusion, and people are not safe in their communities, especially when corrupt government officials and bureau-rats are involved. Nor are the schools any good. The happy children that went to a few hours a day of schooling fifty years ago are now miserable drudges forced to be repeatedly vaccinated to profit a cartel of pharmaceutical companies, taught by Marxist teachers whose union prevents all creativity from flourishing, and bullied by not only the system of "education" itself but also by other children who are encouraged to bully their peers. Fighting back is punished. Everyone is miserable. Public schools, like all other aspects of the commons, don't work.

The nightmare of 2020 is the result of continual bad choice taking. Instead of keeping their own power and individual sovereignty, Americans have been encouraged to trust untrustworthy teachers with their children, untrustworthy police with their safety, corrupt fire officials with fire fighting, corrupt sanitation bureau-rats with garbage collection and street cleaning, corrupt water and sewer officials with fresh water in their homes now tainted with many additives, occasional scandals of lead pipes further polluting their water, and all kinds of scams involving how drainage is arranged and for whom. In sum, the American dream is corrupt to its very core.

Failing Cities

Cities have failed to provide good results. Deed restrictions and zoning do not work for the benefit of home owners long term. Corruption and abuses of power are built into the concentration of power. Centralised systems are fragile and expensive. Misery and tyranny abound.

Instead of being the master of his destiny, the typical American home owner is a serf, commanded by a homeowners association, abused by overseers called police, thwarted by government officials, taxed, licensed, regulated, and further abused by bureau-rats, and subject to arbitrary forced selling through eminent domain. Americans even have a joke about it: You start out as a home owner and very soon you are a home moaner.

An Alternative Strategy

Instead of subdividing a vast tract of land, selling it off to home builders who sell their finished homes to home buyers, all of whom rely upon a homeowner association initially controlled by the real estate developer but soon to descend into the quagmire of parliamentary procedure and pseudo-democracy, all while dancing to the tune of various government agencies, corrupt officials, and busy bodies, what if people chose a different way? What if the large tract of land was kept entirely in the hands of one owner, a company or non-profit or partnership or individual?

Consider a leasehold property owner that has shareholder representation from its tenant lessors. So, when I lease 3 acres for 99 years I get shares of the company I lease from, and therefore have some stockholder rights under equity. If I lease 3 acres for 999 years, maybe I get a few more shares. If I lease 1 acre, fewer shares; 10 acres under lease gets me more shares. So part of the ownership is proportional to the land under lease. Also note that there would be original investors and other shareholders, it would not only be the tenants who own it, or not necessarily.

The various rights of tenants, landlords, users, and visitors would be provided for under a set of agreements. Everyone would know where they stand, how things are in this particular community. As with checking into a hotel, a tenant would have access to credit facilities, amenities, his own particular room or space, and an attentive staff who wants to help the tenant get the most out of the relationship. Satisfied customers result in repeat business, and good reputation spreads, bringing in more customers.

The goal of this strategy is not to upset the existing way of doing things, but to do things in the most effective ways already imagined and **implemented** in developments in the United States and around the world. None of these individual ideas is very new. Combining these ideas into an effective business will depend not only on the effectiveness of the ideas, but also on the care and courtesy of the managers. Good planning, good strategies, and feedback from customers will guide the successful real estate entrepreneur of the future.

If we are careful and sensible, we can reduce the need for government, free ourselves from servitude, and provide for our posterity a free world. It won't be trivial or easy. It will take investor capital, hard

work, and good leadership. For such a consummation, I devoutly pray, may God's will be done, amen.

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