

THE EPISCOPAL CHURCH IN HAWAII

This is intended to serve as a brief overview of the three main types of real property agreements.

1. **Licenses.** A true license is a temporary and revocable permission given by a property owner (licensor) to someone (licensee) to use or access their property for a specific purpose and for a specific period of time. It is not a permanent right, and it can be revoked or terminated by the property owner at any time. It does not create a landlord-tenant relationship and usually does not grant exclusive possession of the property to the licensee.

Licenses are personal to the license and cannot be freely assigned without the consent of the licensor. They are the most property-owner friendly occupancy agreement.

Licenses are personal to the licensee and cannot be assigned or otherwise conveyed. Most importantly, a true license is revocable at the will of the licensor. Licenses are appropriate when a party will not have full-time “exclusive” use of the property.

While it is not unusual for a document that is called a “license” to really be a lease or easement, they are in fact different legal concepts.

Common examples of licenses:

- If you purchase a ticket to enter a concert venue, you are granted a license to be on the premises for the duration of the event. The license gives you permission to attend the concert but does not grant you exclusive possession or control over the venue.
 - Private parties, such as Kamehameha Schools, may grant licenses to 3rd parties for activities like fishing in a pond or gathering wood from forested areas.
 - Commercial real estate utilizes licenses when one entity will be using a portion of a larger space but does not have exclusive access. For example, a choir group may ask for a license to use a single room in a church 5 nights a week from 5:00 pm – 8:00 pm. The choir group has the right to that room, but no other area in the building. Additionally, their right is limited to a finite period of time – they would not be allowed to show up at 2:00 pm and claim rights under the license agreement.
2. **Easements.** An affirmative easement allows the holder of the easement to enter the property of another and to make affirmative use of the land for a specific purposes. For example, utility companies require easements from the property owner in order to lay utility lines. Easements are often perpetual in nature and “run with the land”, which means that they are binding on future owners of the affected properties.

You can think of easements as getting permission for an activity that would otherwise generally be considered to be unlawful trespassing or a nuisance, absent the easement.

An easement creates the right to use land that is owned by another but does not give the holder of that easement a possessory right to that land. In other words, you can use it in accordance with the terms of the easement, but that land does not belong to you in any sense.

Common examples of easements:

- HECO has many easements for its power lines that allow its workers to access private real property in accordance with the terms thereof.

- Certain residential lots in older neighborhoods have easements that allow the “back lot” access over the “front lots” driveway to get to the back lot’s garage.
3. **Leases**. A lease, also known as a rental agreement, is a contract between a landlord (aka lessor) and a tenant (aka lessee) that grants the tenant the ***exclusive possession and use of the property for the duration of the lease***.

A lease creates a landlord-tenant relationship and provides the tenant with significantly more extensive rights and protections for the tenant compared to a license. A lease creates a possessory interest in the subject land for a definite term. Additionally, absent a restriction in the lease itself, a tenant may freely assign or convey its interest in the lease. For the sake of comparison, a license is a freely revocable permission or right to use or access property for a specific purpose, while a lease is a contract that grants exclusive possession and use of property to a tenant for the duration of the lease.

Some other key differences between leases and licenses is that leases include notice and default provisions that must be observed in order to terminate, whereas a license is freely terminable at the will of the licensor.

Common Examples of Leases.

- Residential leases for apartments.
- Commercial leases for stores; e.g., Nordstrom’s has a lease with Ala Moana Center for the use of its space.
- Chun Kerr LLP leases the 21st floor at First Hawaiian Center and has the right to access its offices any day of the week and at any time because Chun Kerr’s right to possession is exclusive to Chun Kerr and not limited by “opening” hours.