

“And When I Die...”

(What Happens to my Long Lease in Thailand?)

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The song “And When I Die,” peaked at number two in late 1969. If you sometimes think you did, too, you may be of an age to remember that the writer of the song, Laura Nyro, left us in 1997.

Now that we’ve got you thinking about the hereinafter, let us pose a question to you. If you have long-leased a house in Thailand, will it automatically go to your heirs when you die? The answer might surprise you.

If there is another lessee on the lease what happens is that the lease goes right to that person. This is what we in the west often call joint tenancy and it simply means that the survivor takes all. So that’s one of the best estate planning arrows in our quiver: If you have a long lease, get those who you want to be your heirs to be co-lessees.

Here’s an example of what happens if there is more than one person on the lease and one of them dies. If husband and wife both sign, the lease is registered and husband then dies the lease automatically goes to wife. Wife will still be entitled to stay there and must continue paying the rent. If wife wants to have husband’s name taken off the lease and register it in only her name, this is at the discretion of the land authority, since there are no official rulings or guidelines on this point. Before trying this, therefore, the best thing is to ask the land authority whether they will allow it. If they do, they will ask for copies of the death certificate in the country where the person died, notarized by a notary public and then legalized at the Thai embassy in that country. “Legalized” just means that the notary’s signature must be certified by the Thai embassy or consulate.

But what happens if both husband and wife die in the same accident? Or, what if, after husband dies, everybody forgets about the whole thing for a few years and wife dies without having added anybody else to the lease? And this is the answer to what happens to any lease where there is only one individual lessee: under Thai law the lease reverts to the lessor.

Eek. If this happens somebody’s heirs are going to be pretty upset.

Of course, an ethical landowner in this situation would voluntarily turn the lease over to the heirs. But you don’t want to be at the landowner’s mercy over an issue like this. The landowner you know may have died or sold out and the successors in ownership may not be so easy to deal with. Better to protect yourself from the start.

One way to get around the whole problem is to add as cotenants not just heirs that are your age, but those in the next generation. There are no special requirements for this. Just have an additional witnessed signature line on the lease for each of the heirs you want to include.

If those you want to include on the lease won’t be present when the lease is executed, have them give you a power of attorney from where they are and you can sign on their behalf. A power to amend or register a long term lease must be in an official form

in the Thai language. It must be notarized in the country where it is given and then legalized. They also have to give you copies of their passports, notarized and legalized. To register the lease you then have to appear before the land authority with these documents.

The people giving you the form power of attorney can do this without notarization or legalization if they are in Thailand when they do so, as long as they give you copies of their passports showing visa stamps from Thai immigration that they were in the country on the date when they signed. These copies must be certified as true copy by their owners but they don't have to be notarized.

There's something else you should do to avoid the problem of the death of a lessee. Prominent Thai legal commentators consider that if the landlord and tenant agree in the lease that the lease is to pass to the lessee's heirs if the lessee dies, and the lease is registered at the proper land authority, the lease will not go to the landlord on the death of a sole lessee, but to the lessee's heirs.

But this point about the landlord and tenant agreeing in the lease that the heirs get the lease isn't bullet proof. There's no disagreement that if this is done the heir can simply continue in possession of the lease, and successfully defend it against a suit by the landlord to get the heir out. Whether the heir could, under these circumstances, register the lease in his or her own name is another matter. There are no official guidelines on this point and some land officials believe that a new lease must be entered into between the lessor and lessee (this, of course, requires agreement by the landlord) and that 1.1% of the total rent for the remaining period of the lease paid to the land authority as a registration fee.

Also, be careful about putting a provision like this in the lease as your only way of avoiding the problem of the disappearing lease. This suggestion comes from legal commentators, not a decision of the Thai Supreme Court, and, as mentioned above, there are not even any administrative guidelines on it. So if you're going to use it as your sole strategy, a legal decision in the future might not support it as we would like. Better to do something like a combination of adding lessees and this clause.

Don't worry if you have a long lease now that doesn't have the protections discussed above. They can be added by amendment, as long as your landlord agrees. An amendment simply means an additional contract entered into later to add to, subtract from or change the original one. People who are supposed to sign this but are out of the country can give a power of attorney using the formalities mentioned above. But if you want to insert an additional lessee the land authority may take the position that 1.1% of the value of the lease for its entire remaining period is due as a registration fee. The fee for the amendment to insert the provision that the lease should go to the lessee's heirs, though, is low.

Let's say the clause allowing your heirs to take your lease does the trick. Who are your heirs, anyway? If you don't have a Thai will, Thai law will determine who takes your assets when you die. So you should have one. But more about that another time.

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*And when I die,
and when I'm dead,
dead and gone
there'll be one child
born in the world
to carry on.
To carry on.*

Back to the song, Laura recorded it herself a couple of years before Blood, Sweat & Tears did, when she was 19.

No doubt the child mentioned was as graceful as the original.

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