


 Expat Counsel

WHAT YOU SHOULD KNOW BEFORE BUYING

Part I: Due diligence

It's unbelievable. We often see people shopping for an item of clothing costing, say, 1,000 baht. And what do they do?

They try it on — three times. They go over the seams. They compare it to other, similar garments. They go home and think about it overnight and bring back their spouse and mother in to see how it looks on them — too tight, too loose, or what?

How about when the same people go to buy a house costing, say 10, 20 or even 50 million baht? They like the view, the marble on the countertops and they sign the contract.

What's wrong with this picture?

When you buy or long lease property you should do a background check before you sign a contract of sale. Lawyers, borrowing from the financial services industry, call it "due diligence", meaning enough looking into dimness of the legal background of a piece of property so that you're reasonably sure there aren't any predators lurking out there.

You should get a due diligence report on every piece of property you purchase in Thailand before you buy. You'll see why when you read below about the pitfalls of not knowing the right things.

But the word "due" in due diligence leads us to the question of not too little or too much, because too little won't find the dangers in the dark and too much will waste a lot of time and be needlessly expensive.

So, how much of a background check on a residential property in Thailand is just right? The first thing you've got to know is who owns the property. The report should include a copy of the land title, and a translation of it, showing who the owner is.

You'd be surprised how often it turns out that the property is being sold by someone else. When you ask about this, there's usually a story that goes with it that goes something like this: the nephew is selling it because it is owned by his aunt, an old lady, but she's crazy and doesn't want to sell and he's sure he's the only heir, so he's doing her a favour because she needs the money to pay the rent on the place where the whole family lives. Trust us. There are mental competence and inheritance issues in there that'll take a lifetime to be resolved.

The person selling the property has to be the owner. Full Stop. If there is some other arrangement, for example that the aunt really has been certified mentally incompetent and somebody else is a guardian and has the power to sell, this may be fine, but you shouldn't be deciding on this yourself.

Your people should be talking to somebody else's people about this. The point is that the report should disclose all of this and the problem should be dealt with before you pay the wrong person and don't get title.



The report should include a physical inspection of the premises.

Have you been promised a lot with a house on it and the lot you're buying or leasing is really the undeveloped one down the street?

Is there someone on the property claiming it adverse to the owner's interest? Under section 1382 of the Thai Civil and Commercial Code, somebody on the spot claim-

ing what lawyers call adverse possession and what everybody else refers to as squatters' rights can get title away from the original owner after as little as 10 years. You want to make sure this problem isn't one that will haunt you in the future.

Next time we are going to cover the other issues you need to know about before you buy, such as things that should also be in a title report, and how not to lose the

deal while you're waiting for all this information. ■

James Finch of Chavalit Finch & Partners
 finch@chavalitfinchlaw.com
 and Nilobon Tangprasit of Siam City Law
 Offices Limited nilobon@siamcitylaw.com

For more information visit
www.chavalitfinchlaw.com
 Comments? Questions? Contact us at the
 email addresses above.