

The Legal Side

Now that you have your Home in Thailand: Is it Really Yours?

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Most foreigners who buy homes in Thailand take the homes with major defects in the documentation and convincing. These problems can lead to all kinds of legal complications, even the loss of the home.

It doesn't have to be this way. Most if not all of the legal problems with homes in Thailand can be fixed, if they are caught before they are at some final stage in the legal system. Here are a few things you should check.

One important issue is whether the home is in your name or not. If you are living in a condo, you should find out whether it is in your name and if you own it on a freehold basis.

If you own a house, you should first find out if the house is in your name, even if somebody else owns the land or the land is leased to you. Foreigners can own houses, even if the houses are on land they don't own, because foreigners can't own land. This is important because most of the value of your home purchase is in the house, not the land, and you should control the house.

How can you find out whether you own the house? Any lawyer can do a search and tell you. If it's not registered in your name, and you bought it from someone, you should take steps now to have it registered in your name. The registration is done by giving an official thirty-day notice along with filing copies of the building permit, the certificate of completion, the blue book and other documentation.

Who owns the land on which your house sits? This may surprise you. The answer lies at the land office, not necessarily in documents you may have signed.

In Thailand, all ownership of land must be registered at the government land office with jurisdiction over the area where the house is. Likewise, all leases longer than three years are not enforceable beyond three years unless they are registered at the land office.

Many foreigners we meet produce elaborate leases, corporate documents and deeds that they think protect their home ownership. Often when we check, nothing has been filed at the land office and they have no ownership or lease at all. What this means is that the real owner of record at the land office can sell the home to someone else. If this real owner dies, his or her heirs will take the home, not the foreigners.

If your land ownership or long lease has not been filed at the land office, it should be, right away.

Numerous foreigners, for convenience, put homes in the names of Thai spouses or friends. If the relationships don't work out the foreigners lose everything. This can be protected against by having the Thai party long lease the real estate back to the foreigner or, in the case of married parties, using a vehicle of Thai law called a usufruct, which gives something like a life estate to the foreigner. There are other ways, as well.

If your land is owned by someone else, even though that someone has held it for some time, you should protect your interests in it now, by asking that person to give you a lease or usufruct or other form of protection.

Was your long lease registered? If it was only in English, it wasn't. What may have happened was that somebody filed a notation of the existence of the lease in the file relating to the title. This will not contain any of the protections for you that are in the lease you may have signed. A translation of the full lease can be filed now, even if you paid years ago.

If you have a long lease, is the house on the lease? It shouldn't be, if only because if the lease for some reason reverts to the landlord, you will lose the house, too. As explained above, you can register the home in your own name and this won't happen.

By the way, what happens if you die during the term of your long lease? In general, it will, under Thai law,

revert to the landlord when you die. There are ways of protecting against this. For example, you could add a spouse or child as cotenant. If you die and there is a cotenant, under Thai law the lease goes to the cotenant. There is also good though not perfect precedent under Thai law that if you provide in the lease that the landlord agrees that the lease will go to your heirs if you die, you will be protected. You should, incidentally, have a will so that if you die the Thai legal system will know who your heirs are.

If you've already paid your money and you need another party such as a developer or a friend to cooperate so that the documents or filings protect you, it may be a little delicate, but it is worth it to try. In our experience, if the situation is fully explained in both languages, the parties end up helping each other.

What if you aren't sure if you're protected in connection with all of the above problems and others too numerous to mention? It might be, for example, that what you have evidencing your ownership is in the Thai language and you don't understand it well enough to be sure. Or you know at the time you paid something was done at the land office but you aren't absolutely sure what.

If you aren't absolutely sure, you should have a lawyer check all of it. Doing so isn't expensive. Also, if there are problems, they can probably be worked out now. If you wait, this may not be possible.

