


 Expat Counsel

By James Finch and Nilobon Tangprasit

## FOREIGNERS: LEGAL PROBLEMS OF HOME OWNERSHIP IN THAILAND

### Part I: Is the home in your name?



ILLUSTRATION: NATTAYA SRISAWANG

This is the first in a series about the legal problems of foreigners who now own homes in Thailand. If you have one or more of these problems, you can and should correct them — before they reach some final stage of the legal system.

Vast numbers of foreigners who have bought homes in Thailand have done so with serious defects in title or ownership. One factor contributing to these numbers is the fact that many first-time home buyers in Thailand let the developer or seller do all the documentation and filing of the ownership documents without consulting with somebody who understands what must be done to protect the buyer's interests. And they sign documents in Thai, even though they don't understand them.

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 have 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.

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 30-day notice along with filing copies of the building permit, the certificate of completion, the blue or yellow 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 foreigner. 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 land in the names of Thai spouses or

friends. If the relationships don't work out the foreigner may lose everything. This can be protected against by having the Thai party long lease the property back to the foreigner. Alternatively, in the case the Thai party is your spouse, you can use a vehicle of Thai law called a right of usufruct, which gives something like a life estate to the you. 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. ■

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