
 Expat Counsel

By James Finch and Nilobon Tangprasit

FOREIGNERS: LEGAL PROBLEMS OF HOME OWNERSHIP IN THAILAND PART II: Is your long lease registered?

This is a continuation in our series about legal problems you may have if you already own a home in Thailand. Many of these may exist even if you're living in the home and everything appears to be fine.

Here's the issue of the week. Is your long lease really registered at the land office? Many foreign residents of Thailand are confused about this, and long after they have signed the lease and forgotten about the whole thing find they have only a fraction of the protection they thought they negotiated with the person who sold the home to them.

Here's how it happens. Often the seller and the foreign buyer sign an elaborate long lease in English that contains protection for the buyer. It may be that the foreigner has requested numerous provisions in the lease that give him or her a real sense of confidence in the transaction. The lease is signed and money changes hands.

Here are examples of the kinds of clauses in a long lease that might protect a foreign tenant: "If the laws of Thailand change and allow foreigners to own land freehold [forever] the landlord agrees to convey it to the tenant in freehold."

"If the landlord is in default, for example by not providing certain services, the landlord must pay damages."

"If the tenant wants to sublet or assign the lease, the landlord has to allow this."

But what happens then? Quite often, the lease the parties have negotiated doesn't get filed at the land office at all. Instead, all that is filed is a short notation of the lease and the names of the landlord and tenant in the file relating to the land. Such a notation will have none of the protection for the tenant contained in what was signed between the parties. In fact, it may contain limitations on the tenant's enjoyment of the property that contradict what is in the lease the parties signed.

What happens to the long lease that the parties negotiated and signed? Under Thai law, unless a lease has been filed at the proper land office, after three years it is not valid. This means that if the lease is for 30 years, the protection in the signed agreement will not last beyond three years.

One tip-off that your lease may not have been filed is that if it is in English or another foreign language only, it cannot have been filed at a Thai land office. A translation of it can be filed, and a lease in both English and Thai in alternating translated paragraphs can be filed at a Thai land office, too. But if it was never translated into Thai, you can be sure it was never filed.

How do you find out if your lease was properly filed? Practically any lawyer can check this with the land office that has jurisdiction over the area in which you live. If the lease you signed was never filed at the land office, you should ask the landlord to cooperate in having it filed immediately. This can be done by having it translated into Thai, if this hasn't been done already. You and the landlord can then file it at the land office. Neither of you has to go in person. You can give powers of attorney to someone else to do this.

Now that you understand what can happen, you also know why we recommend that the "someone else" mentioned above be a person who can explain to you what's being done and who fully understands how to protect your interests.

As with issues discussed earlier, the solution to the problem of the unfilled lease is quite simple and cheap. But the best thing to do is make sure the problem is solved at the time you lease the home — not later. ■

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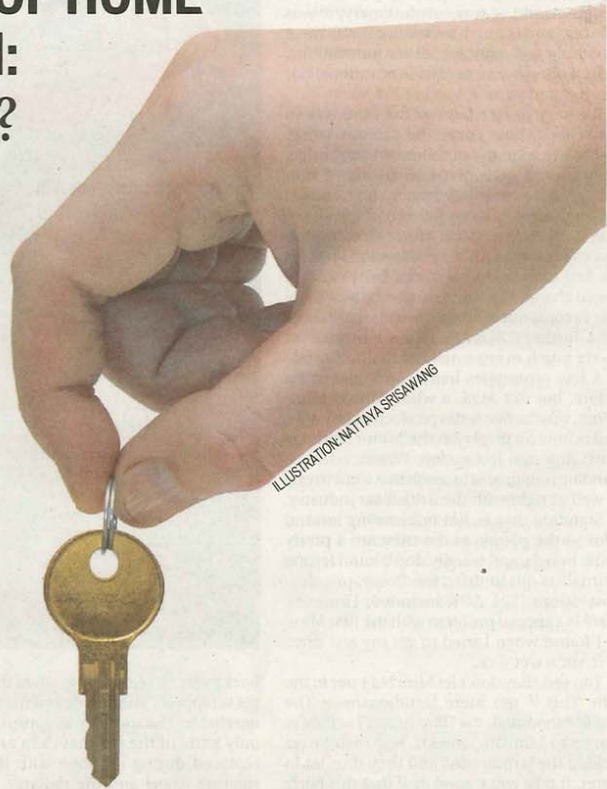


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