


 Expat Counsel

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FOREIGNERS – LEGAL PROBLEMS OF HOME OWNERSHIP IN THAILAND

Part IV: House on the lease, continued

Last time we told you that if you buy a house and rent the land on which it sits, you should take title to the house separately from the land, and not have it included in the lease of the land.

This time we will discuss another reason that your landlord may have put the house on the lease, and what to do about it.

The second reason the landlord may object to letting you take outright ownership of the house relates to taxes and government fees, since the landlord, as seller, may have agreed to pay all or a part of these. Home purchase deals in Thailand may, for example, often provide that the seller or landlord agrees to pay half the taxes and fees.

Of course, property taxes and fees have to be paid on a house transfer, and the seller may have wanted to avoid these. The taxes and fees may, however, be higher on the lease of a house than those on its purchase, but the landlord may not be aware of this.

Here's how the taxes and fees work. The registration fee on a lease is 1.1% of the value of the rent for the entire period of the lease. One option is to include the value of the house for the entire long lease period in the lease and pay 1.1% of this as the fee.

Alternatively, since you as a foreigner may own the house in your own name, you may pay the taxes and fees on the sale, not the lease, of the house and register it directly in your name.

Your landlord may have registered the house on the lease because he or she thought the taxes and fees were lower this way. Here's what your landlord may not know, however — the taxes and fees on the sale of property, such as the sale of a new house where the land has been separately leased, were drastically reduced for one year, from May 1, 2008, to March 28 this year. During this period they were:

- A registration fee of 0.01 % of the assessed price, plus
- a specific business tax of 0.11% of the sale price and assessed price, whichever is higher.



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The above is a total of about 0.12%, including stamp duty.

After March 28, the taxes and fees reverted to the following:

- A registration fee of 2% of the assessed price, plus
- a specific business tax of 3.3% of the sale price and assessed price, whichever is higher, or the income tax on the sale in case the seller owned the house over five years.

On March 26, the Ministry of the Interior, however, announced that the break in the above 2% fee would continue for another year. On May 18, the Ministry of Finance announced a royal decree reinstating the break at 3.3%, effective from May 29. Thus on May 29, and following for about one year, the taxes on the sale of property will go back to the roughly 0.12% mentioned above.

Because of these tax reductions, the property taxes and fees on registering ownership of a house, now about 0.12%, are lower than those of including the value of the house in the lease, which would subject it to the 1.1% fee mentioned above.

What should you do if the house is on the lease? Ask the landlord to amend the lease so that it only includes the land and to convey the house separately to you. You may have to cover the taxes and fees on this, but because they've been reduced this won't be much to put out in exchange for much better rights to what you've bought. If you own the house outright, for example, you may convey it to others without worrying about getting the approval of the landlord. And you can be much more sure that if you die it will go to your heirs. ■

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