



Expat Counsel

By James Finch and Nilobon Tangprasit

FOREIGNERS: LEGAL PROBLEMS OF HOME OWNERSHIP IN THAILAND

Part V: The lease doesn't provide for succession

In this series we're talking about legal problems that foreign homeowners in Thailand may have. The problem we'll discuss below is a typical one. You may be living happily in a home that is long-leased and not even know the problem exists. It's easy to fix, but if you don't, your loved ones could lose the home if you die.

Thai law provides that if a tenant leasing real property dies, the lease is terminated and the property reverts to the landlord. Thus, if you're the sole tenant on a 30-year lease that doesn't provide otherwise, the home will go back to the landlord if you die, even if, for example, less than a year has gone by since you signed the lease.

This means your heirs wouldn't get the remainder of the lease on the place, your landlord would.

How does one deal with this problem? There are two ways. First, the lease itself should be amended to state that the parties agree that if the tenant dies during the term of the lease, the tenant's heirs will

succeed as tenants to the lease. There is a small problem with relying only on this amendment. Though there is precedence for it in lower court cases, the Thai Supreme Court has not dealt with the issue directly. Because of the lower court cases, however, we recommend that you take this precaution.

Needless to say, if you say something in a lease to the effect that your heirs should take over the lease when you die, you should have a will that lets the world know who your heirs are. If you don't, in Thailand the lease would pass to what are referred to as your statutory heirs. In the West, we call this intestate succession. It means that without a will the law, not you, decides who inherits your property when you die. Since you may not agree with how the law splits up estates, a will enables you to make these decisions yourself.

A will you've properly executed in your home country or under the laws of a third country is, under Thai law, acceptable. To be safe, however, we recommend you execute a separate will in Thailand applicable to your property in Thailand.

The second solution to the problem of death during the lease is adding a joint tenant. Under Thai law, there may, of course, be more than one tenant on a lease. A lease could have, for example, husband and wife as joint tenants or father and daughter or even several members of a family, such as parents and children. Under Thai law if one of these tenants dies, that person's interest disappears and the other tenants get the whole lease in equal shares.

As with our suggestion about the clause in the lease, the way to add additional tenants is by amendment to the lease. Of course, you'll have to ask your landlord to sign the amendment, but both changes could be done in a single amendment. If you add tenants, by the way, they'll have to sign the amendment, either in person or by power of attorney.

If you do an amendment you will probably have to pay the government registration fee and stamp duty again — 1.1% of the stated value of the lease over its entire period — but peace of mind is worth it. ■

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.

