


 Expat Counsel

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FOREIGNERS: LEGAL PROBLEMS OF HOME OWNERSHIP IN THAILAND

Part VI: House not on the books

This is the last in a series about the legal problems facing homeowners in Thailand. The problem we'll discuss this time has to do with homes that are held in the name of companies. We'll also tell you how to fix it.

Up to a couple of years ago, practically all foreigners who bought homes in Thailand did so through Thai companies, to avoid restrictions against foreign ownership of land. The majority of the shares of these companies were owned by Thai nationals. An alternative to this, of course, is a long lease on the land, and we'll compare these options and their legalities in later columns. Suffice it to say, though, that there are many who still prefer the company route to that of a lease.

So the company was set up. What happened next? The owner transferred the land to the company. What about the house? There were two options for this. First, when the house was built it could, like the land, have been transferred to and put on the books of the company. Second, the house could have been transferred to the owner directly, because foreigners can own houses in Thailand, but not land.

But here's why the house may never have been mentioned in connection with the company or transferred directly. Let's say, for example, that the value of the land was one million baht and the house six million. To save on taxes, the house may not have been put on the books of the company before you got the shares of the company because the previous owner of the shares would have been responsible at that time for taxes on the increase in value that the sale of a new house entailed.

But what happened to the house? Well, presumptively it's now owned by the party who had the building permit and related documentation such as the tabian ban (blue book) for it, perhaps the developer, or a third party who was the builder.

So, if you're now living in the home, what's the problem? These things seem to go in twos. First, the tax issue. Let's say you bought the above property for seven million baht a few years ago. Now you want to sell it for nine million baht. What would be your taxable gain on the transaction? It would be eight million baht, because the value of the shares that will be sold are only one million baht — what's on the books of the company.

Second, what happens if the presumptive owner dies? The house would go to his or her heirs. What if the presumptive owner decides to sell it? Again, you would be in a pretty tough legal position.

So what should you do about all this? First, have somebody see who owns the house and if it's on the books of the company. If it isn't, a tactful person with experience in these matters should contact the owner, developer and/or builder and request that the house be transferred to you. The more time that has gone by since the sale, the more these parties will prefer to ignore this issue, because transferring may mean income tax for them. This is, however, usually worked out by compromise and having you pay some of the taxes. ■

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