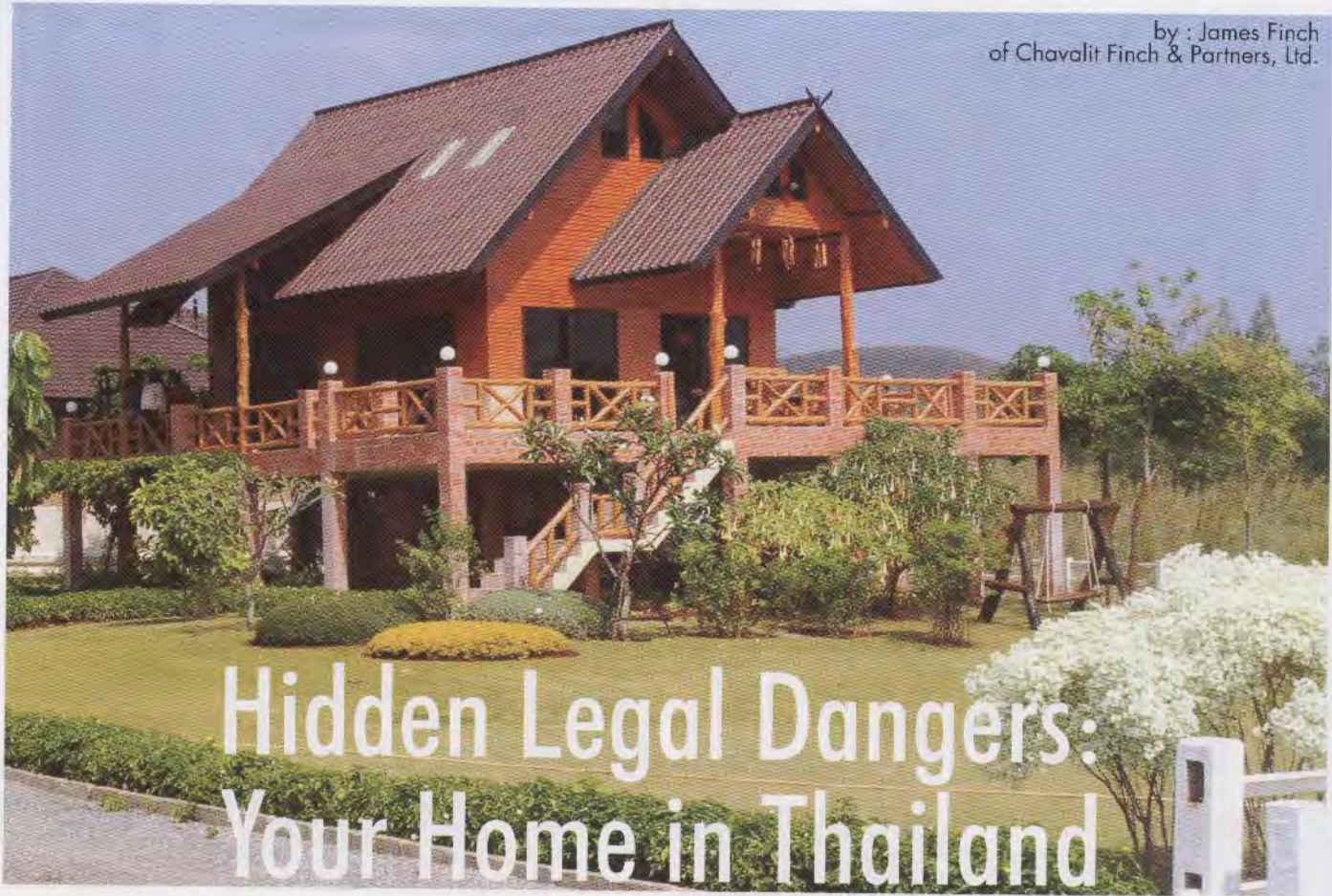


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Hidden Legal Dangers: Your Home in Thailand

If you've bought a home in Thailand you may have the feeling that all is well, and it may be.

But we've gone over hundreds of home contracts and checked equal numbers of interests registered at the land office. And do you know what we've found? More than half of the home ownership and lease documentation we review contains defects that may result in loss of ownership or unnecessary taxes in the future.

The sad thing about the above is that it is virtually all preventable from the beginning. Or fixable now, even though you already own or long-lease.

Here are the kinds of problems we see all the time:

- Title to the house and land left or put in the name of a person other than the buyer. This is the quickest way to get a blue book for the house and get the utilities turned on if the buyer is foreign. It often happens at the land office, since everything filed there may be exclusively in the Thai language. What it means, however, is that the person whose name is on the title, not the buyer, can sell the property and the heirs of the person on the title would get it when he or she dies. If your house is now in the name of

someone else, you should immediately ask that person to give you a long lease on the property and file this at the land office. During the term of the lease your right to use the property will be protected.

- The lease is not registered. Often the seller and the foreign buyer sign a long lease in English that contains protections for the buyer. If Thai and English versions of this are registered at the land office the buyer will benefit from these protections for the entire period of the lease. Quite often, however, this lease doesn't get filed at the land office. Instead all that is filed is a short notation of the lease and the names of the lessor and lessee in the file relating to the land. Such a notation will have none of the protections contained in what was signed between the parties. What happens to the long lease in English? Under Thai law, after three years a document relating to real estate such as a lease is not valid unless filed at the land office. This means that if the lease is for 30 years or longer, the protections in the signed agreement will not last beyond 3 years. Thus if the lease you signed wasn't registered at the land office, you should have a Thai version of this filed there as soon as you can.

- Is the house on the long lease? It probably shouldn't be. Thai law prevents foreigners from owning land so many foreigners lease land. But it doesn't prevent foreigners from owning a house

on land, and in most cases we see, the house is far more valuable than the land. You should check to make sure the house is simply not included in the lease. If it is, you should request that the house be taken off the lease and transferred directly to you. If you do this and for some reason the lease reverts to the lessor, you will be protected and the house won't be lost.

- Is there a provision in the long lease that if you die, it will go to your heirs? If not, under Thai law it will revert to the lessor. There is good though not absolutely definitive precedent under Thai law that if you put a provision like this in the lease and register it, your heirs will not lose the land when you die. If your lease doesn't include this, you should ask your lessor to execute a new lease that does. And you should have a Thai will to ensure that your loved ones will get the lease when the time comes.

- Is the house not on the books of the company? Many foreigners own real estate through Thai companies. In many cases the house is not on the accounting books of the company, just the land. The house was left off the books to avoid taxes at the time the house was sold to you. Let's look at an example of how this can cost you. If you bought the house and land for seven million baht and sell it a couple of years later for nine million baht, you're supposed to pay tax on the amount of the gain, two million baht, right? Not necessarily. If the house isn't on the books of the company and the land's valued on these books at only a few hundred thousand, you'll pay tax at normal income rates on virtually the whole thing. If your house isn't on the books of the company, therefore, you should try to get it added. This will, of course, mean additional taxes now for the person who sold it to you. Alternatively, you can have the house transferred directly to you.

So what do you do to make sure the existing documentation or registration of your home isn't defective? Contact a lawyer and have him or her check all of this. Most will look over the documents with some kind of nominal charge and tell you if they think there's something wrong. You may want him or her to check the title at the land office, too. All of the problems mentioned above can be fixed.

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