

LAND, BUILDINGS AND CONDOMINIUMS

Thai land law are discussed, and also the ways in which foreigners may own land, buildings and condominiums in Thailand.

Land ownership Ownership of land or possessory rights may be evidenced in one of the following ways:

Title deed, Thailand has a system of title deeds similar to the Torrens system in Australia. An ownership deed, known in Thai as a “*Chanote*” is issued in duplicate, one copy for the owner, mortgagee, etc., and one for the official records of the Land Department. The title deed contains a description of the land such as the size, boundaries and marking posts, and a history of all registered transactions concerning the land. A title deed, or at least the Land Department copy, is the best evidence of ownership. The registered owner may transfer the ownership or grant other rights by presenting his original title deed at the Land Department together with the appropriate contract (sale, lease, mortgage, etc.) There is no waiting time required in order to effect the transfer. Title deeds are issued mainly for land in urban and other built-up areas.

Confirmed certificate of use, This certificate known as *Nor Sor Sam Kor* is generally similar to a title deed. It certifies the person named therein has the right to use the land and that his right has been confirmed, that is all requirements for the issuance of a title deed have been met and the issuance of the title deed is pending the issuance of title deeds in the area concerned. Transfers of this certificate are made at the Amphur (District Office) office rather than at the Land Department. Transfers may be made without the need to post a notice or for a waiting period to elapse.

Certificate of use, This certificate known as *Nor Sor Sam* is similar to the Confirmed Certificate of Use, except that not all the formalities to certify the right to use have been performed. The Certificate of Use may be transferred at the Amphur, but before a transfer can be made it is necessary to post a notice of intent and then wait for a period of thirty days to see if anyone objects.

Certificate of possession, This certificate known as *Sor Kor Nueng* is a recognition that a person is in possession of land but the certificate does not imply that there are any rights associated with the possession. A Certificate of Possession cannot be transferred but a person in possession may transfer physical possession and the new possessor may apply for a new Certificate of Possession. Certificates of Possession are common mainly in rural areas. Their issuance must precede the issuance of a Certificate of Use.

Tax receipts, A person may pay local development land tax and use the tax receipt as evidence of possession. The tax receipt does not grant any rights but it is useful in applying for a Certificate of Possession.

Mere possession, A person may be in possession of land without any documentation at all. Depending on the land involved and other possible claimants, including the government, mere possession could possibly, step by step, evolve into a documented possession and ultimately a title deed. Mere possession can be transferred from one person to another by a contract in writing. (This contract cannot be registered.) The transferee does not obtain any greater rights than the transferor had.

Prescription, Ownership of immovable property can be obtained by adverse possession for a period of ten years. Ownership so obtained is superior to the ownership shown on a title deed or other similar document. The court may order that a new title deed be issued to the adverse possessor upon

adequate proof. Ownership, however, cannot be obtained by adverse possession to state property within the public domain.

Preliminary contracts of sale, Contracts to transfer immovable property at some future date are specifically enforceable; however, these contracts generally cannot be registered and so it is possible for the seller, in the interim, to transfer good title to some third party. There is thus little protection for would be buyers who enter into contracts to purchase immovable property in the event that the seller becomes insolvent or sells to someone else.

Transferring ownership, Ownership is normally transferred by a contract in writing made before the appropriate official at the Land Department or the Amphur. The transaction is recorded on the title deed or other document and copies of the supporting documents such as the contract for sale, lease or mortgage are kept in the official records. With respect to land, the purchaser, if a natural person, must prove that he has the right to acquire it by proving his Thai nationality. For example, if the purchaser's father was not Thai, the purchaser may have to show documents concerning his Thai military service. Thai women with foreign fathers may have to prove that they are not buying the land for their fathers.

Foreign ownership, The law generally restricts the right of foreigners to buy or own land unless there is a treaty allowing such ownership or the foreigner has received special permission. All treaties allowing foreigners to buy or own land have been abrogated. Foreign ownership of land is currently possible in the following cases:

- . The Board of Investment and the Industrial Estates Authority of Thailand has power to permit promoted companies to own land for the purpose of the promoted business.

- . Permission for land ownership may also be granted to petroleum concessionaires under the Petroleum Act, for use in approved projects.

- . Banks and financial institutions that have become foreign owned with Bank of Thailand consent may own land, or acquire land through a debt restructuring process, on the same basis as similar Thai-owned institutions.

- . A foreigner who invests at least 40 million Baht in authorized securities in Thailand, may be granted permission to purchase up to one Rai (roughly 1600 square meters) of land for residential purposes.

- . Property funds licensed by the Securities Exchange Commission, may have all their units owned by foreigners. Such property funds are subject to minimum investment and other requirements.

Practice of the Land Department, Foreigners sometimes buy land by using companies which are nominally majority Thai owned. Under the present law, a Thai company which is at least 51% Thai owned may buy land. In practice, the Land Department is reluctant to register transfers of land to any company which is more than 39% owned by foreigners.

In any case where a company has any foreign ownership or where there are foreign directors the Land Department may refuse to permit a transfer until it is satisfied that the Thai equity in the company is real and that the Thai shareholders are not nominees of foreign interests.

In this respect, the Land Department may investigate the Thai shareholders to see if they have the resources to purchase their shares. Such an inquiry may involve a request to see income tax returns. Cases in which foreigners own more than 39% of the shares are referred to the Director General of the Land Department.

Other rights in land

Leases, Although foreigners usually may not buy land, they may lease land on a short or long term basis. Leases for up to three years may be entered into by simple contract and need not be registered. Leases for more than three years are valid for only three years unless the lease is registered on the Title Deed or the Certificate of Use. Leases for three years with an option to renew may in certain cases be treated as a lease for more than three years and the renewal option may not be valid unless the lease with the renewal option is registered.

Leases may in-general be granted for up to 30 years (or the life of either party) and where the lease is for a period of years it may provide for a renewal clause allowing the lease to be renewed for an additional period of up to 30 years. However, the renewal provision is not automatic, the parties must appear at the Land Department to register the renewal. There are court decisions which indicate that the renewal clause is personal to the landlord and so may not be binding on his heirs or successors.

It is also possible for a lease for industrial or commercial purposes to be granted for a term of up to 50 years, and this may also include an option to renew for a further 50 years. The granting of such longer leases has not yet become popular in practice.

Superficies, This is a right granted by an owner of land in favor of another whereby the superficies is granted the right to own upon the land, buildings, other structures or plantations. It is similar to a lease and the rules concerning leases apply to superficies. Often, what many people believe is a lease is in fact a superficies.

Usufruct, This is a right granted by an owner of land in favor of a usufructuary whereby the usufructuary has the right to possess, use and enjoy the benefits of the property. Specially, a usufructuary normally has the right to exploit forests, mines and quarries. The rules concerning usufructs are similar to those concerning leases.

Habitation, This is a right to inhabit a building as a dwelling without paying rent. It may be granted for the life of the grantee or for a period of time not exceeding thirty years subject to the right to renew for an additional period of thirty years. The rules concerning habitations are generally similar to those concerning leases.

Servitudes, Immovable property may be subjected to various types of servitudes for the benefit of another immovable property. A servitude may, for example, consist of an easement giving access to a parcel of land or of the right not to have a tall building built on the subservient estate. Servitudes may be acquired by prescription but normally must be registered on the applicable title deeds. Servitudes by necessity also exist in favor of parcels of land to which there would otherwise be no access or unduly difficult access.

Charges, An immovable property may be subjected to a charge entitling the beneficiary to a periodic performance out of such property or to a specified use and enjoyment thereof. A charge may be created for the life of the beneficiary or for a period of thirty years subject to a right to renew for an additional period of thirty years.

Mortgages, A mortgage may be granted by an owner in favor of a person, bank or financial institution to secure the performance of any obligation. While there is no law restricting the right of foreigners to receive mortgages on land, the Land Department normally does not allow foreign individuals to register such mortgages as it deems that such mortgages may be a subterfuge for the foreigner owning the land. Foreign banks, however, are permitted to register mortgages.

For residents of Thailand, only individuals and licensed banks and finance companies can take mortgages where the mortgage finances the construction or purchase of the immovable property. But any company can take a mortgage to secure trading debts or other obligations.

Buildings and apartments, It is common in Thailand for buildings to be owned separately from the land. As there are no nationality restrictions on owning buildings, it is common for foreigners to lease land for their factories or other buildings. The ownership of buildings may be transferred at the Land Department or Amphur at the same time that the ownership of the land covered by a Title Deed or Confirmed Certificate of Use is transferred. Otherwise, the ownership may be transferred at the Amphur and then only after notice of the proposed transfer is posted and 30 days elapse without objection.

Apartments may be leased in the same manner as buildings but cannot be owned separately from the whole building.

Leasing arrangements are often structured by the preparation of several, rather than a single document. As there is Land and House tax of 12.5% on the gross rental derived from renting out land and buildings, landlords in order to minimize their taxes often prepare three separate contracts.

The first agreement will be a lease of the apartment or building. The rent is subject to 12.5% Land and House Tax. The other contracts to supply furniture or contents or to supply services are exempt from Land and House Tax but subject to Value Added Tax which is currently only 7%.

Condominiums, The rules concerning ownership of condominiums are similar to those concerning land. Condominium units have a form of title deed and ownership is transferred at the Land Department. Since each condominium unit carries with it a proportionate ownership of the land, foreign ownership of condominiums is strictly controlled.

Foreigners, both natural persons, foreign majority owned Thai companies and foreign companies, may own up to 49% of the area of a condominium project. For those who do not have resident permits there must be proof that foreign money was brought into Thailand to purchase the unit. Separate rules apply to persons in BOI promoted companies and those with full residence permits.

Notwithstanding the above, condominium units may in any event be leased by foreigners in the same manner that they may lease land.

Fees. stamp duty and tax, The following are the fees, stamp duties and taxes due on the sale, lease or mortgage of land, buildings and condominiums:

Fees on transfers of land, The land transfer fee for transferring ownership to land, buildings or condominiums is 2% of the assessed value no matter what amount is declared. In addition there is a 0.5% stamp duty based on the receipt actually or constructively given for purchase price. The 0.5% stamp duty is based on the amount declared or the assessed amount whichever is higher. For those who sell land or buildings held for less than five years (less than one year if the owner has his registered domicile at the place being sold) there is a specific business tax of 3.3% (this includes municipal tax) of the declared amount but if this tax is paid, then the 0.5% stamp duties referred to above is exempted.

For juristic persons that sell land, buildings and condominiums there is a 1% income tax withholding payable at the registration office. Full company income tax must be paid on the profit at

the time the selling company files its annual or semiannual income tax return. A credit is allowed for the 1% withheld.

Natural persons who sell land, buildings or condominiums (but not as a business) must pay a capital gains tax of from zero to 20% at the time the transfer is made. The tax is assessed on the assessed price less a standard deduction based on the length of time the seller has owned the property.

The usual progressive natural person tax rates are applied to the deemed profit but in any event the tax may not exceed 20% of the gross selling price. When the natural person files his yearly income tax return he can choose to declare the actual profit or loss or he can ignore the matter and the tax paid at the registration office will be the actual tax.

Leases, Natural or juristic persons who register a lease of land, buildings or condominiums (or other similar right such as a superficies, usufruct or habitation) pay a 1% fee of the assessed rental value. In other words the total monthly or assessed rental value is added up and the tax is paid on the total value.

There is in addition a stamp duty of 0.1% based on the above figure and an additional stamp duty of 0.5% based on the receipt of rent or the prepaid rental recited in the lease. If there is no prepaid rent, this stamp duty is not due until the rent is actually paid and a receipt given.

Mortgages, The fee for registering a mortgage on land, buildings or condominiums is 1% of the amount declared in the mortgage agreement (maximum Baht 200,000). In addition, proof must be presented that the 0.05% stamp duty for loan agreements (maximum Baht 10,000) has been paid. If the stamp duty has not already been paid, it must be paid at the time the mortgage is registered.