

Avoiding the pitfalls in acquiring real estate in Thailand: Avoiding the pitfalls in acquiring real estate in Thailand

By Jiraporn Thongphong, Attorney at Law at Chaninat & Leeds

9 November 2011

Thailand has become an attractive option for many people interested in acquiring a second home, as well as those in search of a permanent residence or a retirement home. Blessed with warm weather year round, modern health care, a developed infrastructure, safe streets and a fascinating culture, Thailand competes favourably with other destinations around the globe. In addition, Thailand's growing spa and hotel industries provide opportunities for savvy investors seeking real estate opportunities.

However, foreigners considering acquiring real estate in Thailand need to be aware of the potential pitfalls to ownership. As in any country, there are those ready to take advantage of a foreigner's lack of knowledge concerning local property law and customs.

Here are the most common risks a property buyer ought to be aware of before signing a real estate transaction in Thailand:

There is no government-mandated licensing process for estate agents. Buyers should never place undue trust in anyone representing themselves as a real estate agent in Thailand before thoroughly checking them out.

Secondly, language and culture barriers exist. Most foreign buyers enter the Thai real estate market without speaking Thai. Moreover, the Thai legal system, as it involves real estate, title deeds and related issues, is likely to be very different to the system a foreign purchaser may be accustomed to.

Finally, many real estate purchasers in Thailand become interested in buying a second home here after having experienced the beauty of Thai nature and culture during a holiday. In many cases, people become infatuated with Thailand and make emotional decisions without hiring qualified legal counsel or conducting due diligence and negotiation.

For the careful investor, however, Thailand provides excellent opportunities for acquiring that dream holiday home, investment property, permanent residence or retirement home.

The risks on the horizon

The types of problems foreign purchasers may walk into are numerous but are, in most cases, preventable.

Perhaps one of the most publicised instances of Thai real estate fraud took place in 2006 on the island of Koh Samui. Government investigations into land companies on the island revealed that thousands of plots of land had been illegally issued title deeds. Deeds for

measurements of land exceeded the amount of land on the entire island, and encroachment and development of state-protected reserves was revealed.

Similar cases have occurred elsewhere in Thailand, usually involving land that borders national parks and mountainous areas. Most cases of land fraud are on a smaller scale, however, and usually involve a purchaser or investor not performing proper due diligence, or not demanding basic contractual safeguards.

Less dramatic cases of real estate misrepresentation and fraud can involve foreign clients discovering that their purchased property lacked promised (and paid for) amenities, including water pipes and sanitation systems. There are also cases where buyers have discovered that the title deeds for the property they believed they had purchased were simultaneously sold to another party, leading to lengthy lawsuits. In other cases, overseas buyers have found agents or business partners had suddenly become unresponsive, or disappeared altogether after receiving large deposits.

Know the laws, understand your rights

The basic premise of Thailand Land Law as it concerns foreigners is, unfortunately, often downplayed in real estate brochures and advertisements. The most important point is that Thai law prohibits, with very limited exceptions, foreigners from purchasing freehold land in Thailand.

The Thai law does, however, allow long-term leases and the freehold purchase of condominium units in designated areas. Thai law also allows foreigners to own buildings (but not land) and allows foreigners real estate rights that do not amount to full ownership. In general, it is advisable to be wary of agents who promise outright ownership of freehold land or the use of complicated company “nominee” structures as a way to avoid the prohibition on freehold ownership by foreigners. Most importantly, prospective investors should obtain qualified, independent legal counsel and execute a thorough due diligence.