



INDUSTRY INSIDER

Thai property law is not renowned for its clarity. Most foreigners contemplating buying property in Thailand are generally aware that they can buy a freehold right in a Thai condominium. But the Condominium Law keeps changing. The latest amendments to the condominium Act (No. 4, 2008) require all “Juristic Condominiums” (which are akin, in some respects, to companies in which the unit buyers are the shareholders) to amend their regulations to comply with the Amended Act.

Cause for Confusion?

As the title of the Amended Act implies, this is now the 4th version since the introduction of Condominium Law in 1979. One of these changes increased the foreign owned freehold portion from its initial 40% to 49%. Another introduced exceptions whereby foreigners could own more than 49%. Now we are back to 49% without exceptions. This is only one example. There have been many changes, and no matter what the law said before, all condominiums must now comply with the Amended Act. This type of confusion is endemic in Thai property law, and it raises the question of long-term security of ownership for foreign buyers.

We asked one of our Industry Insiders David Groom, for his comments. David Groom is the managing director of the Green Heritage Group. He has been living and working in Thailand for 18 years, prior to which he was a property developer and consultant in the UK, Australia and South Pacific Islands. “Thai property laws” he said, “are enacted to protect Thailand’s sovereign ownership of its land; to ensure its land remains under the control of the Thai people.”

David explains “In this context, the 49:51 rule for condominiums is supposed to ensure that majority ownership of every condominium is in Thai hands. However, this is quite illogical.

Foreigners cannot own Thai land, so even if they owned 100% of a condominium, the land on which it is built remains in Thailand under Thai jurisdiction. It must always eventually revert to Thai ownership. So what is the point of limiting foreign ownership of condominium units?

“However, the 49:51 rule is a severe problem only in island resort destinations such as Phuket and Samui. In any country, and Thailand is no exception, local people prefer to buy a 2nd holiday home within easy reach by car, for obvious reasons. Consequently there is very little demand for the 51% Thai quota in these island resorts.

“The only current solution is for the developer to retain the unsold Thai quota units and lease them to foreigners. But this raises two problems. Developers of condominiums wish to sell their inventory and exit the project. They do not want to retain ownership of units and have all the onerous liabilities, responsibilities and costs of administering a holding company for a 30-year lease period, with one or more 30-year extensions.” adds David.

David continues “The other problem is that condominium developers promote that the only secure property ownership for foreigners in Thailand is freehold condominiums. This is self-defeating once the 49% foreign quota has been sold. The real estate agents reinforce this rhetoric. Consequently, the foreign buyers shift to another condominium

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Condominium Law with David Groom

Story : James Goyder Photography : Nakarin Banjerdjin

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that still has foreign freehold available, perceiving leasehold as a very inferior and insecure alternative.

“If the developer cannot sell or lease the 51% Thai quota and consequently does not have the financial strength to complete the project, where does that leave the foreign buyers who have paid deposits and progress payments on their units? How secure is their “freehold” investment then?”

The 49% rule and constantly changing retroactive condominium legislation are by no means David’s only observations. He points out that many foreign buyers are unaware of the restrictive rules and regulations that



govern condominiums “It often comes as a rude shock, especially to retirees who wish to live in their condominiums full-time, that they can’t keep pets and can’t even erect sunshades on their balconies, and that they may need to attend Annual General Meetings and Committee Meetings to protect their interests, instead of enjoying their retirement or spending their hard-earned holiday time relaxing on a beautiful beach.” explains David.

David says “Even the administration of Thai condominium law is difficult for foreigners to deal with and understand. One example, in which I recently became involved, is that under the Act 75% of the co-owners can vote to approve sale or disposal of common land owned by the condominium. The property concerned had a narrow strip of land, not used by the condominium, that ran alongside a road preventing access to land behind it. The co-owners voted 100% to sever this from the condominium land but the Land Department refused to permit this, in spite of legal representation. How can anyone have faith in this law in face of such anomalies?”

Alternative Options?

So what changes would David like to see? “In my opinion, the only really viable procedure for foreigners to own Thai real estate is a well constructed land lease with irrevocable and protected renewal options, as used for many privately owned villas, which are usually far more expensive than condominium units.”

David explains “As an industry, we should be promoting to the foreign market well structured land leasehold, with foreign ownership of the buildings on the leased land. This overcomes the perceived risk, by the Thai regulators, that foreigners can “buy” Thai land, and it provides a secure and registered, long term structure for foreigners to purchase Thai property.

“We should also all be promoting a longer registered lease period to the Thai government, to everyone’s benefit, and not confusing the issue with constant lobbying on the highly flawed condominium structure which will never be fully satisfactory in all situations.”

While David clearly finds the current laws exasperating, he feels that his fellow property developers are contributing to the problem, David says “Condominium developers and real estate agents promoting foreign quota freehold as the only safe purchase mechanism to the foreign market are doing themselves and their customers a disservice. They have only themselves to blame for the problems they create when they cannot sell the Thai quota. The Thai condominium structure is simply not appropriate in islands such as Phuket and Samui, where there are few, if any, Thai buyers.”

Detrimental Effect

The consensus within the property industry seems to be that the 49% rule is actually hurting many developers. Luxury developments in island resorts are comfortably selling their 49% quota but then finding the other 51%, set aside for Thai nationals, remains largely unsold.

The law was intended to protect Thailand’s national identity by ensuring that ownership of its land remains predominantly in Thai hands. It is difficult to find fault with this premise but it is also difficult to see how stemming the flow of funds into the kingdom with unnecessary bureaucracy is benefiting Thailand or its people. A stronger and extended-period registered lease structure is surely the answer for all concerned.