



## Expat Counsel



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# HOME FINANCE IN THAILAND II: Mortgages

Last time we talked about loan agreements for home purchases in Thailand. This time it's mortgages, which are contracts between buyers and owners of real estate to secure loans. If the buyer doesn't pay, of course, the bank will foreclose the mortgage and take the property.

There are a few things you should know about the law concerning mortgages that will help you understand the way financing is offered to foreigners in Thailand.

First, a mortgage must be in writing. It must also state a certain sum owed or a maximum amount for which the mortgaged property is assigned as security. It must also designate exactly the property it covers and be registered at the proper land office. Thus, before you sign anything, a lawyer or other expert on mortgages should review and explain the document to you.

Second, under section 705 of the Thai Civil and Commercial Code, only the owner

of a property can mortgage it. This creates practical limitations on your ability to get financing.

You may be aware that a foreigner may buy a freehold interest in a condominium unit as long as 49% or less of the residential floor space of the condominium is owned by foreigners. So a unit can be owned by a foreigner and they can mortgage it.

As to free-standing houses, a foreigner in Thailand can own the house but not the land under it. Thus in theory a foreigner could mortgage a house but not the land on which it sits. For now, no bank of the several we contacted in writing this article is offering to lend to foreigners in connection with houses.

If the land and/or house is owned by a Thai company, it would have to be the company that mortgages the land. Many foreigners in Thailand have their land and/or houses in the name of Thai friends or spouses. These friends or spouses could

get financing by granting mortgages on the real estate. In practice, a foreigner cannot get a loan from a bank in exchange for a promise to have the Thai owners give a mortgage to a bank. The Thai owners must apply for it themselves.

How about the flip side of mortgages — when a property is already subject to a mortgage when should you buy it? Much land sold in Thailand has already been mortgaged by the developer. Section 717 of the Civil and Commercial Code specifically provides that if a property is divided up into parcels, the lender can consent to having the mortgage lifted as to a particular parcel.

You should have a title search on any piece of property before you buy it. If it has a mortgage on it you should secure its release as a condition of purchase. Traditionally this happens at the time ownership is transferred at the land office. If the home is in a development you should also check

to see if the common areas are free of mortgages.

There is some consumer protection in connection with mortgages built into the Thai Civil and Commercial Code. Section 728 provides that to foreclose a mortgage the lender must first give the borrower notice of default and demand that the borrower perform by a fixed date. If the borrower doesn't pay by the date specified the lender must then go to court to have the mortgaged property sold at public auction. Of course, the borrower would have to have notice of this and could raise any legal objections to the judge. ■

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