

# Thailand Legal Advice

## A summary of many legal questions in one article

### New Year's Resolution

By Alexander Finch

A New Year has arrived and many foreign visitors have already made their New Year's resolutions. After a visit to Hua Hin and seeing the extraordinary beaches and lush countryside here, one of those resolutions maybe to buy a home in Hua Hin to enjoy the local amenities on a more permanent basis.

Many of us make resolutions each year that we abandon because they are too hard, or we don't know exactly how to go about achieving them. To help our readers realize their goals in the New Year, we'd like to offer some of the most frequently asked questions of property law experts here in Hua Hin.



**Q: Can foreigners own property in Hua Hin?**

A: The answer here depends on the type of property you are interested in. A foreigner can own a condominium in his/her own name as long as Thai nationals own 51% of the floor space in the rest of the condo. Home and land ownership, however, is a whole different ball game. As a foreigner, you may own the house, but not the land. The foreigner may lease it, however. Land acquisition is now usually accomplished through a long term lease on the plot. Generally, the land is leased for ninety years total, with three separate leases of thirty years each. Other methods of land acquisition include minority shareholding. Most buyers today, however, opt for a long term lease deal.

**Q: What background information should I have about a property I might want to buy before I put my money down and where can I get this information?**

A: Much information on land in Hua Hin is available from the government land office. The majority of this information, however, is in Thai. Prospective buyers can get this information from a local attorney as part of a translated title report. A good report should include several key elements. One is a statement of who actually owns the land. This will tell you if the person offering it even has the right to sell it to you the land. Another important element is the physical inspection. Has the seller shown you the same land they are selling you? Are there squatters already living on the land? These questions can only be answered by comparing the land records to the plot being sold. A good title check will also include an examination of the property's access and utility availability, along with a thorough check of the construction permit, if one has already been issued. Finally, the report should include assessed prices for the land and house, as well as an expropriation and zoning check.

**Q: While all this is being checked, how do I ensure that I don't lose the house to another buyer?**

A: A great fix in this situation is a reservation sheet. A small deposit can win you the right to the house if the title check comes back favorably. If you write in a clause, such as, "Deposit will be returned in full if the land title report comes back unfavorably", you can also get your deposit back if the title isn't right. Just make sure the seller understands the clause first to save yourself a headache later.

**Q: I now have my house, how do I work out my visa situation so I can actually stay here?**

A: There are many different types of visas that come into play when one is visiting Thailand. Visas for tourists are quite different than those for people wishing to live here. People who are just visiting generally have one of three types of visas. A tourist visa which is valid for 60 days, a 90 day non-immigrant visa, or a Visa on Arrival (VOA)



which is for 30 days. Thai immigration practice for residents has become stricter recently, and the following is what you need to know about long term stay. If you have a VOA, you can, with extensions, really stay for three months at most. For the other two types, an additional month can be tacked on. For a longer stay, one can obtain a year long visa, but only after

converting to non-immigrant status. Also, for this extended visa, a person must state a reason for the extension which ultimately falls into four categories. These are education, business, retirement, and marriage. There are specific requirements in each category that need to be fulfilled to guarantee the right to stay in the country.

**Q: If I buy land with my Thai wife, how can I safeguard my investment?**

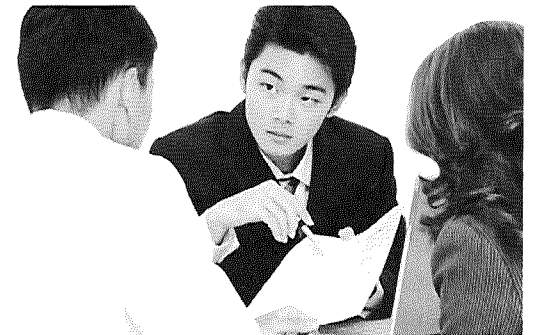
An arrangement that can be used between a Thai spouse and a foreign spouse to protect the foreign spouse's interests is a usufruct. This allows the foreign spouse the right to occupy the land for the lesser of the period of the usufruct (which is usually 30 years) or the foreign spouse's lifetime. To file a usufruct with the land office, the marriage must be proved either by a Thai civil marriage certificate or a foreign marriage certificate.

The original of the foreign certificate maybe translated into Thai and certified as a true translation of the original. Alternatively, a copy of the marriage certificate that has been legalized at a Thai embassy overseas and translated can be used. This is filed at the land office with the usufruct agreement, which must be signed by both parties.

**Q: What happens to my lease if something happens to me?**

A: If someone else is listed on the lease, the remainder of the lease goes right to that person. In effect, survivor takes everything. If there are no surviving lessees, Thai law provides that the lease reverts back to the lessor. There are steps one can take to prevent this. One step is to add other people (for example your heirs) as cotenants. This can be as simple as adding a second signature line on the lease for each heir. Another step you can take is to stipulate in the lease that if the primary lessee dies then the lease is transferred to the lessee's heirs. An amendment can also be made (as long as the landlord agrees) to existing leases to add in these kind of protections, though this is slightly more complicated. It is also highly recommended that on top of all this you make a Thai will, because without this Thai law will determine who takes your assets when you die.

The tropical weather is inviting to many foreigners wishing to escape the harsh cold of their home countries over the holiday season. Falling in love with Hua Hin is easy to do, and whether it's buying a condo or leasing land, it is not hard to see why so many people have chosen to make a residence in Hua Hin a priority on their things to do this year. Either way, we hope that this article has helped you in achieving your New Year's resolution. If only dieting were as easy.



Courtesy of:

*Chavalit Finch & Partners, Ltd. are lawyers specializing in real estate and business transactions. They can be contacted by email at finch@chavalitfinchlaw.com, on the web at www.chavalitfinchlaw.com or by telephone at 032 522237, 032 522273. Their offices are located at 19/51 Hua Hin Soi 19, (Wat Klai Kangwon), Petch Kasem Road, Hua Hin, Prachuab Kirikhan 77110, Thailand.*

*[Faint, illegible text bleed-through from the reverse side of the page.]*