

YOUR HOME'S YOUR OWN.... OR IS IT?



With the increasing availability of high quality vacation and primary homes in paradise locations such as Koh Samui and Phuket, many people are choosing to purchase a second home in Thailand. Whilst it's fairly easy to decide on a location and the type of property you'd like, the specific risks of acquiring land and property in Thailand may be very different from your home country, says Alison Cooke, CEO of First American Title Insurance Company in Hong Kong.

One of the key differences between the property markets of Asian countries is the risk associated with proving good and marketable title to the property. A property title is proof of ownership; including beneficial use of that property – to access, use, lease, mortgage and dispose of it. Proving title is a very different exercise in different jurisdictions.

There are title risks inherent in any transaction:

- Physical problems – such as encroachments of the building onto adjoining land or vice versa, unknown rights of way etc
- Financial problems – such as unregistered or unknown mortgages or liens on the land.
- Legal problems – such as incorrectly stamped documents, discrepancies in land description, missing signatures, etc.
- Fraud, forgery and duress – which may impact any or all of the above areas. 35% of title insurance claims globally and a far higher percentage in Asia fall under this category.

All of these defects have one thing in common: the cost and uncertainty they cause for the owner in the event of a claim on their title.

Thailand operates a form of deeds registration system maintained by land offices throughout the country. There is no state guarantee of title, so the Government will not compensate owners who lose their land as a result of information in Government registers being inaccurate or incorrect. Fraudulent transfers of land (including any fraud committed by Government officials in issuing title) and grants outside the authority of the official (such as granting development rights on forest or beachfront land) are void and will usually result in the property being returned to the rightful owner or appropriate authority.



TYPES OF LAND TITLE IN THAILAND

The highest standard for land ownership is a Chanote, which includes all the legal rights to that land. The deed is evidence of ownership and proof that the land has clearly defined boundaries. These tend to be found in only the most developed parts of Thailand and are registered at the Land Office in the area in which the land is located.

Most titles in rural Thailand are lesser possessory title deeds known as Nor Sor 3 Gor and Nor Sor Gor. These do not have official markers designated on the land by the Land Department and boundaries are recorded in relation to the neighbouring plots. Errors in length of boundary or area are not unusual. Special care needs to be taken where dealing with rural, forest & beach reserve land (where most resort type developments are located) and with Phuket in particular.

In the absence of a Government guarantee on title, the only potential remedy is against your legal advisors in negligence, and this is usually difficult to establish and prove. Furthermore, the negligence remedy will only be of value if the lawyer is backed by adequate professional indemnity insurance.

Title insurance from First American Title Insurance Company provides a resilient risk mitigation tool for developers, purchasers

and financiers in respect of all of the risks identified above. In the event of a claim, the title insurer will defend on the insured's behalf and cover both financial loss and legal costs of defence. The premium is a one-off up-front payment of approximately 0.35% of the property value on purchase and the policy lasts as long as the ownership of the property.

Developers can take title insurance directly which will mitigate any title risks during the holding period and facilitate securing financing if required. A commitment to insure future purchasers of either en bloc sales or sub-divisions of the land holdings can also be given which has the effect of providing comfort to potential purchasers and reducing the length of time required to complete the transaction.

Essentially, title insurance:

- Covers off the significant risk of lack of ownership, inherent in all Asian title systems due to the limitations of the land registers
- Provides all-important fraud cover - this is the main reason for loss / lack of title globally
- Helps to speed up closing of real estate transactions and loans by providing comfort to all parties that these risks are covered off
- Is an excellent risk management tool given it is a no-fault policy and much quicker, easier and cheaper to make a title insurance claim than to sue your solicitors in negligence.