

Buyers and sellers

A guide to real estate legal processes

By Desmond Hughes and Kris Limcharoen

A transaction between a buyer and seller involving the transfer of an interest in real estate runs deeper than a handshake of terms and a mutual understanding. The dynamics of the transaction often involve a number of parties, all of whom should take responsibility for keeping a deal 'alive'. However, also ensuring that the interests of the individuals involved remain protected,

disclosure methodology.

A title search should now be understood in Thailand by knowledgeable investors and well informed clients to comprise a search of the entire history of the land title. This means from the time the land was possessed, until its current status (even "Chanote") should be accounted for to ensure that any investigations by the authori-

ties, court cases, issuance of title have been effected properly and legitimately. If a title search can be disclosed to a buyer's lawyer, then the due diligence process can potentially be expedited whilst the buyer's lawyer simply verifies the information is correct. Additionally, a well organised seller should have arranged for all copies of documents at the land office (relating to title) to be copied and certified. These are to be kept in a private secure place belonging to the seller, so that in the event the authorities are utilising the public documents or a document is unavailable, copies are at least conveniently on hand.

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Agents, Buyers, Sellers and Lawyers

An agent will certainly be thanked by a lawyer if it sends a client to the lawyer's law office. Thereafter, upon becoming engaged by a buyer, the lawyer will have to remain independent. If the lawyer is told by the buyer "please proceed slowly, I am waiting for monies to arrive for

payment milestone one" then the buyer's lawyer is not permitted to disclose this for reasons of confidentiality owed to its client. However, a buyer's lawyer should communicate with all parties to avoid confusion and misunderstanding during this period, in which the title is checked and contracts negotiated. Some law firms will manage their client's legal fees by conducting the title search and waiting for the result to be positive, before incurring negotiating contract costs. If the client agrees with this approach, then the other parties should be made aware to avoid inference of delay.

Lawyers may be asked in ad-

posed to a politician, real estate broker/agent, market analyst or any other kind of professional. It is often useful in a buyer's lawyers instance, if asked for an independent view to be provided (not necessarily a subjective; as a lawyer seeking caution) but, perhaps not only in a legal way but, in a commercial way, for its client.

Surveys and Timing

If a buyer's lawyer recommends, as it ought to, that a buyer arrange a survey of the property, then the buyer should make arrangements early on in the purchasing process. This prevents there being a negotiated contract; completed due diligence report and then an unexpected withdrawal due to a negative opinion on the state of the property. To protect a seller, a seller's lawyer ought to insist upon a nominal deposit to identify bona fide purchasers.

Instructive use of Advisers

In a sale, depending on the demand for a property and the need for the seller to sell, there is normally an onus on the seller

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which can be achieved in writing so far as is possible by the drafting and signing of a clear contract or clear set of contracts.

This article sets out a number of the legal implications, both in the documents and from the management of a transaction perspective. These provide guidance on the key issues being considered in ensuring that the documentation, issuance and negotiation and that the conclusions are dealt with in a professional and appropriate manner.

Document preparation

A seller should contemplate a sale, as if it were a buyer and then should ideally approach its own lawyers to prepare a sales pack. Focus aside on sales particulars, the legal documents, if properly prepared and placed in order, should be presentable and provide a written explanation of content. A collection of Thai corporate documents is not, if presented to a foreign investor, necessarily conducive to a first impression that the seller is seeking to be transparent in its

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dition to provide legal services, relating to their opinions on the state of the economy, the real estate market, and their outlook on the future of the Kingdom of Thailand.

Certainly if opinions are offered, it would be normal for such communications to be made clear that they are subjective, not to be relied upon and emanating from a lawyer as op-

to assist the buyer with information to facilitate the transaction. Likewise, a seller should monitor the communications of the seller's lawyers with the buyer's lawyers to ensure the tone and style of communication is in keeping with an amicable transaction and the intended transaction.

If there is an issue which the buyer raises or its adviser raises, then even if the issue is relevant


or not, part of the sales process, within reason is to provide an answer to the question. In certain jurisdiction, preliminary enquiries before purchase, are written in such an automated way that a large percentage of the questions are irrelevant or are answered "so far as the seller is aware" to make such enquiries worthless.

However, a well posed question such as – "is the target property insured against damage or destruction" be properly received by the seller as a legitimate enquiry worthy of answering in detail, together with a copy of the possibility, and how the policy could be transferred to the buyer post completion.

Advisers should be instructed to co-operate with this process.

Summary

This article only highlights a selection of the areas of a transaction, which may be improved by co-operation and planning by all parties as to how a transaction ought to proceed with the minimum of surprises. A buyer and seller will have to remain to some extent involved in the transaction, post-appointment of advisers, to ensure that the terms of the deal are agreed. If changing throughout the course of the transaction, do not interfere with the overall objectives of buyer and seller, in order to complete the transaction. Likewise, the dynamics between agent, buyer, seller and sets of lawyers should be managed to ensure that the correct actions by the correct parties are effected in accordance with the instructions of the client's best interests and instructions. Document preparation; transparent disclosure; pre-empting obvious questions; avoidance of speculation on matters which may not affect the transaction are all factors which take a position in governing a successful deal.

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Real estate ownership strategies

By Richard Colburn

Whether your real estate holdings are used for shelter or investment, it is important to make use of ownership structures that provide you with the greatest asset protection.

Tax planning

Many of the home countries of expatriates still levy Inheritance taxes on the worldwide assets of their citizens. Inheritance taxes on property and other assets are triggered by the death of a living owner. If assets can be arranged so that they are not owned by an individual, this form of taxation can be legitimately avoided.

Offshore companies

Offshore companies, also known as International Business Corporations can hold real estate and other assets indefinitely. Companies don't die. Many of the world's wealthy own luxury property in exclusive locations through offshore companies. When they die, the company remains the owner of these buildings.

However, if a shareholder of a company dies, there will be Inheritance tax to pay on the value of his or her share of the entire value of the assets of the company, even though there is no change of ownership of the underlying company assets.

Trusts

Trusts offer an alternative way of holding assets, including real estate. Like companies, they allow the legal ownership of assets to be transferred from the individual who originally owned them, with the potential to legitimately avoid Inheritance taxes. Trusts don't have shares either but, there are important considerations for anyone considering this form of estate planning.

The home countries of many expats now have extensive legislation governing the taxation of trusts. In particular, if any of the beneficiaries or trustees of a trust are resident in your home country (or indeed in any country that

taxes resident beneficiaries and trustees) this type of structuring may not meet your goals.

Trusts established in some jurisdictions can be challenged by creditors and others claiming to have a financial interest in the trust assets and so like real estate, location is everything. Furthermore, the trust legislation of many jurisdictions imposes time limits on how long a trust can exist.

Foundations

Foundations combine the

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best features of companies and trusts, whilst eliminating their drawbacks.

Foundations are legal entities and can be thought of as companies without shares. This avoids the Inheritance tax trap that catches shareholders when they die.

Like companies, foundations can continue indefinitely with the potential to provide a permanent tax shelter for foundation assets. This is a vital feature when considering multigenerational tax planning.

It is also much harder for anyone to make a successful claim against the assets of a foundation than a company or trust.

In particular, many of the jurisdictions whereby foundations are established do not recognise foreign forced heirship laws. They also impose relatively short time limits after which no challenge to foundations will be entertained for any reason other than money laundering, drug trafficking or terrorism. This type of asset protection is widely used by those

working in industries and professions that are subject to penal litigation.

Foundation laws and the fact that foundations are formed and managed by lawyers, provides a far higher level of confidentiality than is usually afforded with the use of companies and trusts.

Foundations can own real estate and hold bank accounts. They can own shares, mutual funds and bonds. They can own other physical assets such as precious metals, diamonds and works of art. The management structures of foundations are very flexible and are likely to be able to achieve the financial planning and asset protection goals of most people.

The right plan

Your estate planning strategy will depend on your personal circumstances including your place of residence, intended beneficiaries, type of business if you are still working, the types and value of assets that you hold, as well as your citizenship in some cases.

Avoidance and evasion

It is the task of tax collecting authorities to extract all of the tax to which they are legally entitled. It is your right to part with no more money than you are legally obliged to pay, which for some expatriates is nothing.

Offshore companies, trusts and foundations can help you to legitimately avoid significant amounts of tax, safeguard your assets and ensure that your worldly goods are distributed as you intend.

A professionally examined qualified financial adviser can help you to design an asset protection structure that best meets your objectives.

It's your money and your peace of mind.

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