

# PROPERTY REPORT legal



Legal Clinic: Questions and answers on Thailand property legal issues.

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## Restriction on use

**Q.** I have only ever managed my time efficiently enough to be able to take a holiday once a year for two weeks – and that is normally near Christmas. Having bought a unit in a branded resort property, and wishing to fully maximize the benefits of the resort managing my property, should I push for use during the very limited period of time I have, even though this coincides with a busy rental/occupation period? - *Mervyn James, England*

**A.** Where you only require use of the property for a maximum of two weeks, it may be worth comparing the cost of a two week holiday to the destination of your choice, versus the actual returns you could lose out on if your investment property in Thailand is not available during a peak season. In terms of 'negotiating' a usage right in a resort scheme, you will most likely be penalized for not making available your property during a peak demand period, as the operator will also have difficulties with less units to market and be available for guests. For investment property, when looking at the usage restrictions in a contract, you should have a financial, practical and legal 'hat' on all at the same time to consider whether provisions are fair. Operators do not deliberately create onerous provisions, generally they are linked to maximizing returns.

**Q.** I am an interior decorator and obtain a huge amount of pleasure when I invest in property, from making changes to layouts and décor of interiors. My latest acquisition is a sea view condominium, and I am quite concerned because there appear to be a lot of rules and regulations governing condominiums in Thailand. Will I be able to make the changes I want to make, and is there anything I am not able to do? - *John Malone, California*

**A.** Your ability to make internal variations will be regulated by the contract you signed, Condominium law and the rules and regulations put in place by the corporate body equivalent set up by operation of law to manage the condominium, called the 'Condominium Juristic Person Manager' in Thailand. Therefore, all of these



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factors should be taken into account prior to assessing your variation rights. In a branded resort, such as a condominium which has obtained a hotel licence with consent of all of the owners, there will normally be strong brand requirements for interior decoration. However, in a residential condominium project, you will be restricted from making any structural changes to the condominium unit, as regard must be had to the safety and integrity of the condominium building as a whole. Internal decoration and style is normally left entirely to the individual owner in a contract and under the condominium rules.

**Q.** I have purchased a unit in a branded mixed use hotel, resort and spa facility, not for rental returns, but more for use and enjoyment on my 6 months per year in Thailand, and for capital appreciation over the next 5 years, when I will most likely sell and purchase a new unit for a change of scenery. My passions are golf, tennis, sailing and working out, and all of these facilities are marketed as being a fundamental part of the mixed use development. However, I have now received the contracts, and am quite surprised and concerned to see that there is no mention

of these facilities at all, or the terms on which I can use them. What steps can I take to secure my passions and interests are fulfilled? - *Chris Davidson, Scotland*

**A.** Developers can be in quite awkward positions where they have sold units and the project, but may not have finalized all of the terms with the branded operator if the units are being sold off plan. In such circumstances, if the developer is made aware that you are only purchasing because of a minimum number of facilities absolutely being available to you, you could negotiate a buy-back guarantee, if the developer really wants to make the sale. However, you should note that the buy-back might actually work in favour of the developer, if the property appreciates considerably post completion of the project. Therefore you should negotiate a buy-back guarantee option. You should request a copy of the master plans for the whole project, so you can see where the facilities are planned to be. If they exist in the plans, it is of course most likely that they will be built as they will be included in the application for building permit and environmental approvals. In relation to the rules of the facilities and membership options, you should try to secure a favourable membership term for your favourite facilities, so that there is privileged recognition that you are actually an owner and a resident. How this would work in priority of bookings for facilities such as the tennis court should be detailed. You can also check how the branded operator deals with this matter in other jurisdictions, as this will give a clue as to how they will approach the matter in Thailand. ■

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