



Legal Clinic: Questions and Answers on Thailand Property Legal Issues

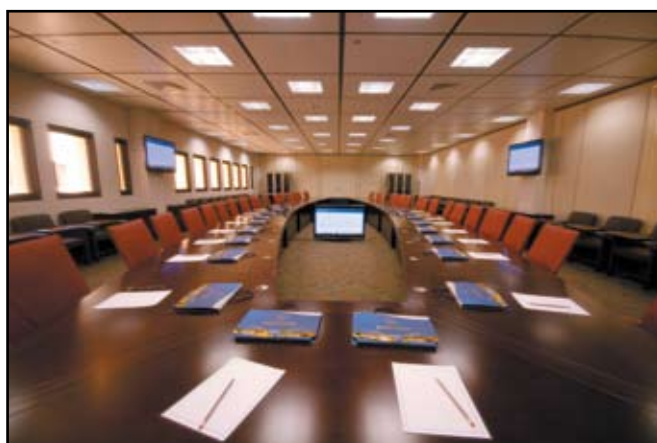
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Tackling management issues

Q. Fortunately, the handover of my condominium occurred just before the end of the year and now the first owners meeting has been scheduled for the beginning of the New Year. I haven't paid much attention to the mechanics of the owners' condominium committee, and I have already paid my appointed lawyers for the transaction but do not want to incur extra legal costs for procedural matters. Please can you provide an overview of common issues I should look for, as I do intend to look closely at the agenda of the first meeting and activities of the manager appointed to maintain the condominium? - *Robert Baggio, Milan*

A. Condominiums have better defined procedures and regulations than most managed estates, by virtue of the Condominium Act, and the density and development of condominiums in Bangkok has contributed over many years to the experience of internationally branded and local management companies being able to handle the interaction between owners in condominiums, management and the physical upkeep of the condominium building and the common areas within the same. However, it is worth scrutinizing the activities of the developer prior to handover of the condominium; and the method and implementation of the managing agent. The key issues to look for at the first meeting:

- Are a large number of units in the control of one party, such as the developer, so that voting rights may be weighted towards one party. Even though no one party can control the condominium juristic person owners meetings, a group of powerful owners can together have weighty influence over decisions. In mixed use serviced and residential apartment condominiums, the interests of the serviced apartments might not necessarily align with the residential side.
- The method of voting in absence through proxy voting should be monitored, so that you are informed of agenda items well in advance of a meeting, and so that you have a clear opportunity to express an opinion.
- Transparency of accounts can often be an issue, with the managing agents presenting the accounts at meetings with lengthy interludes. This can result in 'surprise' one-off or extraordinary expenses, such as back up electricity generators to cover outages; or changes to water pump systems, which might not have been anticipated as early as they might arise as events in the management. Therefore, a clear framework for reporting to owners should be established at the outset to avoid communication gaps and surprises.
- The management agreement that the developer actually seeks through 'competitive



TRANSPARENCY IS SOMETHING THAT INSPIRES MORE CONFIDENCE..

tender' should be reviewed in the context of how competitive the tender actually was, and also for the fairness of the provisions in the management agreement including termination clauses. A sensible cost effective approach would be for a group of owners to appoint a law firm to review this, but unfortunately not many owners have the inclination to group together until there is actually an issue.

- The rules for using the sinking fund should be very clear from the outset. A policy should be inspected, and the bank account and signatories on the sinking fund bank account disclosed by the managing agent to the owners.

There are a multitude of other issues that can arise relating to management, but the general advice is to remain alert to all newsletters and communications; and without being paranoid certainly try to read between the lines of any new issues or costs arising in the management of the building.

Q. I have bought a villa on a golf course, which due to my retiring recently I will actually use at least 6 months per year and do not intend to rent out at all. A large number of owners in the project are absent owners, or tenants and do not seem overly interested in the management of the common areas of the estate. The developer is a publicly listed Thai company and certainly has experience in managing estates, but has adopted a 'do-as-we-say' approach to management. This certainly worked for the first twelve months, as the security and landscape and garden maintenance are very good indeed. However, recently the developer, which controls the entity which manages the estate and through retained units also has its own

appointees and friends on the owners committee, has started to communicate on cost increases with only vague details. Unfortunately, the management have also elected to send all communications in Thai language, which seems very strange given the majority of purchasers were in fact, foreigners. How can I get involved and monitor the situation, without being too disruptive. The whole thing seems very contrived, but is working okay. I am just concerned that the process is being manipulated and not necessarily in my interests, long term. What is your advice? - *Maria Ashburn, New Zealand*

A. It sounds like the estate you bought into is an estate with a real estate development licence, subject to the consumer protection oriented rules regarding such estates and their management. If the services being delivered are up to a standard you are happy with, then the issues you raise may simply be a matter of communication and cultural issues which differ in terms of running a project in Thailand, than say in Europe. Transparency is something that inspires more confidence, so if all communications in Thai then you should raise this on the next agenda through a request for translations of all documents circulated to owners. It is not a matter of this being a 'legal right' but more an issue of practicality, and of course, fairness.

If the developer was happy to sell to foreigners, then of course it should also be happy to accommodate the needs of foreigners, post sales. You could approach a law firm and ask if they would send a junior lawyer along to the meetings, simply to observe and to report back to you in English on the proceedings. This may also make the management committee and developer aware that they have an 'active' owner in the estate, and then they may adjust to be a little bit more 'foreigner friendly' in the approach to meetings and operations.

You mentioned that the constitution of the board of the committee owners may be weighted through developer and manager appointed individuals. If you are retired and actually want to ensure your interests are at least borne in mind, then you could consider attending the meetings and being active, although that may interfere of course with the golf that you most likely wish to enjoy associated with your purchase and retirement.

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