

Leasehold Villa Investments

A Viable Option in Thailand?

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Leasehold

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Leasehold Villa Investments

The number of investment villas for foreign property buyers in Thailand is rapidly increasing. Large selections of holiday villas are emerging in high-profile tourist destinations such as Hua Hin, Phuket, Pattaya, Koh Samui and Krabi. Thailand has long been a popular destination for overseas home buyers but the legal framework surrounding the actual property acquisition by foreign nationals has not always been straightforward.

Over the past year, leasehold interest is fast becoming the most common method of acquiring property in Thailand. This is due in part to the Thai government's stricter stance on foreign ownership through the use of a locally incorporated vehicle. However, despite its growing popularity, there are still some reservations expressed by many buyers on its longer term implications. This article hopes to highlight some of these implications.

Maximum Leasehold Period

Leasehold interest is governed by the Civil and Commercial Code of Thailand (CCC). The maximum lease period in Thailand for a residential property is 30 years. However, lease contracts typically include further renewable lease periods resulting in, technically, 60 or 90 year terms. What happens after the original 30 year lease period has lapsed has long been shrouded by myths and over zealous sales pitches. There is indeed no automatic

renewal of leases after the 30 year lease period. In fact, there is an automatic extinguishment of the lease after this period. The renewal terms are merely a contractual obligation by the parties to do so. Therefore, only the 30 year period is registered at the Land Office itself. At the end of this period, the lease expires and all the parties will have to attend the Land Office and register another 30 years again.

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Succession Planning

A 90 year lease, albeit unregistered in this case, does naturally bring to mind the question of succession. There is no problem with the transfer of the leasehold interest to heirs within the registered 30 year period. The uncertainty arises when we talk about the renewable clauses in the lease. Courts in Thailand have been reluctant in the past to recognize the renewable clauses in the lease to the respective successors. New lessors are therefore not obligated to extend the original lease period. This is due also to the privity of contract rules which limits the obligations of third parties.

Transfer of Leasehold Interest

Transferring or assigning an existing leasehold interest in a villa is quite a straightforward procedure. An assignment agreement is usually prepared and all interested parties will attend the Land Office again and effect the transfer. It is worth noting here, however, that only the remaining period of the lease is transferred during this period. Any subsequent renewal terms in the contract will have to be made again by the new lessee and the lessor. These renewable terms are once again limited by the problems highlighted earlier. Alternatively, it is also possible under certain circumstances to extinguish the original lease that you have with the lessor and have the new lessee enter into a new lease agreement for the full 30 year

period. It may be advisable to consult with a legal professional in getting these types of contracts drafted.

A Good Investment?

So far we have highlighted some of the limitations of leasehold titles in Thailand but the question remains whether it is a viable investment option for foreigners. There is a certain stigma to leasehold titles and this is due mostly to the inadequate duration of the lease. Indeed, 30 years may not seem like such a long period and thus investments of this nature is not for everyone. Due to the restrictions imposed on the lease term, buyers should be wary of the return surplus after all expenses have been considered.

Due to the nature of leases, there is a likelihood that the villa will depreciate in value as the lease term draws to a close so it is important to make sure that the rental yield over the 30 years will far exceed the amount invested. Using the first 30 years is a good baseline when making your calculations. Should you be able to exercise your renewable terms then that would be considered a bonus. This conservative approach should save

much headache and quite possibly, heartache in the future. As such, we will be looking at a minimum of 8% rental return on the villa to make it a viable acquisition.

Ways to Make your Lease a More Secure Investment

Thai property law is based generally on the continental European legal system and therefore some of the terms used may be unfamiliar to those who are more accustomed to the common law system of countries such as the UK, US and Australia. In broad terms, there are other codified rights which can further protect your leasehold interests on the villa. Rights such as a superficies used in conjunction with a leasehold title may be able to provide better security on the villa as this right affords greater interest on the physical structure itself.

Another option being offered by some respectable villa developers in order to protect their buyers' rights on the property is by the use of an off-shore company. It works in some ways as a quasi co-op commonly used in cities such as New York or Chicago.

As an example, more often than not the off-shore company may be set up to own the site and in turn, their buyers will also receive shares of this company which then provides them further protection on top of their leases. This ensures that further extensions on the lease shall be met as the buyers themselves have relative control over the actual ownership of the property as a whole.

This is naturally subject to the rules and regulations of the developer, or more commonly known in the US as the Covenants, Conditions and Restrictions (CC&R). It is advisable to go through this carefully or get a lawyer to go through it to make sure you know what you are getting yourself into.

Final Word

Given that freehold properties are becoming increasingly difficult to obtain, a leasehold interest is not a bad alternative in some ways. There are certainly properties with good rental returns out there, particularly in much sought after places where land itself is fast becoming a scarce commodity. There are many cities in the world with high property prices such as London, Hong Kong or even Hawaii where leasehold title is very common and still much sought after. With the quality of some of the developments in the country now and its general popularity as a holiday and tourist destination, there appears to be no reason why Thailand cannot find success in this area in the future. Taking the extra precautions and doing the right calculations may mean that your investment in a leasehold villa may not be fraught with as many limitations as we once thought.

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