

Condominiums: Spend a little to save a lot

- Published: [2/06/2013](#) at 12:00 AM
- Newspaper section: [Spectrum](#)

This is the last instalment in our series on condominium law and land titles in Thailand. We propose to conclude with some "war stories" to illustrate how amazing Thailand can indeed be.



The first story falls within the category of "too good to be true".

It happened many years ago, just before the 1997 financial crisis. Thailand's property sector was booming and there were more project developers than pharmacies on the island of Phuket, where this story unfolded.

A dear friend of mine, an investment banker, came to see me and asked for my input and opinion on a piece of land he had bought along a very nice beach. He thought he was about to realise his lifelong ambition to have a nice house with ocean views so as to enjoy his weekends and holidays and sip his favourite brands of tequila. He had spectacular architectural plans in hand for a villa.

I was curious about the deal and slightly worried about the location of the plot of land he had purchased, so I asked for some details. The price was quite attractive and when I heard with whom he had done business I became immediately concerned; he had purchased the land from a gentleman (not Thai) who was notorious for having purchased many island and beach front land plots, often with the backing of a particular financial institution, which with the arrival of the 1997 crisis became front page news. Some of its executives are now wearing prison fatigues.

So I asked my friend whether he had investigated the land ownership history. No, he said, and he asked that we do that for him. Excellent, I thought, because I might not be too late yet to scupper the deal. My friend had not yet paid the full price. It did not take long for our legal colleagues to figure out that the titles in this area could not have been issued legally. It was like scoring in front of an open goal; the land was supposed to be public domain. The history of the title issuance was clearly flawed. Interestingly, the official who had signed off on these land titles was infamous and was either on the run or already dead (I cannot remember exactly). Happily, my friend got his money back.

Next is a story which fits in the "mai mee pan ha" category. When someone utters the words "don't worry, no problem" (Thai pronunciation) or "no worries, mate" (Aussie slang) I start to get worried. In this case, we had every reason to be worried. The story starts again during the boom years.

Our clients were again from the financial sector. Flush with cash from big bonuses, these bankers-turned developers were looking at buying a large tract of land in a very attractive location on the mainland, not far over the bridge from Phuket. Somewhere on the south-west coast of Thailand. I had been on that land previously, but had heard there was a very good reason why this land had not been sold when all around it land deals had been done. Knowing well the broker involved (and thus being extra suspicious), I asked my colleagues to check the files at the land department and everything seemed quite kosher and the land history appeared clean. But there was a railroad easement right across the land! "No problem" exclaimed the broker hearing the news. "I can talk to the Railway Authority and have the easement cancelled."

We knew from experience that this broker is indeed able to pull strings in many high places, but this was really a bridge too far even for this broker. It would have required a cabinet resolution. We advised our client who gratefully beat a rapid retreat. I believe the broker did return the deposit.

Finally, a story with a good outcome it appears (it is an ongoing case). Our client had acquired a large land area over a long period. The location is within a national park but, as you may recall from earlier instalments, that in itself is not an issue as long as one can show that the land had been validly occupied and used prior to the announcement of the national park. This case is quite serious because a criminal complaint had been filed by the officials against the company for encroachment. We got engaged initially to do legal due diligence. We normally do a site visit, because one can learn a lot by checking the land: You can check whether there are squatters or whether local people cross the land to go from A to B and back and we always check for structures. Nothing is worse than buying land and being faced by a law suit from somebody who claims adverse possession or a statutory easement.

When we checked the site we found stumps of old rubber trees. My driver _ bless his soul _ was trained to manage rubber plantations and told us that he could see these trees were very old rubber trees. Excellent news, because we could now prove that the site had been used previously for at least 10 to 15 years. We knew when the trees had been chopped down too, and by whom. But we could not yet prove utilisation to a period before that one to 15 year period, and we needed to make sure we had proof that the land had been occupied and utilised prior to the announcement of the national park.

The land files helped us only a little. These files did show that the last known person occupying had applied to upgrade the relevant land but he had for some reason (illness, possibly, or even death) not pursued the upgrade to the end.

Time to go "local". We went to speak to the local village head. These people can be very useful sources of information because these are locals and know most people in their village. Low and behold, he knew a relative of the original occupier of the land. We met and interviewed her. She was an octogenarian but sharp as a knife. She told us, to our delight of course, that she remembered that this area was used as a rubber plantation by her relatives going back to a time before the National Park was announced.

This was a major break for us and the woman's statement will be very useful. We needed a bit more though than mere hearsay from a local and we had an expert review black and white aerial photographs of the area.

These photographs too confirmed our suspicion that the land had been used for many decades. The case has not yet been wrapped up but we are now confident that our client will prevail.

The moral of the stories? Spend a bit of money to save potentially a lot of money and time. Do worry and be happy.

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