Condominium Rights

Kert Stavorn BA LLB

Kerr Stavorn is a senior legal adviser for Siam Legal International. Kerts practice primarily focuses on real estate, construction and corporate matters.
Condominium Rights in Thailand

Purchasing a condominium is by far the most popular and relatively straightforward method for a foreigner to acquire a property in Thailand. Indeed, a recent Bangkok research conducted in the first quarter of 2007 has shown that there are nearly 50,000 existing condominium units in Bangkok alone and this number is continually growing with new developments sprouting all over the country. There are also a large number of condominium units in popular tourist destinations such as Phuket, Hua Hin and Pattaya and the number of units in these regions is also steadily increasing. With such a great interest in condominium units among local and foreign nationals, it may be pertinent to shed some light on some of the post-implications of such an acquisition. Many of us are already familiar with condominium titles in our home country. Some jurisdictions refer to it as a Strata title or a common hold as it is known in the UK, which in essence, is almost identical.

In Thailand, the features of this ownership right are quite similar. A condominium is a planned development that has been created pursuant to and registered under the Condominium Act B.E 1979. It is characterized by the individual ownership of living units and the joint ownership of the common areas within the building. Although purchasing a condominium unit in Thailand is a fairly simple process, there are nevertheless certain steps which should also be considered as part of the due diligence. Standard due diligence will normally check for, among others that the title is good, that the owner is who they claim to be and that there are no registered encumbrances on the property. While such checks are necessary, there are other steps which may be just as necessary in order to prevent any harrowing nightmares impeding on your dream purchase. What happens after the purchase of a condominium can be just as disconcerting and taxing if certain precautions are not taken. Much time, money and effort can be saved if these steps are taken into account when selecting your ideal condominium property here in Thailand. Also, knowing your rights afforded by the Condominium Act would put you in a better position if faced with unfair or unscrupulous treatment by your condominium management company.
Maintenance Fees and Sinking Funds

Ensure that you check the contract and the monthly maintenance fee and sinking fund amount. This should be in all contracts for new condominium units although some units in the secondary market may omit this in their documents. Ask the seller to provide you with this or you may obtain it directly from the condominium’s management company. The Condominium Act stipulates that the maintenance fees must be in accordance to the ratio of space that you own. As such, it should be expressed as an amount per square meter. This amount is also registered under the Rules and By-laws of the condominium at the relevant Land Office. Any increase must be agreed with a three-fourths majority vote amongst all joint—owners of the building and the amended Rules and Regulations registered at the Land Office in order to take effect.

Rules and Regulations or By-Laws of the Condominium

It is prudent to obtain a copy of the Rules and Regulations of the Condominium before you decide to buy the property. According to the Condominium Act, it should, in the least, include the following:

1. Name of the condominium’s juristic person;
2. Objectives
3. Location of the office;
4. The amount of sinking fund an owner must pay;
5. Other common properties;
6. How the common and individual properties would be used;
7. The ratio of each unit in terms of space;
8. The procedures for the general meeting;
9. The ratio of the maintenance fees;

There are normally other things which a buyer should also consider so as to reflect their expectations and match their lifestyle. Some rules may be so restrictive that you would not have bought the unit had you read the Rules and Regulations beforehand. Sometimes, there are no English translations or the translations are in such a state that is difficult to make clear what is meant. However, the benefits of having read a clear and precise Rules and Regulations of the condominium unit are well worth the effort. Things to look out for may include the following:

1. Restrictions on pets and age of children who can use the pool or other facilities;
2. Restrictions on parking any vehicles or boats;
3. Restrictions on types of floor-covering materials, drapes or window hangings, screenings or closing in of open balconies;
4. Limitations on use of recreational facilities in the common areas;
5. Sound or noise restrictions.
Know Your Condominium Juristic Person

It is in your interest as a co-owner of the common areas to ensure that everything is in good order. Be sure that a good and reputable management company is looking after things in an orderly and transparent manner. Beware of development companies appointing their own managers as they could be acting with ulterior motives in regards to repairs during the default liability period in which the developer should be responsible for and not the juristic person. The co-owners may wish to appoint a new manager if 50% of the co-owners in a general meeting agrees. You may also wish to request for a copy of the juristic person’s accounts to ensure that everything is in order and that no funds are being siphoned furtively or that any payments are unaccounted for. This is important as you want to see fees you contribute help maintain the premise and ensure its value in the long run.

Occasionally, there may be a need for the management to call forward an emergency fund to cover some unexpected repairs. In practice, the Condominium Act stipulates that the decision to attain this fund must have a three-fourths approval in a general meeting.

Before you vote, do check that the fund is indeed genuine and by right, you may request for all the related information in regards to this emergency expense. As an added precaution, the Condominium Act also allows the co-owners to set up a Committee to oversee the management of the juristic person. The number of members shall not be more than nine and may consist of any of the co-owners of the condominium who are elected in a general meeting of all co-owners. It may be useful to note that a co-owner’s voting rights are determined by the proportion of the ratio of space owned in the building.

Having Your Say

Politics may not be everyone’s cup of tea and it is certainly regarded by many as a waste of time and effort. Such views do often lead to apathy and many of us try to avoid the dreaded rigmarole of residential politics and hope by ignoring it long enough, it will go away. Living in such a close knit arrangement would, not surprisingly, lead to some conflicts in some way or form.

Indeed if you have a complaint, it is best to deal with it rather than live with it especially if you have to live with it everyday. Common complaints may include, noisy pets, parking spaces being used by neighbours in an inconsiderate manner, loud music at unreasonable hours or the committee members acting in an autocratic or biased manner.

The Condominium Act requires that a general meeting be held at least once each year although in practice, this can be as often as required. You may wish to take the floor and air your grievances here or if having a right of audience is not your preferred mode of communication, be sure there are other formal methods set up to air your grievances within the juristic person. This may be in the form of knowing who to contact or whether there is a complaints box available somewhere. If these initial methods do not work, you may wish to pursue other avenues such as, negotiation, mediation, arbitration or, in the most unlikely scenario, litigation.
BANGKOK

45 Sukhumvit Road Soi 24 Klongtoey, Bangkok 10110
BTS Station Phrom Phong Exit 4
Tel : 02-661-1362
info@siam-legal.com

BANGKOK HEAD OFFICE - Times Square

246 Times Square Building Room 25-02A, Sukhumvit 12th - 14th Rd., Klongtoey, Bangkok 10110
BTS Station Asoke Exit 2
Tel : 02-253-8100
International Dialing : 662-253-8100
International Fax : 02-253-8010
info@siam-legal.com

PHUKET

41-9 Rat U-Thit 200 Pee Road Patong Beach, Kathu Phuket 83150 Thailand
Tel : 076-345-277
info@siam-legal.com

CHIANG MAI

Changkran Plaza- Suite 7 , 191 Changkran Road Muang Chiang Mai, Chiang Mai, Thailand
Tel : 053-807-070
info@siam-legal.com

PATTAYA

6/56 Moo 6, Pattaya Nua Road, Banglamung, Chonburi 20150 Thailand
Tel :038-370-786
info@siam-legal.com

HUA HIN

Hua Hin Market Village 234/1 Unit S101, Petchkasem Road, Hua Hin, Prachuabkirikhan 77110
Tel : 032-526-286
info@siam-legal.com

SAMUI

142/17 Maret, Koh Samui IT Complex Building Suite 309, Surat Thani 84310 Thailand
Tel : 077-230-291
info@siam-legal.com