

Law Can Do More Harm than Good

Article by: Neil Simmons

It's never an easy thing trying to manage a condominium - you'll never please all of the people all of the time. Things get particular difficult because the Thai condominium law is generally a mix of dark and light grey, with little snippets of black and white.

I'm not a qualified lawyer, but I do have extensive experience in managing condominiums here in Thailand. The Thai Condominium Act was written years ago and, since its inception, has only been modified once with the Thai Condominium Act 2534 (1991), which basically only covered rules relating to foreign ownership.

However, instead of making positive amendments to the Act when a problematic situation arose; instead of learning from experience, improving the Act and making it more user-friendly and more beneficial for condominiums in Bangkok (there are of course a whole lot more condominiums now than there were 26 years ago), what has been done? That's right, nothing. So, if at first you don't succeed, let other people deal with the consequences.

What consequences? The fact is that many condominium developers in Thailand are forced to break the law just to avoid going bankrupt.

As time goes by, inflationary pressure will eventually mean that a condominium will be spending more than it receives in common area management fees (CAM). This means that there won't be money available even for the most necessary things, like repairs, condominiums repainting, and cleaning. To avoid things going belly-up the CAM fees would need to be increased.

Although the Condominium Act itself is a bit vague, the Land Department has confirmed to me that in order to register a CAMfee increase with them, and make it a legal increase, there would need to be 75% or more of all of the condominium co-owners to approve the increase in CAM fees in a general meeting.

This is just practically impossible for most condominiums to do. The chances of having 75% of co-owners in the same place at the same time, for them all to give up their social arrangements to attend a general meeting - it just can't happen.

So, eight the condominium doesn't increase its CAM fees, and it slowly falls into a derelict state, or the CAM fees are increased ignoring the 75% rule, and the increase is not legally registered with the Land Department.

What if the co-owners refused to pay the increase in CAM fees? Well, this is where Thai law really makes things difficult. There's nothing the condominium can do.

Luckily for most condominiums, people generally want what's best for the condominium and they pay up. But in some condominiums, co-owners refuse to allow a CAM fee increase without the 75% voting rule, and that's when the financial troubles really start. The law is supposed to protect the majority of co-owners, when in reality it hurts them all.

Typically, you need one-third of all co-owners to attend a general meeting to make quorum. But the condominium Act states that if you want to make any changes to the Condominium Articles of Association, or increase CAM fees, you need 75% of all co-owners to approve. So you can normally hold a meeting, but just can't vote on anything. What a wonderful piece of common sense that was.

So remember, if you've seen a condominium unit that you like, don't just buy it, do a little homework first. Here are some things to bear in mind:

- Check that the condominium income is sufficient to pay for its expenditure. Ask to see the financial statements.
 - Check that all co-owners are paying their CAM fees. It's not worth buying a unit if half the co-owners aren't paying or aren't able to pay.
 - Find out if there are any legal disputes happening or likely to happen in the future, or if the banks have seized any units.
- Neil Simmons, formerly of CB Richard Ellis, is co-director of Soho Properties (<http://www.soho-properties.com>), a leading real estate agent and location specialist for property in Bangkok.