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Control of Real Estate Sale by Legal Regulations—A View from Thai Context

***Rujittika Mungmunpuntipantip*[1,*], *Viroj Wuwanitkit*[2]**
[1]Research Scholar, 26 Medical Center, Bangkok Thailand
[2]Adjunct Professor, Joseph Ayobabalola University, Ilara-Mokin, Nigeria
[2]Honorary Professor, Dr DY Patil University, Pune, Maharashtra, India

Abstract
In trade, the real estate sale becomes an important business worldwide. Several companies have the real estate businesses. Some dishonest companies might lure the consumers. The legal control is very important. Here, the authors discuss on the legal regulations for real restates in Thailand, a country in Southeast Asia.

Keywords: *Law, real estate, control*

****Author for Correspondence*** E-mail: rujittika@gmail.com

INTRODUCTION

Real estate is accepted as a valuable treasure that everyone recognizes. By definition, a real estate means a property consisting of land and the buildings on it. It also covers with its natural resources such as water resource and agricultural plant in that area. The real estate is a monetary equivalence and one who has a lot of real estates are usually perceived as a rich one. Therefore, the real estate becomes important belongings in the present day. Brown noted that "*Having a real estate attorney is a good insurance policy* [1]." The problem regarding the real estate is not uncommon at present and becomes an interesting issue for studying.

The real estate sale is the blooming business in developing countries worldwide. In the new town settings, several companies play businesses on real estates. This deals with the large monetary scale. The honesty in business is the rule but here are usually the cheating companies with unethical practice. Since real estates are expensive [2 – 3] and the cheating illegal cases are usually widely affected the lured customers. In fact, dealing with a real estate business has the risk, like dealing with other kind of businesses [4]. However, the risk due to normal natural fluctuation is acceptable but the change due to illegal intention is totally not acceptable and there should be a good measure for management of this unwanted problem. The unethical event is not common and becomes the important social problem in several countries where real estate business is presently expanding. Sometimes the cheating problem might be due to the companies, the sales or the professional real estate broker. Choplin and Stark noted that "*In particular, salespeople such as mortgage brokers and lenders can exploit the fact that consumers do not know where to look for information on disclosure forms by violating conversational norms, introducing confirmation biases, and using dual tasks such as talking to consumers while they are reviewing forms* [5]."

The use of the real estate control by legal way is interesting. Here, the authors discuss on the specific case in the Thailand, a tropical country in Southeast Asia.

THAI LEGAL REGULATIONS ON REAL ESTATE

Like any country, Thailand has set of real estate laws. The laws usually involve the buying and selling activities. There are also some interesting regulations regarding the foreigner who might buy or sell real estate. However, an interesting issue is there is usually few details regarding the control of the violation of the laws. In fact, in each year, there are many legal cases of sues relating to real estate laws. The bankrupting might be the most serious punishment to the legal violators.

In fact, this is the simple common way that seen around the world [6]. Bankruptcy is the common problem around the world. This is the end of the business and the estate has to be sold out. Any kinds of business can turn into bankruptcy during an economic crisis. The low risk business such as private hospital can also turn into bankrupt state and the estate has to be sold out during an economic crisis [8]. The case of 1997 Asian economic crisis that was firstly occurred in Thailand also involved the illegal practice of the real estate business companies in Thailand. According to that scenario, the companies were only assigned to bankrupted stage. However, the actual international loss is extremely much.

Generally, for controlling of real estate in Thailand, the local laws indicate that the owner of the real estate must be the Thai ethnic. This weans ownership to real estate properties is strictly limited to Thai nationals. The transfer of the ownership to the others is possible and this is usually under legal assignment. Nevertheless, if the real estate owners neglect their treasure, there might be an invader to conquer the estate and if the conquering is persistent for a long term, the invaders might ask the court to reassign the rights and ownership to real estates to them. This is specifically known as important concept of the Land Registration Act. This kind of Thai law seems not good, but it still presently exists. While one might give a reason that the laws promote stimulating of the real estate owner to take care of their treasures, the other might argue that the laws promote illegal stealing and invasion of common public lands. Indeed, this kind of law exists in several underdeveloped area of the world. In some remote countries, such as Papua New Guinea [9], this kind of law is widely used. Conceptually, the land registration is of "*2 kinds: a) systematic registration, which serves as conclusive evidence of absolute title, and b) sporadic registration, which serves only as prima facie evidence of the facts stated therein at the date of registration* [9]."

Foreigners are normally prohibited from acquiring real estate properties and it is hard that the foreigner will own a real estate in Thailand. Nevertheless, a recent amendment has just been introduced to Thai Land Code for a few years. Now the foreigner is permitted to acquire and buy some real estate properties in Thailand by mean of co-investment or partnership. But the stock sharing in partnership must be less than a half. For example, a foreigner is also allowed to buy condominium unit situated in Thailand since the actual right of the land, not the room, is still belonged to Thai land. Another common way that the foreigner might acquire the real estate is the long-term rental option from the local Thai owner.

DISCUSSION

Decision before buying real estate is recommended generally [2 - 3]. However, some unethical companies try to use tricks to lure the consumers and there might be several unethical actions. How to control are the big issues. The specific real estate laws are important However, the law is usually classified to be non – criminal law and there is no serious punishment. This might cause the unethical practitioners dare to do bad things. This might be a good answer to the main question "Do organizational and political-legal arrangements explain financial wrongdoing? [10]" Prechel and Zheng concluded that "*sector corporations with a more complex organizational structure, larger size, lower dividend payment, and higher executive compensation are more prone to commit financial malfeasance* [10]."

In Thai context, there are also laws on real estates. Several descriptions are detailed and there are some issues on punishment but there is no serious punishment. The bankrupted persons might be easily recovered and there is no strict way for compensating the destroyed consumer. Legal consumer cases are not common in Thailand. How to promote a good legal control to balance between the advantage of real estate business owner and the consumers become the interesting issues for further discussion.

Another interesting legal scenario is on land registration. This kind of laws usually brings the problem of argument between owner and invader which might be sometime serious. There are many legal cases at court in

Thailand due to these problematic laws. Conceptually, the land registration might be peaceful. As noted by Papua New Guinea. East Sepik, "*Land so registered is not taken out of the regime of customary law but remains subject to customary law and the possibility that custom may change with time* [9]. *Nonetheless, a registered interest is given priority over an unregistered interest, and the burden of proof in land disputes lies with the person asserting a change in facts at the time of registration* [9]." Nevertheless, the registration might be useful in some special instances such as arrangement of land to the poor people. Sharing of the public land to transformed agricultural field by land registration can be seen in Thailand. This is the same concept as described in other Asian developing countries. Equatorial Guinea concluded that "*The buyer is required to present and carry out a five-year plan for cultivation and may not sell the land to a third person. If these conditions are not fulfilled, the land must be returned to the State, which will then distribute the land to villages* [11]."

Finally, the control of the ownership of the estate is an important concept. This is a common practice around the world. The owner is usually assigned for the local ethnics. However, the new concept according to the paradigm change is allowance of the foreigner to be the owner. The ownership taken by the foreigner is usually mentioned for the risk of loss of rights on the lands of the local ethnic. The protection might be suitable in a way, but it might not be suitable on the other side of the coin if we strictly follow the free trade concept and globalization paradigm. A good collaboration via real estate partners and negotiating effective monetization agreements should be the good concept for control of real estate management [12 - 13]. Nevertheless, there is no specific control based on the fair housing concept in Thai real estate law. This results in many emerging problems of neglected family members due to the cheating land and hose sale by a family member who is assigned to be owner by law. Regarding the Fair Housing concept, it is conceptually stated that "*It also prohibits discrimination based on familial status in the sale or rental of homes and makes it unlawful for anyone engaged in residential real estate-related transactions to discriminate in the provision or terms of a transaction because of sex and familial status, among other things* [14]."

Conflict of interest: None

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