

TIME TO REGULATE ESTATE AGENCY IN THAILAND? – PART ONE

What happens if an estate agent in Thailand lies, double deals, cheats or misrepresents...?

“Can you count on and trust estate agents in Thailand?” This is a question that, in one form or another, our firm has received countless times. It is an important question. Many buyers use a significant part of their wealth to purchase real estate in Thailand. It seems worthwhile to receive professional advice before making such a significant decision.

The role of an estate agent is, in the public eye, one of a “fiduciary” (like a doctor, a lawyer or an accountant) someone in whom one puts trust in their competence, loyalty, diligence and honesty to tend to their interests—in short someone who should be a “professional”. Thus, in most western countries, estate agencies, as with most professions, are regulated. Society expects a certain minimum level of professionalism from estate agents and sanctioning of those who do not live up to that. Clients are often confused because they assume that, like back home, estate agents are “professional” by definition; and they assume that they are regulated here in Thailand. Such belief often leads to a “blind” trust on the side of the client. The unfortunate truth is, however, estate agents are not regulated in Thailand.

Of course, a given estate agent could act professionally without being regulated, but “can you *count* on [such professionalism from] estate agents in Thailand . . . ?” We believe that due to the absence of an effective regulation the answer is “no”. The situation is, therefore , not good for clients, not good for the reputable estate agents and, from an investment and economic standpoint, not good for Thailand.

Recently you may have read a legal article in a South-East Asia property magazine, which stated: *“Lawyers don’t like agents [. . .], and agents don’t like lawyers much either.”* This may be true where one or both of them is unprofessional/concerned more about their own interests than their client’s. But, it is quite odd that one would think that estate agents and lawyers would not like each other if both regularly conduct themselves professionally. Where that is the case and both recognize their fiduciary duty to the client, then their duties and interests are actually in sync—not conflict.

The article then asserts that estate agents are regulated under Thai law provisions governing the conduct of “agency” or “brokerage” or both. It is further concluded that this leads to confusion among clients and estate agents. The alleged confusion is surprising when reviewing the law.

Under Section 797 of the Thai Civil and Commercial Code (“CCC”) *“Agency is a contract whereby a person, called the agent, has authority to act for another person, called the principal, and agrees so to act. . . .”* This means that an “agent” has legal authority to act on behalf of, as if the agent is the principal (i.e., the client) himself or herself. Think—“power of attorney”, what you give to your lawyer to act for you and to legally bind you. This firm is not aware of any estate agent concluding an agreement by which the estate agent and client agree that the estate agent has the power to legally bind the client. In short, estate agents in Thailand are *not* legal agents as defined by Thai law.

Rather, legally speaking, estate agents are “brokers”. Section 845 of the CCC provides that a “broker” is someone you pay if they give you information or provide performance that leads to a third party entering a contract with you. That is what estate agents basically do, not only in Thailand, but worldwide. Any confusion is clarified, once the relevant law is consulted and understood.

It should be noted that under Section 847 of the CCC, estate agents may be liable if they improperly represent both the buyer and the seller. However, this is far from addressing and requiring the very real professional responsibilities that an estate agent wields. What is needed is to:

- a. protect sellers;

- b. protect purchasers; and

c. to enhance the quality and professionalism of the of estate agency in Thailand; so that. sellers, purchasers, professional estate agents, and therefore, Thailand will benefit.

d. sellers, purchasers, professional estate agents, and therefore, Thailand will benefit. This can be done by either what can be called “internal” regulation, i.e., by way of a recognized, respected and fully functional estate agency association(s) in Thailand or by “external” regulation (i.e., legislation). Both of these approaches are common place in the developed world and, in fact, are slowly and inevitably taking root here in Southeast Asia.

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DUENSING KIPPEN is an international law firm specializing in business transaction and dispute resolution matters, with offices in Bangkok and Phuket, Thailand and affiliated offices in 45 other countries. Visit them at: duensingkippen.com