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HIRING SOMEONE TO BUILD A HOUSE? THAI LAW NOW PROTECTS YOU.

DUENSING KIPPEN



After ten years of success of consumer protection for condominium units purchased from a developer in Thailand, consumer protection for the construction of residential houses is now celebrating its first year of enactment.

On 1 January 2017, by way of the Notice of the Contract Committee for the business of residential building construction which shall be contract-controlled (2016) (the "Notification"), residential house construction contracts were officially included among the list of contracts that are regulated by the Consumer Protection Act (1999) (the "Act").

How can you benefit from this?

In short: if you hire a contractor to construct your house in Thailand, you now have rights that are applicable to your agreement with the contractor regardless of whether your agreement with the contractor explicitly includes these rights or even if your agreement with the contractor provides for terms contrary to these rights.

And these rights have teeth. The Act specifies that should your contractor fail to comply with the Notification the contractor may be subject to imprisonment for a term not exceeding one year, or a fine not exceeding one hundred thousand Baht, or both.

The Notification outlines several terms a contractor must now include in all residential construction contracts, such as:

- the details of the parties to the contract with the parties' addresses and identifications, the place and date of contract, the purpose of the construction, a description of the building, and the construction location;
- the details of the construction costs, including VAT;
- a description of the construction materials, including quantity and price;
- the payment schedule in accordance with work progress;
- the due date of the building permit application, to be measured from the contract execution date;
- the completion date, to be measured from the date the building permit is received;
- the contractor's liability for defects, such as five (5) years for structure and one (1) year for component parts and equipment;
- lists of the construction materials, including quantity and prices;
- your right to have a third party remedy construction defects in case of any failure by the contractor to remedy the same; and



- your termination rights in case of delays in starting construction or completion including a contractual penalty of 0.01% of the construction price per day (limited to 10% of construction price) for late delivery.

The Notification also provides that certain terms are now prohibited in residential construction contracts, such as:

- the exclusion or limitation of liability for breach of contract by the contractor;
- termination by the contractor without written notice or under any circumstances where you are not in material breach of the contract;
- the contractor's right to claim partial payments before the due date as set out in the contract if you are not in default of any payment or otherwise in breach of the contract;
- the contractor's right to amend the contract's construction specifications, prices, or conditions, or to add any additional obligations with which you must comply, without your written consent;
- the contractor's right not to refund your payments;
- restrictions to your inspection rights;
- the contractor's right to assign the contract without your consent;

- that any of the construction and equipment for which you have paid will be owned by the contractor at any time; or that
- should you fail to inspect the work within any specified time you will be deemed to have accepted the construction, including any construction defects.

Thailand's inclusion of condominium development sale and purchase agreements in the list of contracts protected by the Act ten years ago has been of significant benefit to investors and, thereby, to Thailand's real estate market and greater economy. We expect that this year's inclusion of residential construction agreements under the Act will yield similar benefits.

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