

# Condominium Act amendments and their implications

In a move to address numerous complaints from condominium buyers, the Thai government enacted Condominium Act No. 4. Effective as of July 4, 2008, the new law significantly expands the scope of consumer protection to potential condominium buyers by amending several provisions of the existing Condominium Act (1979).

Since its passage almost 30 years ago, the original Act has been amended three times in an attempt to keep the law up-to-date with new private sector developments and practices. However, this latest amendment has been one of the most comprehensive overhauls — extending buyer protection, imposing additional requirements and duties on developers, and modifying restrictions on foreign ownership.

**Buyer protection:** Prior to the new amendment, there were few legal provisions to protect condominium buyers. Potential buyers risked exposure to developer bankruptcies, unfair contracts, unfinished or substandard construction, disputes over maintenance fees, and various other problems. An aggrieved buyer's only options were to file a complaint with the Consumer

Protection Board and hope that the Board would take action, or initiate a potentially lengthy and expensive legal case against the developer. The new amendment contains several provisions designed to protect potential condominium buyers.

**Standardised contract forms:** A key provision in this new set of protections is a requirement that purchase contracts between the developer and buyer conform to a standard format prescribed by the Interior Ministry, promoting a degree of uniformity and certainty. Furthermore, any clauses in a purchase contract that deviate from the standard format and are not in favour of the buyer will not be enforceable. The required clauses include basic information such as the developer's ownership of land and location, price, and size of the condominium and development complex.

More importantly, one of the required clauses is a detailed objective of the usage of every area of the condominium including individual condominiums, common property, and facilities. This

provision addresses prior buyer complaints of developers who changed the common area for other uses or built additional units over common areas.

**Accurate advertising:** Developers must also take careful steps to ensure that their advertisements such as pictures, statements, or brochures truthfully and accurately represent the completed condominium. Any advertisement will be regarded as forming part of the purchase contract and any inconsistencies between the advertising and the actual purchase contract will be interpreted in favour of the buyer.

**Additional duties and restrictions on developers:** Payment of monthly maintenance fees for unsold units. In the past, disputes often arose between developers and buyers over the payment of maintenance fees for units that had not yet been sold, resulting in a shortfall of maintenance funds. Under the new amendment, the developer is responsible for paying taxes, common service expenses, and common maintenance

expenses for units to which ownership has not yet been transferred.

**Operation of businesses within condominium:** New restrictions state specifically that businesses are only allowed to operate in designated areas, and the developer must arrange for separate entrances and exits for these businesses in order to protect residents from noise and disturbances.

**Penalties for violations:** The new amendment also provides a comprehensive list of penalties for developers who violate any of the new provisions. The biggest penalties are for violations of the standard form contract or for violations of accurate advertising. A violation of the standard format contract carries a fine of up to 100,000 baht while a violation of accurate advertising carries a fine between 50,000 and 100,000 baht. A violation of the provision regulating businesses within the condominium carries a fine of up to 50,000 baht and an additional 5,000 baht for each day the violation is not fixed.

**Changes in restrictions on foreign ownership:** Under the original Condominium Act (1979), foreigners were explicitly granted the right to

purchase and own condominiums, but foreign ownership of total units within a development could not exceed 49%. Condominium Act No. 3 (1999) liberalised these restrictions and allowed foreigners or their juristic persons (holding companies) to hold in aggregate more than 49% of total condominium units in certain developments (usually small developments not exceeding five rai). The new amendment repeals these exceptions and reinstates the 49% ceiling from the original Condominium Act (1979).

Viewed as a whole, the new Condominium Act is part of a larger consumer rights movement in Thailand. Along with the newly enacted Escrow Act (2008), the Thai government has been moving to address complaints of consumer fraud and abuse. In general, the new law creates some minor burdens for developers while extending significant protection to consumers.

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