

Popular financing option should not be confused with leasing

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Last week *Your Money* talked about renting a property: the legal issues, contracts and other dimensions involved. Today, we look at hire-purchase.

Hire-purchase is a very popular lending option, used to acquire a wide range of movable assets from electrical and electronic goods to cars, industrial equipment, ships and more. Sometimes it has also been used with immovable assets such as factories. However, it is rarely used with residential property because it represents higher risk for lenders.

"That's because the ownership of the property doesn't yet belong to the hirer.

Therefore, the banks may find it hard to extend loans since those properties still can't be used as collateral," explains Thawat Damsa-ard, a partner with the international law firm Tilleke & Gibbins.

Nevertheless, some residential projects are employing hire-purchase financing. The National Housing Authority (NHA), for one, allows the occupants of its houses to pay installments on condition that the NHA will transfer ownership to them within five years. This also applies when the hirer is willing to pay cash — he or she will still get the rights transferred after a five-year period.

Typically, many people confuse hire-purchase with leasing. According to the

law, a hire-purchase is a contract whereby an owner of a property lets out the property on hire and promises to sell it to the hirer on condition that he or she makes a certain number of payments.

In other words, hire-purchase combines the essence of hiring and purchasing, meaning the hirer is legally bound to purchase the property or asset after a certain period of hiring. However, for leasing, the law doesn't enforce purchase on completion of a certain period. That choice remains with the lessee.

The law also states that a contract for hire-purchase will be void unless it is made in writing. As well, the hirer may at any time terminate the contract by

returning the property to the owner at his or her own expense. Meanwhile, the owner is able to terminate the contract in case of inability to service the debt by the hirer for two consecutive payments, or any other breach of contract. In that case, all previous payments can be forfeited to the property's owner, who can resume possession of the property.

Since hire-purchase integrates the essence of hiring and purchasing, the laws involving hiring therefore are applicable to hire-purchase, Mr Thawat explains.

For instance, the owner of the property is obliged to deliver the property in a proper state to the hirer. The hirer is barred from subletting the asset to others.

In the case of repairs and maintenance, he says they will be carried out as stated in the contract agreed by both parties. Where no such issue is explicitly stated in the contract, other laws will be applied.

The law says that the owner is liable for any major repairs to a property during the valid term of the contract and he or she is bound to reimburse any expenses related to the repair to the hirer. There is an exemption for petty repairs or ordinary maintenance that the hirer should be reasonably expected to undertake.

At the same time, the hirer of the property is required to take as much care of the property hired and must not make alterations or addition without

permission of the owner.

Mr Thawat says that disputes tend to centre on the facts of what is considered a major or petty repair. "Sometimes, to compromise, there are cases in which both parties agree to share the expenses."

However, for most movable assets such as cars, appliances and equipment, the contract usually identifies the hirer as the one responsible for repairs and maintenance. This also includes the loss of property, for which the hirer is required to settle the full payment.

In many cases the hirer will have insurance but if the policy does not cover the entire cost, he or she will be required to make up the difference.