



## Condominium disputes: concerns for joint owners

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Condominiums have long been one of the most popular properties for people living in Thailand's big cities. The different units in a condominium are individually owned, while common properties, such as lobby areas or swimming pools, are jointly owned by the owners of individual units.

Unfortunately, disputes among joint owners (the owners of units in the building of each condominium) or between joint owners and the condominium juristic person are sometimes unavoidable. Therefore, it is prudent for joint owners to know and understand laws and regulations related to common condominium disputes.

Exemption of court filing fees in consumer cases: Cases between condominium joint owners and a property developer or a condominium juristic person are regarded as consumer cases. Where joint owners sue property developers for breach of contract in delivering incomplete or defective units, the joint owners (as consumers) are exempt from court filing fees according to the Thai Consumer Case Procedure Act BE 2551 (2008).

If condominium juristic persons sue joint owners for unpaid expenses from providing common services and maintaining and managing common property (normally known as "common fees"), the juristic persons may sometimes argue that they should be exempt from paying court filing fees as well, since they are not property developers.

Under the Consumer Case Procedure Act, only consumers or persons assigned to file a claim on their behalf are exempt from court filing fees. Condominium juristic persons are considered by the Appellate Court to be business operators and service providers rather than consumers because they are paid a common fee to maintain the condominium building and common property for joint owners. Thus, condominium juristic persons filing claims against joint owners will be required to pay court fees.

It should also be noted that claims for common fees must be filed by the condominium juristic person within five years from the default date.

**Debt clearance certificate:** Under the Thai Condominium Law, joint owners must jointly pay common fees. Previously, condominium juristic persons could refuse to issue a debt clearance certificate for joint owners failing to pay such fees. This would prevent them from registering title transfers with the local Land Office, which requires a debt clearance certificate for the transfer of condominium unit titles.

Without the issuance of this certificate, buyers purchasing units via public auction would then have to shoulder the unfair burden of paying outstanding common fees in order to complete the registration of title transfer.

Section 309 quarter was added to the Civil Procedure Code on Nov 16, 2015, to provide better protection for buyers of condominium units by public auction. Under this section, debt clearance certificates are no longer required for the sale of units by public auction.

Before the sale of any unit by public auction, the executing officer will notify the condominium juristic person to report any outstanding common fees within 30 days from the date of receiving the notice. After the sale, the officer must set aside proceeds from the sale to pay for any outstanding fees to the juristic person (which will have priority before the mortgage creditor).

A competent officer will then register the title transfer for the buyer without requiring a debt clearance certificate. Buyers from public auction therefore no longer have to be responsible for unpaid common fees.

**Common fees:** Another critical concern for condominium joint owners involves situations where the condominium juristic person cuts electricity or water, or refuses to hand over key cards in order to force payment of common fees.

The Supreme Court has held that condominium juristic persons can only compel joint owners to pay unpaid common fees by filing a claim with the court. Since joint owners maintain ownership over their personal property and share ownership with the juristic person over the common property in the condominium, they have a right to use the common property. The juristic person cannot obstruct joint owners' use of common property to compel payment of common fees, and courts will likely view these tactics as wrongful acts against joint owners.

Furthermore, the Thai Supreme Court has ruled that a previous regulation issued to exempt property developers from paying the common fees of unsold units is void, and developers must be responsible for paying the common fees for the units that have not been sold.

There are many potential legal issues that may arise between condominium joint owners and juristic persons. Each party should ensure compliance with its respective duties to avoid potential disputes. Joint owners should learn and understand their rights and responsibilities and comply with the condominium bylaws and seek legal advice when disputes are unavoidable.

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