

## Property: Phuket Real Estate Advice

Phuket is one of Asia's most sophisticated and certainly Thailand's best established property market outside of Bangkok. For the past twenty years developments have been sprouting up around the island, encouraging a large influx of investors. At present, there is an increasing demand for new developments in areas such as Bang Tao Beach, Surin, Cherng Talay and Layan, as well as the southern coastal areas of Nai Harn and Kata. The traditional areas, such as Patong, are overdeveloped and priced at a premium.

With political instability and amendments to the foreign business act in 2007, many investors are proceeding with caution, but are not deterred from investing in Phuket real estate. Phuket boasts a wide range of property choices: condominiums, apartments, houses and villas, so there is no shortage of options. However, for the most part it is strictly for the wealthy. Residential property away from the lovely west coast bays is affordable but certainly not the cheapest in Thailand. Many locals opt for something nearer Chalong or Phuket Town.

## Buying property in Phuket

Real estate in Phuket is, in some respects, a lot more established and sophisticated compared to other coastal regions, like Pattaya, Krabi and Koh Samui. There is a wide range of estate agents: Phuket One Real Estate, Tropical Homes and Knight Frank to name a few. This alone attracts a large number of foreign investors to a market once dominated by buyers from Hong Kong and Singapore. Phuket real estate is now seeing a large influx of European and American buyers. The common price tags for properties ranges from 5 million to a 20 million baht, largely depending on location and size, with beachfront and sea view properties going for significantly higher prices. Phuket was very heavily marketed in the 1990s by Laguna Phuket - an area of man-made lagoons in the Bang Tao district. A lot of spin off properties are now available to buy from companies associating themselves with large brand names such as the Banyan Tree, Sheraton, Allamanda and Dusit Laguna.

## Buying condos in Phuket

Although villas are the most desired property choice in Phuket, they are often unaffordable and condos serve as a second choice. Condo buildings are concentrated in developed areas such as Patong and Karon, and are now back in vogue since the structure typically used for foreigners to buy villas has now been deemed unlawful. Only Thai nationals have a right to own land, therefore foreigners are limited to buying condos in buildings that are at least 51 per cent Thai owned. Some companies use complex company structures or long term land lease to overcome this, but condos present a much safer option. Condos also offer all sorts of shared amenities such as pools and fitness centres and are generally more centrally located. [More on buying condos in Phuket.](#)

## Buying villas in Phuket

For high-flyers and those who can afford a second home, villas are a popular choice in Phuket and are offered by numerous developers who have seen the demand in this sector. Mostly, they are luxury property options, stylishly done in tropical Asian contemporary design, with good seafront locations and big price tags. Some are sold as stand alones, but mostly they are offered as part of an exclusive project. Since the land they are built on cannot be owned by foreigners a round-about ownership structure is created. [More on buying villas in Phuket.](#)

## Investing in Phuket properties

Phuket property market has also proven popular with investors' who see the potential and low risk in this lovely tropical location that is increasingly becoming a jet set magnet. With a solid infrastructure and demand from the wealthy, it is seen as a good option for investing in property and making guaranteed profitable gains in the mid or even short term. [More on investing in Phuket properties.](#)

## Living in Phuket

Phuket has long been a popular destination for holiday makers, retirees or simply an area for holiday homes because of its tropical climate and fantastic beaches. As such real estate has been buoyed by investors, hospitality developers and those wishing to settle on the island. Located in the Andaman Sea, Phuket is seen by many as a desirable home away from home. Relocation to Phuket has been made convenient by its well established infrastructure, international airport and quality services: yacht marinas, golf courses and shopping malls, all of which draws the Westerners in. A large expatriate community has continued to grow over the past 10 years, with two international schools available on the island and an extensive support network of clubs and societies.

Phuket offers a wide range of services which include an international standard hospital, English speaking lawyers, extensive estate agent services and local English newspapers (Phuket Post and Phuket Gazette amongst others). Undoubtedly the tropical, scenic backdrop of the island encourages foreigners to invest in property and developments. Phuket, as a large island has many tourist destination areas, such as Patong, Kamala, Karon and Kata. They all have vibrant nightlife scenes, with a combination of great discotheques, bars, restaurants and nightclubs, making Phuket, a 'foreigner friendly' destination for foreigners.

## Buying condos in Phuket - condo buyers' guide

Phuket has been well established in the foreign investing property market for many years, which has resulted in a large number of qualified and experienced real estate agencies. Phuket has two types of luxury condos or apartments: those affiliated with international brands, such as Laguna property on Bang Tao Beach and those with local brands, such as Royal Phuket Marina, or Layan Gardens in Layan.

The Phuket condo market is heavily supported by good English speaking agents, these include; Tropical Homes, Phuket One Real Estate and Knight Frank. Prices vary dramatically: 13.5 million baht for a 125m<sup>2</sup> two-bedroom condo unit, to 30 million baht for a higher end property. If these are all out of your price range you can also find 45m<sup>2</sup> to 60m<sup>2</sup> condos in Phuket for considerably less. And at the bottom end of the market you can buy units in modest condo blocks in Phuket Town area, usually full of locals as tenants.

Prices vary heavily according to location, style and facilities. On average, a buyer can expect to have a wide choice for 14 million baht. Prime locations for condos in Phuket include southern coastal hotspots: Patong, Karon, Kata and East-western coastal areas such as Layan, Bang Tao, Surin and Chalong. The tropical paradise lifestyle you were imagining doesn't come cheap any longer in Phuket, and condos in the popular areas near the lovely beaches are in high demand internationally.

Be prepared to do your research and make sure that the building will be properly maintained and maintenance fees will be properly collected. This should not be a problem when dealing with reputable companies, but be assured there are many pitfalls that unsuspecting condo owners could fall into. Unlike other places in Thailand however, many of the condo buildings are almost entirely made up of foreigner tenants and their expectations for professional management are high.

An important consideration is that, like most popular areas in Thailand, condos in Phuket have the highest demand of any sector, because they are easiest to own as a foreigner. Thai law forbids foreigners owning land but has a structure allowing up-to 49 per cent of a condo building to be foreign owned. Therefore, many who want to retire in Phuket or live here part time find that buying condos are more practical in Phuket.

When buying property in Thailand, a foreigner must bring in 100% of the purchase price from overseas. In order to do this, you will need a Tor Tor 3 document (Exchange Control Form) from the Thai bank. You will need to transfer the funds in order to provide evidence of this to the land department in Phuket. Another consideration to bear in mind is that the name of the party remitting the money on the Exchange Control Form and the name of the property buyer must be the same.

### **Buying villas in Phuket - villa buyers' guide**

Property is booming in Phuket and villas tend to be a popular investment for foreigners due to Phuket's tropical setting. It boasts lovely beaches and a hilly interior that provides fantastic views and opportunities for secluded developments. The choice of location, style, functionality and luxury are all encouraging to those thinking of buying villas in Phuket.

Although prices for selected properties have risen by 50 to 100 per cent between the launch of a project and the transfer of title deeds, it has been generally considered that the island's property market is going along the same path as Spain's. Many foreigners are thinking of buying villas as second or retirement homes in Thailand, and Phuket is usually the first choice. Although condos and standard residential houses also make up the property market, it is villas that have gained the most demand in recent years since they most effectively fit the typical lifestyle model that is desired.

A typical high end-premium Phuket villa has upwards of 300m<sup>2</sup> of interior space, two to four bedrooms with en-suites, a private swimming pool, gardens and a sea view or mountain view. These types of properties have an expensive price tag though, starting at 40 million baht. These include developments such as Phuket Pavilions at Layan. More modestly priced properties such as Layan Gardens, Lakewood Hills, Sujika Gardens in the Layan, Bang Tao and Cherng Talay areas are impressing foreign investors. These types of properties begin at around 13.5 million baht and are pitched mainly at Hong Kong and Singapore ex-pats as well as a healthy supply of Europeans and an increasing number from Russia and the Middle East.

Most Phuket villas are advertised well in local newspapers along with a variety of estate agents and lawyers advertising their services. Property in Phuket is sprinkled everywhere, with estate agents almost on every corner, so you can always investigate this way. Buying villas in Phuket doesn't require much leg work since there is a very well established property infrastructure dominated by foreign personnel.

Mostly the villa developments have gone up along the sought-after West coast - on the peripherals of the popular bays such as Patong, Kata and Kamala. The prime land is still dominated by commercial developments such as resorts.

Since Phuket villas on the West coast are becoming increasingly unaffordable to most, developers have now been looking to the east coast and North, where land is cheaper. When buying villas in Phuket, your best piece of advice is to rely on the reputation of the developer, their track record, and the performance of the project to date. Almost all villa projects in Phuket can be considered good investment options due to the growth in demand on this island. It's also advisable to take your time and familiarise yourself with the island, the area you are interested in buying villas in, and Phuket's character in general. You may not want to be living permanently among the crowds of tourists that arrive during the season, but some developments are also a little too remote.

### **Buying houses in Phuket - house buyers' guide**

Phuket has a robust house market, mainly on the strength of villas that are sold as second homes. However there are also several residential house projects - similar to 'gated communities' - which appeal to the local market. Away from the popular tourist areas there are also plenty of lovely houses, as well as land for sale. Buying houses and land in Phuket is also a solid sector of the property market but limited to a privileged few.

Since Thai law forbids foreigners owning land, this puts a dampener on buying houses in Phuket. Of course, there are ways around the law, which has supported the robust development of villas, but since late 2006 the officials have pledged to more strictly monitor the common practice of foreigners establishing companies to own the land or houses by proxy. If you have a Thai spouse or a legitimate company with capital-injecting Thais (51 per cent minimum share), then you can assume del facto ownership of the land via this vehicle. Many others are now opting for a renewable 30 year lease (up to 90 years maximum) on the land, while retaining ownership of the building. In all cases, due diligence and full trustworthiness of your partners is essential, as Thai law is notoriously unreliable in protecting a foreigner's interests if disputes over ownership arise.

With this quasi-lawful means, buying houses in Phuket can be rewarding, and since much of the foreigner market is shut out, the diminished demand suits the buyer. However, property in Phuket is typically much more expensive than most other popular ex-pat centres in Thailand. Since the topography of the island tends to carve it up into parts, space can sometimes be limited, and much of the land is held by local speculators. With a bullish growth in recent decades, expect land in Phuket to be expensive.

There are however, several house projects around Phuket, ranging in price from roughly 4 million baht for a 200m<sup>2</sup> house with modest garden, to the high end market at 45-50 million baht in Patong and Kata. There has been, in recent years, an increasingly huge demand for the middle housing market catering to foreigners, including areas around Chalong, Surin and the southern coastal areas (Karon and Kata). As a newcomer, the safest option is buying houses in the prestigious projects (gated communities) but these Phuket houses cost roughly 30 to 50 per cent more than a stand alone house in a regular 'locals' suburb. Of course, with the latter you risk all the usual habits of an Asian neighbourhood, such as noisy neighbours, uncontrolled dogs and so on.

However, those with the means - usually by placing the land ownership in the name of a Thai spouse - find that considerable savings can be made from buying land in Phuket and developing their own houses. In Phuket some do this as a development investment, since materials and labour are cheap, and the choice of styles excellent. But although building a house can be rewarding, the process to completion can often be a nightmare.

Skilled labourers are readily found and cheap but, delays, shortcuts, inferior materials and lack of detail to jobs can often be the problem. Having some Thai know-how to motivate the team and inspect quality, as well as bargain, can certainly help.

### **Buying land in Phuket - buyers guide**

Despite what you might think, there is plenty of land in Phuket for sale. It's an island roughly the size of Singapore and although much of the prime west coast seafront land has been snapped up, some of it does still change hands and remains undeveloped. With a hilly hinterland, there are plenty more opportunities for sea views further back from the beach. Others are realising that the cheaper land away from the busy and desirable areas is equally suitable for second or retiree homes.

Phuket land covers a vast lush tropical, hilly landscape that offers some convenient locations, some privacy and some sea views, or all three. Many permanent residents prefer to stay east of the hill range that separates the lovely West Coast bays from the rest of the island where all the commercial activity is. They have the advantage of good access to Phuket town, the malls and facilities, and a less crowded neighbourhood. The Chalong area in particular is favoured by locals, while places like Kathu's hillsides (not to be confused with Kata) is a nice place for an up market secluded villa.

The biggest impediment to land ownership is the Thai law that forbids foreigners owning 'Thai soil'. Therefore many foreigners place the ownership in the name of a Thai spouse or company that has 51 per cent Thai ownership. As frequently pointed out in this section, you never have proper ownership or control, but with trusty partners you can become a 'del facto' owner. However, swindle cases occur fairly regularly. So make sure you have some legal checks and balances in place. In late 2006 the government began more vigilantly checking the real status of companies that owned land on behalf of foreigners, insisting that the Thai partners prove their capital investment.A^

Foreigner can however own buildings freehold when attempting to buy 'land' in Phuket. There are various options available in order to become a 'proprietary owner'; these include 30 year leases with a twice over renewal possibility. It should be noted however that any sale of the land would render the lease invalid, so some sort of compensation safeguard need be written into the contract to avoid this situation. Also, ownership of shares in a land-owning company, allows foreigners more reign on purchasing power, mortgages from the bank and loans. With a good lawyer, good advice and estate agent people can generally buy with peace of mind and security.

There are several types of land ownership in Thailand, but you should always consider a deeded property. The deed in Thai is called a chanote and a lawyer will be able to help with the land transfer. Using a lawyer will help you understand the process in more depth and help with the language and legal barriers.

When buying property in Thailand, a foreigner must bring in 100 per cent of the purchase price from overseas. In order to do this, you will need a Tor Tor 3 document (Exchange Control Form) from the Thai bank. You will need to transfer the funds in order to provide evidence of this to the land department in Phuket. Another consideration to bear in mind is that the name of the party remitting the money on the Exchange Control Form and the name of the property buyer must be the same.

The only other remaining option open to foreigners is using a Thai spouse to purchase the land and property. You will have to prove that the money used in the purchase of freehold land legally belongs solely to the Thai spouse with no foreign claim.

Land area measurements in Phuket Thailand

Land in Phuket and Thailand is always measured in talang wa or rai. A wa is 2m in length and a talang is 'squared', therefore 4m<sup>2</sup> = a talang wa, and there are 400 wa in a rai. A rai therefore is 1600m<sup>2</sup> and can also be split up into 4 ngan (of 100 wa each). Typically a villa will occupy about 150 to 200 talang wa. The Thai prefer to spend most of their budget on the building and will therefore build a modest home on 100 talang wa or less, but it's not uncommon to develop on a whole rai with a nice tropical garden, depending on the area. In Phuket a rai will sell anywhere from 1 million baht in a coconut grove in a remote but accessible corner of the Northeast coast, to 10 million baht and upwards near the beachfront. In Chalong expect to pay about 4 million baht.

1 talang wa = 4m<sup>2</sup>

100 talang wa = 1 ngan (not commonly used anymore)

400 talang wa = 1 rai

1 rai = 0.42 of an acre

1 rai = 0.16 of a hectare

### **Phuket - house builders' guide**

Building a house in Phuket province is a popular choice, and quite feasible within lawful structures. In fact Thais love building, it's a national obsession, so the industry is supported by a good supply of building contractors, materials choices, decorating options and, of course, tropical Asian design characteristics.

Only Thai nationals can legally own land, but you don't need to own the land to build, if you are prepared to settle for renewable lease agreements. Building costs are surprisingly cheap, but quality can often be compromised, and you'll need to be fairly knowledgeable about local methods and workmanship or rely on a trusty local to bargain and supervise the building of a house in Phuket.

One of the main key advantages in building your own Phuket house is that you can design the house exactly to your own requirements. Choosing your own location (as long as the land is available) can also be a pulling factor, as a lot of houses, villas or condos are not always in your 'ideal' location.

In theory, you should be able to build your own house cheaper than buying from a property development in Phuket. Nevertheless, building on your own does not always guarantee that you will get the house of your 'dreams', at the price you expected. In most cases, your budget will overrun and it is essential to keep a close eye on all proceedings, as it is not always as straight forward as you predicted. If it does all work out, you can expect the finished product to have cost at least 30 per cent cheaper than a pre-developed alternative, making the time and effort a good investment.

When building a house in Phuket, it is essential to obtain the services of a reputable builder. Shortcuts are often made and builders taking advantage of unsuspecting foreigners are rife. Typically, complaints are made about a craftsman's attention to surface appearance. Closer examination often reveals poor woodwork, poorly painted walls and fixtures in the wrong places. The most important thing to remember is that building here is completely different to building in your own country: performance bonds, retentions, warranties and buildings standards generally do not exist!

If you are dealing with a reputable real estate agent, they should be able to refer you to honest builders. Phuket has a great selection of suppliers that will sell anything from light fixtures to garden pots. Gardeners and landscape artists are easily found and fairly cheap. Always make

sure you always get a quote and the builder/gardener to evaluate the job before beginning. Price competition is always aggressive in Thailand and the result is a compromise on materials and quality. On the other hand, locals have become used to flush foreigners who unquestioningly agree to overpriced quotes.

It can be daunting, as a foreigner, to build your own home in Thailand, but the end product can often be rewarding. In a lot of cases, building your own home can lead to great long-term returns and profit.

When looking into building properties in Phuket, you might want to bear in mind the following considerations:

1. Location - accessibility via roads; proximity and access to all local amenities.
2. Telephones- good access to direct lines and broadband reach.
3. Water- make sure a secure water supply with supplementary storage facilities are at hand, you will likely have to supply your own auxiliary storage to guarantee 24 hour supply and pressure.
4. Electricity- make sure a secured mains connection and backup generators for condo blocks are checked and available.
5. Security- if you are purchasing holiday homes, so you want to make sure your property is secure. 24 hour security, service door, window locks etc. will help you to maintain a high level of security.
6. Pest control- with Phuket's tropical climate, it is imperative that you have your property regularly sprayed, especially against wood eating insects.
7. Hot water- mostly all hot water in Thailand is instant and not stored.
8. Air conditioning- this is an imperative element to consider when buying and an absolute necessity as Thailand's climate can often be overwhelmingly hot.
9. Manpower - beware, many constructors cut cost by illegally using Burmese migrant labour, at below minimum wage. Apart from the moral issues, tip offs for police raids can result in all sorts of problems.
10. Views - aren't guaranteed, as local laws don't protect this element of a properties value and Thais have little appreciation for them anyhow, resulting in senseless and unfair planning and neighbourhood construction.

Although these may seem like simple requirements, that each property would automatically offer, remember this is not your home country and often corners can be cut in order to save money, and you'll have difficulty challenging it.

### **Investing in Phuket Properties**

Phuket has never had it so good and property is booming, despite the temporary set backs of tightened ownership regulations and the uncertainty that followed the 2006 coup. But properties in Phuket continue to change hands regularly as international investors and the wealthy increasingly want a 'piece of Phuket'. The days of an undiscovered paradise are long gone and the speculators have come and gone as the market settles. Investors with an eye on 'the next big thing' are better off looking at other islands along this coast, but those with more genuine interests to develop on the back of a robust and maturing infrastructure will find Phuket very agreeable.

Entry level into acquiring Phuket properties isn't cheap, and there certainly isn't the mass cheap apartment scenario that Spain undertook in the seventies and eighties. The investing here is far more up-market and tasteful. Although it has slowed down, relative to Pattaya for instance, the

investment on Phuket is set to continue growing with more developments emerging. Phuket is considered relatively safe when it comes to your money, with long-term returns encouraging. Accessibility, location, style and size however, are all important when investing in Phuket properties.

Also, it is important to consider the distance to the airport. A lot of Phuket's part-time residents, work in Hong Kong, Singapore, Bangkok or other parts of Asia, thus the commute when time is precious can often be limited. Is a longish drive to the southern coastal hotspots of Nai Harn, Patong, Kata and Chalong, whereas, Cherng Talay, Phuket Royal Marina and Laguna areas are more idealistic.

Most importantly, when investing in properties in Phuket, is the reputation and professionalism of the developer. Phuket probably boasts a higher standard than anywhere else in Thailand - a country not known for exceptional standards of quality - and this is largely due to the international nature of the industry. Many of the companies are managed by experienced property developers from other sophisticated locations, with the advantage of competent local staff.

Initially it was the wealthy Bangkok Thai nationals that snapped up much of the land during Phuket's original boom, when its potential was recognised in the early eighties. This has dominated the commercial property business, including resorts, and retail space in the popular tourist centres. Now the focus is more on residential villas as second or retirement homes for the wealthy. Many buyers do so purely for investment as the pre-build price usually matures by up to 70 per cent following completion.

Investors looking at acquiring Phuket properties should take the time to properly familiarise themselves with the local market and the ownership laws and structures in particular. The most important factor influencing the local market is that only Thai nationals can own land. A legal structure for condo developments allows foreign ownership of up-to 49 per cent of the building. For stand alone developments like villas, a complex company structure and lease of freehold agreement is usually employed to circumvent this law. However, you can never legally own the land.

In late 2006 the government decided to more strictly interpret this modus, and investigate the status of the apparent Thai partners. This created pressure on the industry and resulted in a slowdown. It had a devastating effect on the property market in Samui which had notoriously become riddled with corruption, land encroachment and unlawful ownership structures. Since then investors have been cautious, waiting for clarification or updating of the legal structures to accommodate an important pillar of these island's economies.

### **Phuket property - buyers' tips**

1. Property near or within a large town will provide you with all the modernistic features: entertainment, services, eateries and work opportunities. However, a major drawback is that prices will be a lot higher for property, especially properties located near the beach and mountains.
2. Make sure you do your research of the area when buying; areas such as Patong, Karon and Kata are heavily populated by tourists, which can have its drawbacks when considering exclusivity and privacy.
3. A good agent is essential, as it will allow you to see as much of the island and areas of development that it has to offer. Always be careful when consulting your investment options.
4. Make sure the development has valid papers, such as title deed that have been verified by local official land bureau. Don't rely solely on a local lawyer or single agent to do the due diligence for you, they will not accept responsibility if they get it wrong.

5. Create a positive image and good relation with local people; remember you are investing into the culture and lifestyle that is already there. If you decide to 'go native' and live among the locals in their neighbours be prepared to put up with their habits, such as unruly dogs, noisy karaoke, morning village announcements over the tannoy, and unregulated development.
6. To avoid all of the hazards mentioned in point 5, consider buying into one of the modern project developments which minimise these problems through carefully managed neighbourhoods, but you pay a premium for the privilege.
7. It would be judicious to appoint a good English-speaking lawyer, who is fluent in Thai, in order for them to detail to you all the relevant legalities and proceedings regarding your property. Remember, Thailand has a lot of red tape when concerning foreign investment especially with the recent amendments to the foreign business act. Furthermore, you cannot rely on the legal system in Thailand to present foreigners with a strictly just outcome.
8. If you insist in buying among the developed and sought after West Coast bays, expect to pay a great deal more, although your investment will be secure. Many locals (expats included) prefer the less frenetic middle and east side of the island with the convenience of Phuket Town and its services. To be close to the beaches look into some of the less developed by secluded areas nearby, such as the southern-most parts of the West Coast, or Bang Tao's lagoon areas.
9. There are some lovely, as yet undeveloped and still affordable, areas on the east coast with access to nice beaches, such as Koh Siray and even some of the offshore islands.
10. Phuket is one of the most expensive property markets in Thailand but does have one of the most sophisticated property infrastructures and support from building, renovating and decorating businesses.

### **Opinion and Analysis - 29/12/09 - Property prospects for Phuket and Krabi**

Impact on Thailand's property sector by the global economic crisis, and what to watch for in southern Thailand during 2010 by Nick Anthony and Tom Travers

Nick Anthony and Tom Travers of Indigo Real Estate discuss how Thailand's property sector has been affected by the global economic crisis, and what to watch for in southern Thailand during 2010.

The global financial crisis will rumble into 2010 and will create more surprises. The United States is still in deep trouble, Europe is fracturing and Africa is unstable.

In Phuket most projects went into the global financial crisis under duress caused by the previous two years of political instability, so most developers have escaped the worst of the speculative excesses. Developers have been offering attractive incentives in the final quarter of 2009 that have helped to thaw the standoff from buyers.

After an eerily quiet nine months in terms of actual deals, and despite a constant stream of interested wealthy clients visiting Phuket throughout the global financial crisis, there has been an upturn in negotiations and an increasing number of transactions, although prices remain unpredictable.

The reduced prices on offer from sellers is a return to a long term 'fair valuation' and is about 30 per cent down from peak prices. However, cashed up buyers have been seeking distressed pricing, asking a further 30 per cent discount - but without success.

Today the pendulum is starting to swing back towards sellers because the supply of value-priced finished villas is limited.

'Completion' continues to be a buzzword in the minds of buyers, with rental programs, solid property management and access to boats and beach clubs highly sought after. Developers, despite not being able to reduce prices dramatically, are being realistic. Sellers of luxury homes are getting fair value prices, leaving buyers with a great long term asset, yield possibilities and medium term capital appreciation of between 20 per cent and 40 per cent.

Completed, well-managed villa projects will continue to outperform other market sectors, and in some cases developments such as Andara, Trisara and the Amanpuri will see their resale prices rising by as much as 100 per cent from just two or three years ago.

Developers who have shown financial strength and have made solid construction progress will be signing deals that will see the luxury market in Phuket entering a state of under-supply of quality new developments by end of the first quarter. This could well surprise many people. Quality sea view land is becoming scarcer in Phuket, and there will be no increase in this type of land available while finished luxury villas for resale are already in short supply.

Tourism is down some 20 per cent over 2008 figures, but the high season is now in full swing and all the main hotels are full. Occupancy rates in February 2010 are likely to be close to 100 per cent at many of the 5-star hotels. Virtually every big villa is rented throughout the peak season, and this is despite of a doubling in supply of finished villas since 2008. In 2009 there has been a steady slew of high-end renters, for example some villas in the Surin area have maintained 85 per cent occupancy levels all year at rates of between US\$800 and US\$4,000 per night.

There was a marked thawing in the final months of 2009, with intransigent negotiations that have frustrated all parties throughout the year starting to progress. Buyers, thanks to bullish regional equity rebounds and a relaxation in general global business, have resumed their rest and relaxation mentality. They have started writing cheques again. But political concerns are always a wild card when it comes to Thailand, although Phuket is increasingly becoming more isolated, independent and immune to Bangkok's volatility.

Places like Saigon are getting jammed by traffic and pollution, and are starting to resemble other overpopulated Asian cities where long term expatriates are leaving. With huge population growth predicted during the next 20 years in all major Asian cities, pollution will only get worse.

In the immediate vicinity we have wealthy investors from places like Malaysia, Singapore and Hong Kong looking for quality of life and a healthier family environment. Those buyers will continue to choose Phuket as the number one alternative place to spend substantial time. Put simply, no country in the region can offer what Thailand can offer overall.

The Thailand property buyer today is savvy, is seeking value, and is well informed on the range of properties available – thanks to the Internet. Buyers are looking for representation from an agent that presents quality projects and developers with experience, and balance sheets to match their bravado. Agents must be prepared to do battle on their behalf, and with the buyers' interests at heart. Agencies that are seen as a 'sellers' agency – listing all properties at the highest possible price – will lose the trust of customers.

Following the immense success of the exclusive Andara Luxury Villas, the Kamala headland development is now offering Andara Apartments with 2, 3, and 4 bedroom apartment suites. The Taj Phuket is readying for launch in 2010 and will be Phuket's most luxurious combination of a hotel and managed villas, nestled into three private beaches on Koh Lon Island south of Sri Panwa.

Indigo Real Estate, with offices in the southern Thailand provinces of Phuket and Krabi, was awarded Best Thailand Agent at the Thailand Property Awards 2009.

## **Opinion and Analysis - 29/12/09 - Ensure your deeds are in good order**

Thailand land registration and ownership: How good is your title? by Julian Male

The process of land tenure in Thailand follows a rich history of legal tradition and culture where all land and resources once belonged to the King. The continuum of land law and ownership go as far back as the 13th century when King Mangrai would bestow ownership to his subjects if they cleared and cultivated land for the benefit of the people for a period of three years. They could pay a small fee and register the land as their own.

In fact this custom of defacto ownership by occupancy continued until the reign of King Rama V in 1901. Known as the Royal Buddha this powerful monarch was credited with social reforms, innovation of government and territorial cessation of the British Empire.

The monarch's reform to land tenure was also a defining moment in his reign as he introduced the idea of modern ownership as being legally distinctive to occupancy. Utilization of the land under the new system no longer gave protection of tenure occupancy once enjoyed. Real rights and security of tenure were only granted under the notion of ownership.

While this customary practice remains to this day, confusion and conflict ensued until the introduction of legislation in 1936 and The Land Code Act in 1954. With the latter remaining the most important land ownership legislation in Thailand, the act expressly states the steps that must be followed for the issue of title deeds, land protection and land allocation. In spirit it recognised the three different stages of acquiring land initiated by King Rama V: occupancy, utilization and legal possession.

Consistent with these principles the act proscribed the powers of the Director General under section 8 to "supervise and carry out acts for purpose of protection and prevention, as it may think fit, of all land which is the domaine public of State or the States property."

### ***Title by Registration***

Innovation in the administration of land ownership came in the form of land registration. The concept of title by registration of land in Thailand was influenced by two powerful forces. Customary underpinnings of land tenure, and the rapid expansion of the Torrens system around the world, first established in South Australia in 1958, found its way to Thailand at the beginning of the 20th century.

In the common law jurisdictions of the U.K., Australia and America, "the register" was created at a time where the veracity of title could only be ascertained through documents or the "chain of title" collectively known as the Title Deeds. For a property buyer, a central system of property registration with the local authority meant he would enjoy an inalienable right to title that was once the domain of uncertainty and fraudulence.

Enshrined in Thai law, the concept of title by registration is expressed in the guiding principle of the Civil and Commercial Code by virtue of section 1373. The provision states "[w]here the property is an immovable entered in the land register, the person whose name is on the register is presumed to have possessory right over it".

Over time the Thai version of the register gained prominence, enabling a buyer or any person to gain valuable information on the history of the land. This includes classification, previous and current ownership, zoning, servitudes rights, encumbrances by mortgage or if the land is subject to development by local government. More importantly it provides a convenient, reliable and accurate system of title by registration administered by officials at the Central Land Office or, if need be, the district lands office.

### ***Land Classification and Rights of Ownership***

In simple terms there are two types of rights to private land in Thailand, the right of possession and use of the land and, secondly, ownership by title deed. By and large traditional land claims (normally bestowed on Thai only) vary, including Por Bor Tor 5, Sor Kor 1, Tor Bor 5, Sor Por

Gor 4. The common feature of these claims is they give the occupier possessory rights and rights of use only.

Yet this type of land blankets much of the Thai landscape, including the popular tourist destinations of Samui, Koh Tao and Koh Phangan. On the whole it is used for farming and cannot be conveyed, rented or leased to another party. Neither can ownership be registered with the Land Office, other than notification filed with the district office. In addition, Thai farmers have traditionally built their homes on this land without official permission or even a building permit from the relevant authority. Overall the process of conveying this land is governed by no more than local custom, with a gentleman's agreement handing over the notification form of possession and use with a hand shake to follow. More importantly there is no real right attached to sell or transfer it particularly to foreign buyers.

### ***The Issue***

With opportunism rife for quick money in the Thai property sector, some developers trumpet the ease of upgrading this type of land to full title rights. More poignant examples of this practice have occurred on land with Por Bor Tor 5 (PBT 5) title on Samui and Koh Phangan. Classified as farm or forest land, it offers no more than proof that the holder has paid tax, been issued a tax number to exploit the benefits of the land and a right to occupation. Although it has been upgraded to Sor Kor 1 in the past, the next tier in Thai land classification, SK1 title has not been issued since 1972.

Under Thai land law the process of upgrading land has to follow each tier up the chain to the strongest title - the Chanote. It cannot be finessed to the top of the chain by jumping any of the successive tiers. It has to follow process, if any. In substance the only titles offering a real right to a lease, sale, usufruct, superficies or a right of habitation are Chanote or (Nor Sor 4 Jor), Nor Sor Sam (N.S.3) and Nor Sor Sam Gor (N.S.4.G).

### ***Conclusion***

Commercial reality dictates that land with these titles has a greater market value than land without title, for the simple reason they enable the buyer good title by registration. A developer can make a killing on deals involving this type of land, yet the investors inevitably lose their money for the very reason that transactions of this nature are illegal. With legal recourse proving onerous and costly, many buyers give up and leave bitterly disappointed with the outcome. The real moral of the story is to have the land investigated by a reputable law firm before you sign off on the deal.

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## **Opinion and Analysis - 01/12/09 - Tax issues when buying overseas homes**

### ***Tax issues to consider when purchasing overseas property by Paul Ashburn***

The tourist high season will often see some visitors to the Kingdom tempted into making a more permanent connection with Thailand. If you are considering the purchase of a holiday home in Thailand, here are some tax pointers to help you on your way.

#### ***Freehold condominiums***

Probably the most straight forward type of purchase for foreigners: several taxes and fees apply when the transfer of ownership of a condominium is registered at the land department.

At the moment the transfer registration fee, normally 2 percent, and specific business tax rate, normally 3.3 percent, have been reduced to negligible amounts for condominium purchases in order to stimulate the real estate sector.

Buyers need to be aware that developments that will not be completed and transferred into their name by March 28, 2010, as they will not be eligible for the reduced rates unless the tax measures are extended.

Buyers should take into account the tax impact if the normal rates will apply. How much of an impact it will have will depend on whether the developer has included clauses in the sales contract that effectively shifts all or some of their tax liabilities to the buyer.

Buyers may wish to compare the terms of their sales contract regarding tax liabilities with the standard condominium sale and purchase contract drafted by the Consumer Protection Office.

### ***Properties on lease***

Foreigners may find that when they start looking into the legal details of purchasing a property in Thailand that they cannot become the owner of the property because of certain legal restrictions on foreign ownership.

In such situations a long-term lease of the property may be offered instead. The taxes payable on a long-term lease agreement are quite straightforward and less complicated than a direct sale. In most cases only stamp duty and lease registration fees totaling 1.1 percent will be payable at the Land Department. Leases of land and buildings do not attract VAT and so VAT should not be added to the rents charged. VAT may come into play, however, if the lease covers fixtures and fittings.

Under the law you will find that the lessor is liable for the stamp duty, whereas the registration fee should be borne by parties equally. The parties can agree otherwise and I have seen many contracts offered by lessors that make the lessee responsible for the duties and fees. Armed with a little knowledge of the law, the lessee may be able to negotiate this point to lower their acquisition costs.

### ***Tax efficient ownership structure***

Generally speaking, a foreign purchaser may consider purchasing the property in his own name or that of a foreign company.

On acquisition, the taxes payable are likely to be the same. If the property is rented out however, then the level of taxes payable on the rents received can differ depending on whether the property is owned by a foreign individual or company. Individual ownership may allow you to claim tax exemptions or claw back some of the taxes that apply whilst foreign company ownership does not.

Tax planning at the time of acquisition should take into account the exit strategy and the mitigation of taxes payable on the eventual sale of the property. Owning freehold property in your own name will allow you to take advantage of the special personal income tax treatment afforded to the sale of real estate.

For personal income taxpayers, the gain will be calculated based on the official appraised price of the property – the amount actually received on sale is not relevant in computing the tax payable on the gain. It is not unusual to find that the official appraised price of a property is lower than the current market value.

Individual ownership is the simplest way to hold the property and can have interesting Thai tax advantages for freehold owners. Foreign buyers should however also consider the tax laws in their home country when analysing the tax implications.

### ***Rental returns***

Some developments, particularly those in resort areas, offer rental schemes as part of the package, including guaranteed rental returns. Some taxes to consider when working out how much of the rent goes to the taxman include:

- 7 percent VAT may need to be added to rentals, including short term rentals where the property is being operated as or similar to a hotel or serviced apartment.
- 12.5 percent of the rental value of a commercial property is required to be paid every year to the local authorities in the form of land and house tax.
- 15 percent withholding tax applies to rents paid to non-resident individuals and foreign companies not carrying on business in Thailand.

Being part of a rental pool should make a property owner a 'soft target' for a tax audit. Records of the rents received by owners are maintained in Thailand by the rental pool manager. It is important that owners and property managers alike understand and comply with the tax laws if they are to avoid nasty surprises when the taxman eventually pays a visit.

Paul Ashburn is a senior partner of BDO Richfield Advisory Limited, a firm specialising in providing tax services to international clients in Thailand. BDO has compiled a collection of articles in Property Report over the years. Please contact Paul Ashburn by email at [paul.ashburn@bdo-thaitax.com](mailto:paul.ashburn@bdo-thaitax.com) for your free copy.

## LOTUS TRINITY

Lotus Trinity is a resort development company. Incorporated in 2005, Lotus Trinity grew out of Lighthouse International based, originally, in Hong Kong and is owned by their Managing Director, Ben Daniel. Ben has 20 years experience in the financial services industry and has been actively involved in property development and sales in Asia since 1999. He holds a BSc. in Engineering, a BA in Marketing and an MSc. in Technology and has worked for major international companies since the mid-80's i.e. National Westminster Bank (UK), Mobil Oil (UK), ICL-Fujitsu (Malaysia and Singapore) and Ernst & Young (Hong Kong and China)

At the beginning of 2009 Lotus Trinity formed a strategic alliance with David Lloyd Resorts. David Lloyd Resorts aims to open resorts world wide over a 10 year period. The first to launch include Kamala Falls and Lotus Gardens in Phuket, Le Jardin de Fleur in Saidia, Morocco and Eagles Ridge, Montreal, Canada. The company is spearheaded by the international businessman and renowned sports celebrity David Lloyd. The development approach Lloyd's company has taken is to follow the fractional model, constructed as a lifestyle product ([www.davidlloydresorts.com](http://www.davidlloydresorts.com)).

David is also launching a new premium villa development supported by Lotus Trinity called Cape Sawan ([www.capesawan.com](http://www.capesawan.com)) located on the Kamala Peninsula.

Lotus Trinity work together with SOCON Corporation, their construction partners, managing the architectural and structural elements of the design and build. SOCON have their own team of architects and project managers and well established relationships with local government.

Their primary development is Kamala Falls ([www.kamalafalls.com](http://www.kamalafalls.com)) and they have another planned for launch in 2009 called Layalina Residences ([www.layalinaresidences.com](http://www.layalinaresidences.com)). These two residential resorts are both in Kamala - Kamala Falls is currently under construction and Layalina Residences will be on the market from the beginning of 2009.

The development team are also working on a new 250m USD hotel, premium villa and condominium development located in the Layan area near to the Banyan Tree Golf Course. Details will be released early in 2010.

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