

TIME TO REGULATE ESTATE AGENCY IN THAILAND? – PART TWO

What happens if an estate agent in Thailand lies, double deals, cheats or misrepresents...? “Can you count on and trust every single estate agent in Thailand?” In part one of this article we explained that because estate agency is treated as a profession in other parts of the world, many people believe that estate agents in Thailand are also guided by and subject to a professional code of conduct. We then covered how, unfortunately, this is not case. Regulation of the conduct of estate agents in Thailand is currently virtually non-existent.

We concluded that article by noting that internationally estate agency is often regulated by either what can be called “internal” or self-regulation—in other words, by way of a recognized, respected and fully functional estate agency association(s) or by “external” or government regulation (i.e., legislation). Both of these approaches are commonplace in the developed world and, in fact, are slowly and inevitably taking root here in Southeast Asia. This part two of our article will provide one example of each. It must be noted that there are other examples available and the following have been chosen randomly.

The National Association of Realtors (the “NAR”) is an estate agency trade association based in the United States with over one million members and affiliates in over 50 countries. The NAR provides a good example of self-regulation of estate agency practice and doing so is among the NAR’s core purposes. The NAR’s “Code of Ethics and Standards of Practice” (the “NAR Code”) by which all NAR members must abide is over 100 years old. The current 2013 version of the Code is broken down into 17 sections covering approximately 100 pages.

Approximately half of the NAR Code is dedicated to regulating the conduct of estate agents with regard to their clients. These require the estate agent to be honest in all

regards to the client regarding the transaction, negotiation with the other party, the property, its valuation, and even the value of their own services to the client. The estate agent must also care for the interests of the client first, before his own—this is sometimes referred to as the role of a “fiduciary”, a trusted caretaker. Related to this role is the estate agent’s duty not to act in any way which conflicts with the interests of the client. Such conflict is represented, for example, in taking a commission from the buyer where the buyer engaged the estate agent without the buyer client being *first* fully advised of this. If such double representation compromises the buyer’s interests it is strictly forbidden. Estate agents are also required to have and maintain an acceptable level of professional competence. This means, for example, when questions or issue affecting the client’s interests arise, which are outside of the estate agent’s competence, the estate agent must refer the client to the appropriate source to address them—to a lawyer for legal questions or an accountant on accounting issues, for example.

The NAR Code further regulates the estate agents conduct with regard to the public in general. One may ask, “Why is it necessary to regulate what an estate agent does with his clients?” We think the NAR would say “everything...if ours is truly a profession.” In other words, if the industry wants people to trust it and ultimately use it, its member must conduct themselves ethically, not only towards their own clients but also towards their non-client public. This means that estate agents must conduct themselves professionally and ethically such that they do not bring disgrace to—in this case—the rest of the NAR membership. They will not be dishonest in their advertising or give advice outside of their competence to potential clients or the public at large.

Finally, the NAR Code deals with the conduct between estate agents. This may initially seem even stranger than regulating the conduct towards the general public. However, if one stops for a moment and thinks about this, it makes sense that true professionals would not make false statements about or file false complaints against their estate agent colleagues. It also makes sense that if any disputes arise between such colleagues, they would agree to a civil, speedy, efficient and professional dispute resolution process—as such the NAR Code provides and requires.

The NAR Code binds all its members. In case a member does not follow the NAR Code, a detailed procedure is outlined for parties to file complaints regarding any such violation. In significant and disputed cases the NAR provides an arbitration process

within its own rules. Final findings of any violation will and do result in sanctions including suspension or even expulsion of NAR membership.

The other means of estate agency regulation is legislative. A good example of this option is Singapore's Estate Agents Act (2010) (the "Act"). The Act is comprised of 75 sections. The first third of the Act sets up and details the governmental agency in charge with overseeing the Act. Most of what follows deals with regulating estate agency itself.

Section 28 of the Act outlines that all "estate agents" must be licensed and Section 29 of the Act provides that "sales persons", must work only for licensed estate agents and that such sales person must further be registered. Any violation of Section 28 is punishable by up to one year in jail and/or a fine of up to approximately Thai Baht 1,900,000 plus Thai Baht 190,000 for every day that the offense continues after conviction. Any violation of Section 29 is punishable by up to one year in jail and/or a fine of up to approximately Thai Baht 600,000.

The next few sections of the Act detail certain duties and liabilities of estate agents (and sales persons) under the Act such as a registered address and what is required in a contract with the client. But perhaps the most important duty is required under Section 42 of the Act. Section 42 requires both estate agents and their sales persons to adhere to a code of "practice, ethics and conduct" (the "Act's Code").

The current version of the Act's Code is comprised of 16 sections covering some 75 pages. Among others, the Act's Code requires the estate agents to be honest, competent, maintain a professional duty of care for their client (dual representation of buyer and seller is not allowed *even if* consent is provided by the client and any violation of this rule is subject to one year in jail or a fine of up to approximately Thai Baht 600,000 or both). With some minor exceptions, estate agents/sales persons may not handle or hold any money involved in any estate transaction—even if it does not involve a client of theirs. Estate agents must also carry insurance to cover any wrongful acts by themselves or their sales persons or employees. Finally, estate agents must complete a certain number of approved continuing professional education hours every year.

Under Section 52 of the Act, any violation of the Act's Code is punishable by a fine of up to over approximately Thai Baht 1,900,000 and/or suspension and/or revocation of an estate agent's license or sales person's registration.

In conclusion, what can be seen by way of reviewing these two examples of regulations relating to estate agency outside of Thailand is what we believe is needed for Thailand:

a. protect sellers;

b. protect purchasers; and

c. to enhance the quality and professionalism of the of estate agency in Thailand; so that

d. sellers, purchasers, professional estate agents, and therefore, Thailand will benefit.

In our opinion some version of either meaningful self-regulation or governmental regulation of estate agency or both is what will help the real estate industry in Thailand to regain the confidence of the real estate investor that it deserves.

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