

4186112034 : MAJOR LAWS

KEY WORD: ESCROW ACCOUNT

MALLIKA KHOMANANT : ESCROW : THE APPROPRIATE LAW FOR THAILAND. THESIS ADVISOR : ASSOC. PROF. PAITON KONGSOMBOON, 169 pp. ISBN 974-17-0012-1.

The purpose of this study and research is to find out some ways to solve the problems and to protect contractual parties, particularly house buyers, with respect to the deposits and down payments that they have to pay to the sellers for the properties during the construction period until the ownership in the properties is transferred to them. Normally, the sellers will use these deposits and down payments to develop the housing project. There is, however, no limitation of the sellers' power to use the money. Some sellers therefore misuse the payments for other purposes, which causes the projects to fail. In addition, problems may arise from the lack of working capital because the sellers have financial difficulties. In other cases, the sellers may simply want to deceive or cheat the buyers as they do not carry out or do not complete the construction of houses in accordance with the buyers. As the result, the buyers lose the money paid when the sellers default, and any claim for a refund is rather difficult and may take quite a long time. Moreover, it is uncertain whether the buyers will get their money back.

Hence, this study and research analyzes the principles of law that may give protection to house buyers, given that the real estate business laws and the consumer protection laws for the time being in force contain no provisions to protect buyers who have made installment payments to sellers under such circumstances. This thesis examines the principles of an applicable foreign law that give protection to buyers, namely, the Escrow Law of the United States of America.

Our study of the escrow system applicable in the State of California U.S.A. shows that this escrow system is very effective because it is governed by law. In addition, the socioeconomic conditions there give protection to buyers, sellers and escrow agents who properly gain their benefits. This system can prevent sellers from defrauding or taking advantage of consumers.

In any event, if the principles of the Escrow Law apply to the purchase of immovable properties in Thailand, there may be legal problems the concept of giving protection to the contractual parties in the escrow system was developed from the principles of the Trust Law, which is a common law. It is different from the system of Thai law, which is a civil law. In addition, Section 1686 of the Civil and Commercial Code provides that no trust can be established in Thailand. Hence, the study results show that the Thai law that may apply to the legal relations between the parties in the escrow system is the law governing co-agents under Section 805 of the Civil and Commercial Code. Regarding business operations under the escrow system, the procedures for escrow business operations for the time being in force in U.S.A. that are applicable to the socioeconomic conditions of Thailand should be adopted. This law should be passed in order to specify the details and the essential issues of escrow business operations. Then, business operations under the escrow system can effectively protect the contractual parties, particularly the buyers.