



USUFRUCT LAWS IN THAILAND

Usufruct grants the legal right to control another man's real estate property.

The right of usufruct transfers possession, use and enjoyment of an immovable property from the owner to the usufructuary. Usufruct can only be registered over properly titled immovable property and is established by agreement with the owner and registration at the local land office. The contract or memorandum for usufruct is the legal document that states and confirms the formal agreement between the owner and the usufructuary (the person granted the right of usufruct).

A few facts about usufruct in Thailand

- The usufructuary does not obtain the title to the property, nor can he sell or consume the property;
- The usufructuary must take as much care of the property as a person of ordinary prudence would take of his own property;
- The usufructuary is **not** allowed to transfer the right of usufruct, but he is allowed transfer the exercise of his right under the usufruct to another person contrary to the right of habitation (the person granted a **right of habitation** can't transfer the exercise of his rights);
- The usufruct is not transferable by inheritance;
- The usufruct is governed by the sections 1417 to 1428 Civil and Commercial Code (*see law translation below*)

Term of the usufruct

The right of usufruct can be created for **a period of time up to 30 years** or for **the life of a person or persons**. If the right of usufruct is granted to a juristic person the period can't exceed 30 years.

If a usufruct is created for a period of time the usufruct remains depending on the life of the person (or persons) granted the right of usufruct. If the owner of a property grants to B the right of usufruct for a period of 30 years and B dies after 20 years the usufruct **will be terminated after 20 years** and the property will return to the owner. The right of usufruct distinguishes itself in this matter from for example the right of superficies (which is an inheritable right if registered for a period of time).

Renting out the property under usufruct

Unless restricted in the contract of usufruct the usufructuary is allowed to rent out the property without the consent of the real owner and keep the rent. Usufruct could include the power to register the contract for hire exceeding 3 years with the land department. In case of a **foreign national as the usufructuary** land offices in Thailand will not allow registration of the contract for hire as foreigners are not allowed to manage land under the Thailand Land Code Act and can also not obtain this right under a usufruct. The land offices make a distinction between a foreign or Thai

national as the usufructuary. In practice a foreign usufructuary can only rent out the property under usufruct for periods not exceeding 3 years at the time.

If a valid rental or lease has been established the hire of property is not automatically terminated together with the end of the usufruct (Scj 2297/2541).

Registration of the usufruct

A usufruct can be granted with or without consideration. Usufruct **must** be registered at the local land office and registration fees are 1% and 0,1% stamp duty over the total consideration, or if the usufruct is granted without the exchange of value (money) the registration will cost less than 100 THB per plot.

Practical

A right of usufruct is often used to protect a foreign spouse's interest in a property in Thailand that is registered as a personal property in a Thai spouse's name. The right of usufruct is based on an agreement and as an agreement between husband and wife entered into during marriage it may not offer a full protection in case of a divorce (section 1469 Civil and Commercial Code), but in case of a marriage it is the only suitable right under Thai law that offers protection .

SERVITUDE LAWS IN THAILAND

The right to use the real property of another without possessing it

Right of servitude is governed by the **sections 1387 to 1401** of the Thailand Civil and Commercial Code. **Section 1387:** 'An immovable property may be subjected to a servitude by virtue of which the owner of such property is bound, for the benefit of another immovable property, to suffer certain act affecting his property or to refrain from exercising certain rights inherent in his ownership'. Servitudes usually involve two or more separate properties/ plots of land, one of which is burdened and the other benefited by the servitude. The burdened parcel is called the servient property and the benefited land parcel the dominant property.

Servitude can decrease the value of the burdened property and increase the value of the benefitting property

A right of servitude is created by registration of the right with the Land Department or in certain situations a right of servitude exist by prescription (section 1401) after a period of time a certain right or practice has existed. Servitude can involve several kinds of benefits and burdens, but usually it involves the use of neighboring well, the use of a road over adjoining land plots, laying irrigation ditches, laying pipelines or utilities over neighboring plots. A registered right of servitude is an important right in case a plot of land is surrounded by other plots of land and has no direct access to a public road. The right of servitude registered over adjoining plots guarantees uninterrupted access to dominant property.

Q&A

- Can a right of servitude also include building or height restrictions? Can adjoining plots of land be burdened with private building restriction through servitude, even though government building and zoning regulations allows building?
- **Yes**, the Land Department in Thailand is clear that neighboring plots of land can be burdened with a right of servitude which can include building and height restrictions.