

THEMATIC TITLE	PROBLEMS IN THE ENFORCEMENT OF ESCROW AGENT ACT B.E. 2551: A CASE STUDY OF RESIDENTIAL REAL ESTATE
KEYWORDS	REAL ESTATE
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YEAR	2016

ABSTRACT

In 1997, Thailand faced with critical economic problems on real estates, which eventually led to damages to the consumers or housing buyers due to defaults of real estate business operators or housing sellers. These problems were later tackled by the legislation of Escrow Act B.E. 2551, of which the law aims to create a mechanism whereby contractual parties can take care of interest together. However, there remain obstacles and problems for the law to be fully effective according to its objectives, that is to say, to reduce or mitigate disputes between contractual parties in real estate sale and purchase transactions and to boost confident to the parties and the country economics as a whole. The researcher, hence, saw the importance for a study of the problems surrounding the enforcement of Escrow Act B.E. 2551 and wish to provide some suggestions so that the law becomes more effective and thus beneficial to the country.

From the study, it was found that the material problems causing ineffectiveness of Escrow Act B.E. 2551 including the followings: (i) the Act does not specifically state to which contracts to be governed by the Act, rather it only serves as an option for contractual parties to determine whether they want to be governed by the Act, (ii) the Act permits only 2 type of persons who can act as an escrow agent (i.e. financial institutions or juristic persons as announced under the Ministerial Regulation) whereas other countries such as USA allows more variety of persons to operate as an escrow agent, (iii) there is no issuance of applicable Ministry Regulation at present to prescribe rules, criteria, and conditions in applying for an escrow agent business

license, and (iv) the Act currently protects only the money in the escrow account and properties under the escrow contract from seizure or execution of properties under a civil suit under which the escrow agent is a debtor according to the court judgment, and does not cover the circumstances where a buyer or a seller becomes a debtor as the court judgment or being executed according to the provisions of the civil procedure codes and the Bankruptcy Act.

To make Escrow Act B.E. 2551 becomes effective as intended (i.e. to solve problems of real estate sale and purchase transactions), the researcher suggests the followings: (i) Section 5 should be amended to stipulate that real estate transactions shall be subject to the Act whereby the business operators or the housing sellers shall procure that the escrow contract is signed together with the sale and purchase contract; (ii) Section 10 should be amended such that a more variety of persons or juristic persons can become an escrow agent and promulgating a Ministerial Regulation to provide the qualifications, criteria and conditions in applying for a escrow agent license; (iii) Section 25 should be amended to provide coverage in circumstances where a buyer or a seller becomes a debtor as the court judgment or being executed according to the provisions of the civil procedure codes and the Bankruptcy Act; and, lastly, (iv) a government circulation should be announced to all financial institutes, encouraging them to advise or promote the benefits in using for an escrow system in real estate sales transactions, especially for those customers who ask for home loans, as a way to provide options for them to decide.