



LAWS CONCERNING SUPERFICIES IN THAILAND

The right of superficies in Thailand legally separates ownership over the building and the land.

The right of superficies is used when you build upon land you do not own. It creates the registered right to use the land and to own the structures you build upon the land without obtaining ownership rights over the land itself. A right of superficies may be established either for 1- a period of time up to 30-years, or 2- for life of the owner of the land or 3- for the life of the superfiary. A right of superficies registered for a specified term is a transferable and **inheritable** interest in land.

Right of Superficies in Thailand

A right of superficies is a **real property right** (attached to the land or part of the land area covered by title deed) and legally separates ownership over anything above the ground (building) from ownership of the land. A superficies must be registered and can only be created over titled land administrated by the Land Department.

Laws governing superficies can be found in the Civil and Commercial Code sections 1410 to 1416 (see further down this page).

Superficies and land lease

The right of superficies can be registered **as a separate right** or in combination with a land lease. Normally superficies is used by someone (e.g. a foreigner) who acquires a lease interest in titled land and uses the land for the construction of a building. Superficies is a strong supporting right to a lease agreement (e.g. you could loose your lease (termination upon death) but your superficies remains in full force and can be transferred to your heirs).

Superficies registration

A superficies must be entered in the Land Department's land registers and will be noted by the competent authority (the local or provincial Land Department's branch office) on the backside of the owner's land title deed copy. As a registered property right it follows the title (it is attached to the land, not the owner of the land) and is enforceable against any third parties. The right of superficies is not extinguished by transfer of ownership of the land.

Registration fees are 1,1 % (this includes a 0,1% stamp duty) over the total consideration paid for the right of superficies, or if the superficies granted without the exchange of value (e.g. in combination with a land lease) the registration will cost less than 100 baht per land plot.

Superficies and an existing building

In case of an **existing building** registration of a right of superficies will not be approved by the Land Department. Registration could be allowed after transfer of ownership of the structure separate from the land and after transfer fees and taxes have been paid (unless the person granted the right of superficies can proof he is already the owner of the house).

HABITATION LAWS IN THAILAND

The right of habitation concerns only the right to dwell in a house.

The grantee of the right of habitation does not pay rent to the grantor. If there is rental payment made, the matter becomes a **Hire of Property**. A right of habitation may be created for either a specific period of time or for the lifetime of the grantee. In case the rights are granted for a specific time period, the law states that such a period may not exceed 30 years; if a longer period is fixed, it shall be enforceable for only 30 years. The grant may be renewed for a period not exceeding 30 years from the time of renewal. Lastly, the right of habitation is not transferable by way of inheritance.