

RUSSIN & VECCHI

INTERNATIONAL LEGAL COUNSELLORS

BANGKOK
MOSCOW
NEW YORK
SANTO DOMINGO

HANOI CENTRAL OFFICE BUILDING, 11/F
44B LY THUONG KIET ST, HANOI
TEL: (84-4) 825-1700
FAX: (84-4) 825-1742
E-MAIL: LAWYERS@RUSSINVECCHI.COM.VN

TAIPEI
VLADIVOSTOK
WASHINGTON, DC
YANGON
YUZHNO-SAKHALINSK

OSIC BUILDING, 15/F
8 NGUYEN HUE BLVD, HO CHI MINH CITY
TEL: (84-8) 824-3026
FAX: (84-8) 824-3113
E-MAIL: LAWYERS@RUSSINVECCHI.COM.VN

HOUSE OWNERSHIP AND LAND-USE RIGHTS FOR OVERSEAS VIETNAMESE IN VIETNAM¹

Russin & Vecchi, Ho Chi Minh City and Hanoi

Many overseas Vietnamese have long anticipated being able to own a house in Vietnam. Land and housing in Vietnam is complicated. Land ownership carries with it a historical, political and emotional overlay. The legal framework is comprised of the Land Law (“Land Law 2004”)², Law on Residual Housing³ and several Resolutions of the National Assembly’s Standing Committee which deal rather specifically with overseas Vietnamese.

Land and housing issues involving overseas Vietnamese:

The eligibility of overseas Vietnamese to own a house remains limited, even though the Land Law 2004 does broaden the eligibility beyond what was set out in the previous law. Moreover, adequate implementing regulations on eligibility do not yet exist. According to the Land Law 2004: “Overseas Vietnamese who have made an investment in Vietnam; who have made meritorious contributions to the country; who return for cultural or scientific activities in Vietnam in order to serve the cause of national construction; or who return to live permanently in Vietnam may buy a house and receive land use rights and others as may be prescribed by the National Assembly’s Standing Committee.” The Law on Residential Housing which took effect on July 1st, 2006 further provides that overseas Vietnamese who have legally resided in Vietnam for a period of six months or more are entitled to own a separate residential house or an apartment in Vietnam.

As a result of historical issues, there are many Overseas Vietnamese who used to own or whose family used to own property in Vietnam and they seek to determine whether it is possible to recover the house which they or their family previously owned. This article addresses primarily

¹ Current through September 2006.

² Passed on November 26, 2003 by the National Assembly of Vietnam and went into effect on July 1, 2004.

³ Passed on November 29 2005 by the National Assembly of Vietnam and went into effect on July 1, 2006.

the rights of overseas Vietnamese to recover land and houses previously owned by them or their families.

Land-use rights and house ownership in general:

A discussion of “Land” and “houses”⁴ actually raises two different issues. Individuals or organizations do not have the right to own land in Vietnam. Land is owned by the entire Vietnamese people or, stated another way, land is owned by the State of Vietnam⁵. Individuals or organizations only have the right to use land. “Ownership” of a house means both “to own the house” and “to have the right to use the land on which the house is built”. So, the sale of a house means the transfer of the right to own the house and the right to use the land on which the house is built, from the seller to the purchaser. The purchaser will receive a “pink certificate” or a “red certificate” which indicates his ownership of the house and his right to occupy and use land on which the house is located, or other types of certificates which have similar effect. The reason for having different certificates is because the law governing land-related issues is very dynamic and has changed considerably over time, and there have been different types of certificates that indicate ownership of a house and the right to use the underlying land.

Historical Land and House Reform:

On April 14, 1977, the Government launched the so-called “Socialist Land and House Reform” policy (“Land and House Reform”) in the southern provinces of Vietnam by promulgating Decision 111⁶. Generally speaking, Land and House Reform was aimed at “nationalizing”, “confiscating” or “managing” the land and houses of five categories of persons or organizations. The land and houses which were “nationalized” or “confiscated” by the State came under State ownership. Theoretically, land and houses which were managed by the State might not mean that the State became the owner of the land and the house. It seems, however, that “State ownership” and “State management” in this context and in practice were not different, even though the legal documents created a difference. Whether the State confiscated or undertook to manage a house/land, in practice, its owner retained no real rights any more. Here “to manage” unofficially meant “to own”. The State took the action outlined below, and that action affected the persons and organizations as described.

- The State nationalized land and houses which had been leased to other people by so-called “compradors, landlords, bourgeois, political and economic criminals, and reactionaries” (“landlords”). If the land and houses were leased by people other than the people so described, and if the land and houses were excessive to the owner’s residential needs, then the State also managed them;

⁴ We wish to clarify our use in this article of the term “house”. In Vietnamese the term “house” can be used either as a place to live or, for example, as a factory. There is no clear distinction. We referring to “house” as a residence. However, even if the building is used for a broader purpose, the concepts we discuss are the same, but have to be adapted to non-residential “houses”. Thus, the word “house” in this article will mean primarily a residence but within the appropriate context, it could also be a building which is not a residence.

⁵ Article 17 of Vietnam 1992 Constitution as amended in 2001, and Article 5 of the 2003 Land Law.

⁶ Decision 111/CP dated April 14, 1977 issued by the Council of Government (now the Government).

- The State managed land and houses legally owned by absentee owners (these are people who abandoned their land and houses before or during the final days of the war). If the abandoned land and houses were being occupied by the absentee owners' close relatives (parents, wife/husband, and/or children) with or without the absentee owners' authorization, the State allowed those relatives to continue to stay in the house, but it did not allow them to sell the house. If the land and houses were occupied by people other than the absentee owners' close relatives, the State still managed them and reserved only enough space within the house for those people to stay on, or the State "arranged" other space for them to live;
- The State managed the land and houses of religious organizations, which land and houses were not used for purposes of worship;
- The State managed the land and houses owned by senior officials⁷ of the former Saigon government; and
- The State managed the land and houses owned by foreigners.

All the land and houses subject to Land and House Reform were used for public purposes, were allocated to State officials, or were leased to other people by the State.

Land-use rights and house ownership after the Land House Reform and before the promulgation of the Land Law 2004:

In 1991, the Government issued Decision 297⁸ stipulating that all land and houses which had been "managed" by the State under Land and House Reform would revert to the ownership of the State on July 1, 1991. This meant that any land and houses which had, thus far, been under State management would become the property of the State on July 1, 1991. "State management" became "State ownership". No claim regarding private ownership of those houses would be recognized.

However, there was an exception to Decision 297. That is, although Decision 111 stated the types of land and houses that would be managed by the State, the State was not always efficient enough to know every house, or every parcel of land on which it stood and which qualified for management. That is, the State originally "missed" some land and houses⁹. So, on July 1, 1991 all houses¹⁰ that the State "missed" were considered to be privately owned by the real owners¹¹. The Decision did not touch on the situation where the State "missed" the land and houses of a person who had already left Vietnam--the absentee owner (see discussion below).

⁷ These senior officials included military officials of the rank of major or higher, police officers of the rank of lieutenant or higher, administrative officials of the rank of manager from central to local government and other so-called anti-government people, etc.

⁸ Decision 297/CT dated October 2, 1991 issued by the Council of Ministers (now the Government).

⁹ An article of the Ho Chi Minh City Legal Journal (published February 27, 2001) says that in Ho Chi Minh City there are more than 30,000 houses subject to Land and House Reform which were likely "missed" by the State.

¹⁰ The Decision does not mention "land" but it appears intended to include land.

¹¹ Article 1, Para 2 of Decision 297/CT stated: "For houses under Land and House Reform, if the State has not carried out procedures to manage and actually has not managed, or has not used those houses, the State will recognize the ownership of the house owners".

Also, according to Decision 297, people who owned a house could sell it or authorize other people to take care of it. In case the owner authorized another person to take care of the house, the owner would be considered legally to be the owner of the house once he returns to Vietnam to reside. If the house was subject to the Land and House Reform policy but the State “missed” it, the owner had to give it to the State as a condition for leaving, and, in such case, the owner could not, as part of his preparation for leaving, authorize another person to take care of the house.

In respect of people who owned a house but left Vietnam illegally (eg, boat people): (1) if their house was occupied by people other than any of their close relatives, including their parents, husband/wife and/or children, the house became nationalized, (2) if their house was occupied by any of their close relatives, including their parents, husband/wife and/or children, the State would let those people own (posses) either part or all of the house on a case-by-case basis. If they were permitted to own part or the entire house, they would have all rights (including ownership rights) in the permitted part of house/entire house. Where people who owned a house but left Vietnam illegally and later returned to reside in Vietnam, the State agreed to “create conditions for them to have a space to reside”¹².

Land-use rights and house ownership after the promulgation of the Land Law 2004:

Together with the issuance of the Land Law 2004, the National Assembly released Resolution 23¹³. It deals with houses and land that were managed by the State for use during the course of implementation of house and land management policies, and of the so called “socialist transformation policies” which were in existence before July 1, 1991.

Resolution 23 states that the State shall not re-consider its policies on house and land management which were promulgated before July 1, 1991. Consequently, the State will complete the legal procedures regarding the transfer of categories of houses and land, which have been managed and arranged for use by the State under the Land and House Reform policy, to ownership by the entire Vietnamese people.

Pursuant to Resolution 23, the Standing Committee of the National Assembly adopted Resolution No 755/2005 which came into force on April 17, 2005 (“Resolution 775”), setting forth guidelines on how certain outstanding cases will be settled.

Of particular interest, Resolution 755 provides a number of possibilities for people to have their property restored or to obtain compensation for their property in some very limited instances, as follows:

- Land and houses that were subject to Land and House Reform policy but for which the government, in fact, failed to issue a decision to manage.
- Land and houses that were intended to be managed by the government and for which the government issued a decision to manage, but until April 17, 2005--

¹² The law is unclear whether the phrase “create conditions for them to have a space to reside ” means “to recover their house”, “to be allocated another house”, “to continue staying in their house without ownership”, etc.

¹³ Resolution 23/2003/QH11 dated November 26, 2003 issued by the National Assembly of Vietnam.

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when resolution 755/2005 came into effect--the government had not yet managed nor allocated them to others.

- Land and houses that the government requisitioned for a defined period, and that period has now passed.
- Land and houses that were subject to implementation of the Land and House Reform policy, and which are being occupied by a private person, with a part of the land and/or house set aside by the government for the owner. The portion set aside would be reclaimable.

The above regulations do not speak specifically to overseas Vietnamese.

On July 27, 2006 the National Assembly's Standing Committee adopted Resolution 1037/2006/NQ-UBTVQH11 on civil transactions relating to residential houses established prior to July 1991 involving overseas Vietnamese. It took effect on September 1, 2006. According to this Resolution, there is a possibility for overseas Vietnamese to claim ownership or the value of their house in the following situations:

- The house has been leased or lent to another person by an overseas Vietnamese who was the owner of the house before July 1991;
- The overseas Vietnamese owner authorized another person to manage the house;
- The house was purchased by an overseas Vietnamese before July 1991, but the transfer of ownership of the house has not been completed;
- Two houses were exchanged but formalities of the transfer of ownership of the houses was not completed;
- An overseas Vietnamese inherited or was given the house by another person.

The term "another person" includes individual persons, governmental organizations or non-governmental organizations, and the above transactions must have been conducted before July 1, 1991.

There are procedures to follow and documents to be presented in order to claim ownership or the value of the house.

A typical case involving house ownership by an overseas Vietnamese:

Consider the situation, for example, of an overseas Vietnamese who owned a house but left Vietnam before April 14, 1977, bringing with him the ownership documents of the house. Other people--non-relatives--are living in the house. He wants to know whether or not he can recover the house.

Since he left before April 14, 1977, his house would have been considered the "house of an absentee owner" under the regulations on Land and House Reform. The fact that "other people" are living in his house can be interpreted as follows:

- The State has been managing the house but leases it to those people in the form of a lease¹⁴. In this case, the overseas Vietnamese cannot claim back his house because the house has become State-owned since July 1, 1991 according to Decision 297¹⁵. If the State had been managing his house, then his original ownership documents no longer have validity. As a result of Decision 297, that house, as from 1991, belongs to the State. If so, probably the State issued a decision to manage the house and then leased the house to the people who are living in the house; or
- Although “other people” are living in the house¹⁶, the State “missed” the house. So his ownership of the house is recognized by the State (Decision 297) and, according to Resolution 755, the State “will not implement the management in accordance with regulations of previous policies”, and he will be “considered for issuance of an ownership certificate and land use rights certificate” if he returns and resides in Vietnam. If the State “missed” the house as described above, the house still belongs to its owner (Decision 297).
- If the overseas Vietnamese owner can prove that the house was his house, and that before July 1991, one of transactions described in Resolution 1037/2006/NQ-UBTVQH11 mentioned above took place, it is possible for the overseas Vietnamese owner to reclaim the house. If there is no written contract reflecting the transaction, the owner, of course bears the burden of proof. If the State recognizes his ownership, the original ownership documents of the overseas Vietnamese still have validity and they are important documents for him to use to try to recover his house or to claim compensation or in some cases to be allocated another house or another piece of land.

Conclusion

The Land Law 2004, the Law on Residential Houses and, recently, Resolution No 1037/2006/NQ-UBTVQH11 broadens the eligibility of overseas Vietnamese who wish to own or to reclaim a house in Vietnam. The Resolution mentioned above has just been adopted and there is no precedent. From the standpoint of most overseas Vietnamese who wish to recover a house or land which they or their family previously owned, the possibility to do so relies on very limited circumstances. We expect that implementation will be time-consuming and unpredictable.

¹⁴ Circular 383/BXD dated October 5, 1991 issued by the Ministry of Construction.

¹⁵ Decree 60/CP (“Decree 60”) dated July 5, 1994 issued by the Government also confirms the State ownership of pre-1975 land and houses under Land and House Reform policy.

¹⁶ Maybe, for one reason or another, his house was abandoned; then, other people without any authorization occupied it, and have continued to live in it.