

Independent Study Paper Title : Problems on Mortgage Enforcement in Thailand
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ABSTRACT

Nowadays, the economic system of Thailand is developing continually, including trading part. Due to the ever growing of economy, both domestic and foreign investors have filed a number of cases to the Court of Justice in order to solve their problems in mortgage enforcement. It is noted that there are many cases accumulated which is in pending for judgment in the court. It is a major problem in developing domestic economy as well as international business growth. In order to facilitate the business growth, this independent study paper therefore aims to study the principle of Thai Civil and Commercial Code concerning mortgage enforcement.

This independent study paper provides background, principle, characteristics of mortgage law and the legal proceeding of mortgage enforcement in Thailand, including the problem in submitting mortgage enforcement case as an ordinary case. Moreover, there will be a recommendation to solve the problem on mortgage enforcement by referring to the law of other countries as a model law. The study focuses directly on the problem of mortgage enforcement in Thailand which is governed by the Civil and Commercial Code. Normally, the legal proceeding of the mortgage enforcement is the ordinary case. Therefore, it increases a number of cases in the court. In this regard, it is a good opportunity to study the principle of mortgage enforcement in other countries.

According to the study, two systems of mortgage enforcement are presented; the first one is the judicial system and the second one is the non-judicial system. The non-judicial is based on the Power of Sale principle, this system has been used in the United Kingdom and the United States of America. The Power of Sale permits

mortgagee to close the mortgage enforcement by themselves. This system reduces number of court's cases; furthermore, it can reduce the delay of enforcement. Therefore, this study recommends Thailand adding the Power of Sale into the provision of mortgage in The Civil and Commercial Code. It is likely that if the Power of Sale is applied to Thai cases, the mortgagee will have more chance to acquire the property and the number of cases in the court on this problem will be decreased. Furthermore, it will enhance the economy and development of country in the future.

