



# ระเบิดเวลา ที่ วัดลาว และ ไทย์ TIME BOMBS at LAO and THAI TEMPLES

by Into Bo Champon, Esq.    ໂດຍ: ທະນາຍ ອິນໂຕ ຈຳພັນ

Since I first started practicing law 14 years ago, I have been asked many times to serve on the “board of directors” of various Lao and Thai temples in the United States, and have politely but regretfully declined after a few short preliminary inquiries even though I consider it an honor just to be asked.

In most cases, the temples were just too far for me to serve effectively. In several cases, the existing board members wanted me to simply add my name to a long list of names on the board and rubber stamp their actions without giving me a copy of the articles of incorporation, bylaws or operational details of the temple. I hope that this article will help explain my decision.

Most Lao and Thai temples in the US were started by older immigrants who would like to have a place to worship. Only a small number of these immigrants were employed or had a credit history. In most cases, the temples were not properly formed and did not initially have sufficient fund to buy the real estate for the temples.

In a typical case, the “founders” would ask someone (Hereinafter, refers to as “Mr. X”) to apply for a loan to buy a house for the temple. As the lenders would

ask that the loan be secured by the house, they would ask that the title to the house be under the name of Mr. X. The temple would then start raising money to pay off the loan. In most cases, Mr. X would be a nice person and would voluntarily deed the house to the temple after the loan was paid off.

In California, the county assessor would re-assess the house to its value at the time that Mr. X deeded the house to the temple and would raise the property taxes of the house. This increase in property taxes is a very minor problem compared to other potential issues.

A more serious problem starts when Mr. X claims that his “CPA” or “lawyer” advised him that he would have to pay income taxes on the gain for the difference between the acquisition cost (typically, the price paid for the house plus other non-recurring costs) and the fair market value at the time of the quitclaim deed. Even if Mr. X would eventually be found not to owe any income taxes, he would need to pay his “CPA” or “lawyer” to defend him against the claim by the IRS or other state/local income tax authorities. Prior to deeding the house to the temple, he

would like to get some money from the temple to pay the “CPA” or “lawyer” and the income taxes on the gain. When the temple refuses, Mr. X would then start to reason that he deserves to keep the house or a substantial share of the house for all the troubles that he had to go through and for the temple’s use of his credit

Another problem would occur when Mr. X marries Ms. X who has a different life philosophy, convinces Mr. X not to transfer the house to the temple or simply refuses to sign the quitclaim deed to the temple. Most title insurance companies in California would not insure real estate without Mrs. X’s signature on the quitclaim deed.



If Mr. & Mrs. X decide to keep the house, the temple will need to spend money on legal fee and costs to attempt to recover the house.

What if Mr. X decides to sell the house to a bona fide purchaser? California law would protect the purchaser against any claim by the temple if the purchaser is truly a bona fide purchaser who does not know the arrangement between Mr. X and the temple. A lawyer for the temple may argue that there can be no bona fide purchaser as a simple inspection of the interior of the house would reveal that it is a place of worship and that Mr. X does not reside there. The purchaser may say that Mr. X lied to him/her that Mr. X rented the house to the temple. The factual issues will probably need to be resolved at trial and will be very costly.

If Mr. X did not sell the house but simply obtained a loan secured by the house, the argument that the lender would have had knowledge with a simple physical inspection, would not be as strong as most lenders may not conduct any physical inspection of the interior of the house especially when the loan was an equityline or the loan-to-value ratio was low. The temple would be responsible for the loan even after Mr. X deeded the house

to the temple. Of course, if the title to the house was in more than one name and Mr. X forged the signatures of the remaining title holders, the result would not be as clear. In most cases, Mr. X could no longer be found. The temple (through the remaining title holders whose signatures were forged) may be able to recover its damages from the notary public who “witnessed” the forged signatures. If an escrow company was involved, its liability would depend on its negligent involvement, e.g., its employee notarized the forged signatures+. If the notary public did not work for the lenders, the temple’s defense against the lenders would be more limited.

What if Mr. X dies before Mr. X deeds the house to the temple and Mr. X’s heirs refuse to deed the house to the temple? A costly litigation would be required to resolve the title.

Although most problems are title-related, a very important but often overlooked problem is the potential liability to a third party.

In most cases, the lenders would require that the temple maintain a fire and general liability insurance policy which generally would pay off their loans and the balance of the damages (up to the policy limit) to the temple for loss resulting from fire and pay any third party who was injured or killed at the temple as a result of the temple’s negligence, e.g., trip and fall, roof collapse, etc. However,



this insurance is not workers compensation insurance and would not pay for the injury or death to temple’s employees.

What if a “volunteer” fell from the top of the temple’s roof while he tried to repair it per the monk’s instructions? Most volunteers who typically live rent-free

at the temple, probably would not make any workers compensation claim for minor injuries against the temple. However, if the volunteer was killed, his/her heirs may proceed with the claim. In California, a payroll is not required and the volunteer's heirs would be allowed to make a workers compensation claim against the temple. Currently, such claim may be as much as \$320,000.00 depending on the number of claimants and their dependence on the decedent. If the temple is not covered by any workers compensation insurance, the heirs may make a claim against the government's uninsured fund which will in turn pursue the same amount plus penalty from the temple.

A similar situation arises when someone drives the temple's car and injures himself/herself while performing services for the temple, e.g., did errands for the temple or drove the temple's monks to/from a buddhist ceremony. The driver would be entitled to make a workers compensation claim.

A more serious problem would occur if the driver caused an accident, resulting in the death of one of its occupants and the car was uninsured or insured only for the minimum statutory policy limits. The heirs of the dead occupant would be entitled to recover from the temple. This is true even if the car was not owned by the temple as long as the driver drove the car to perform the temple's services. As the value of a life may be very substantial, this could be a serious "time bomb" for the temple.

In California, a member of the board of directors who had never attended any board meeting and never made any inquiry into the irregularities of the corporation, was held to have failed her duties as a director and was liable for the corporation's liabilities. A very prominent Southeast-Asian immigrant who did his friend a favor by agreeing to serve as a director of his friend's corporation (which conducted business more than a thousand miles from him), but did not otherwise have anything else to do with the now-bankrupt corporation, is being sued for close to a million dollars. For this reason, many large corporations would pay for an insurance policy to insure its directors against such lawsuits. As a lawyer and a director, I would be held to an even higher standard and may be required to ask questions which would certainly offend many members of the temple or at least the long-established traditions. In part for this reason, I prefer to be far enough from the temple if the "time bomb" explodes (I hope that it never will) so that I will not be "incapacitated" by the bomb and yet remain close enough to try to go to the rescue if asked.

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\*This article is very general, is based primarily on California laws, and does not attempt to give any reader a legal advice nor establish any attorney-client relationship. For a legal advice, a reader should consult an attorney with a specific question.



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