



How Can Foreigners Purchase Properties in Thailand?

One of the most common questions our office receives from prospective investors is: *How can Foreigners purchase properties in Thailand?*

Properties can be a variety of real estate such as leasehold and freehold assets like:

- **Condominium units**, what we refer as Apartments in the US and Europe or as Flats in the UK. Condo units are owned by individual owners organized under a Committee and a Juristic Person which is the equivalent of a Homeowner or Condo Association
- **Apartments**, which is a self standing structure such as a multi-unit complex owned by one owner, usually referred as “rooms” by Thais
- **Individual homes**, which are composed of the land and the tangible assets constructed such as permanent fixtures, the garage, the pool and landscaping
- **Townhomes**, which are most often 4m wide x 12m deep; can be found in the city center, where shops and restaurants are on the street level, and the 2 or 3 additional floors above are usually composed of the private residence of the owner with a roof top terrace
- **Hotels and resorts** with the business activities
- **Businesses and intangible assets** such as restaurants, furniture shop, services
- **Commercial malls and stripes**
- **Offices**
- **Warehouses and industrial parks**, which are often located on the outskirts of the city due to regulations, zoning and ease of access by airport, sea ports and freight trucks
- **Raw land and plot**
- **Easements**, which are developed and undeveloped land that are dedicated and owned by either a community for the community such as roads, water ways, klongs, national parks, coastal areas, recreational areas or any other special real estate owned by His Majesty the King and his Family under the Crown Property Bureau which is always leasehold to third parties such as Patuwan 1 and Lang Suan areas in the Ratchaprasong neighborhood near Siam Paragon and Central World
- **Air, water and mining rights** are strictly regulated in Thailand and the use of a specialized attorney and permits are required

Difference Between Leasehold and Freehold Properties

The difference between Leasehold and Freehold properties is that the buyer is only leasing the land for a pre-determined period of time instead of having the full ownership rights, which can range from the usual 30 – 60 – or 90 years lease negotiated between the lessee and lessor. The leasehold is transferable to your heirs, and is registered at the **Land Office**, which is the equivalent of the Clerk of the Court in the US or a Public Notary as in most EU countries. The Land Office registers title deeds and legal acts related to real estate agreements. Freehold property grants the owner the full ownership rights of the land without restriction, as well as the right to develop, lease and sale, which is not available to foreigner.



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These protective measures ensure that future generations of Thais can own properties and land in their country and serve to control hostile foreign speculative investors from raising artificially the price of real estate that would exclude domestic buyers from owning a primary home. This is perceived by many as a primary right to own a home or land in your country. Hence, Thai nationals are at an advantage compared to foreigners especially with their ability to secure attractive loans from Thai banks at better conditions and much lower rates.

Some foreigners have used many loopholes to own land in Thailand such as the set up of Nominee Shares through legal Thai companies where a foreigner would create a company with a 51% majority Thai ownership (such as a wife, partner or nominee) and the remaining 49% ownership is owned by the foreigner. Some jurisdiction such as DSI (Department of Special Investigation) has launched certain investigations in areas such as Phuket, Koh Samui and Pattaya where many unscrupulous foreigners have “abused” these loopholes to snatch prime land to build and develop their own projects and counter the law.

Our advice is to always use the assistance of reputable attorneys and accountants to hedge both your legal risk and prevent future legal hurdles that may well end up costing you more than the cost of setting up everything properly from the beginning.

The old saying of: “you get what you paid for” is no less accurate in Thailand than it is in your home country.



Many other ownership forms exist, albeit more complicated and costlier legal and fiscal mechanisms. Our company can assist you to run a risk and cost analysis before deciding to go with one structure vs. another. A 2 billion THB project will certainly not require the same planning as a 2 million THB investment. Good common sense and hiring the right professionals with a proven track record always prevail.



The strategy of Nominee Shares is not only, in our opinion, weak but may in the future expose the foreigner investor to legal hurdles especially in light of global economies and harmonization of fiscal policies where the government needs to support its growth (i.e.: raising tax and fining law breakers). Always bear in mind that when you are a guest in a foreign country (whether you are a long or short term one) you should always behave as such and you cannot expect to be granted the same favors as a national resident of that country. Even more so predominantly when national preference and protectionism instruments exist.

Don't hesitate to contact us to conduct all your necessary real estate due diligences to ensure a smooth, cost efficient and successful one stop transaction.



Condominium Ownership

Now that the distinction between freehold and leasehold ownership has been made, it can be said that foreigner can own freehold condominium units provided that the land is owned by the Juristic Persons group which is controlled by an elected Committee (similar to a Condo Owner Association or Co-opt where you own shares of a building based on your unit size) to the condition that the foreigner quota doesn't exceed the Thai quota under the 49% - 51% rule as per the Condominium Act.

In some rare occasions, foreigners can use a Thai company structure to own condos legally and use the same 49% - 51% rule of ownership. This can be used for many reasons such as estate planning, tax reasons, protection or simply because the Foreign Quota has been reached.



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A title deed owned by a foreigner is sensibly more valuable than a Thai owned title deed (although they are not legally different) since you can either transfer it to a prospective Thai or foreign buyer whereas a Thai owner can only transfer it to a Thai owner if the foreign quota has already been reached. If the Foreign quota has not been reached such as in a case where the Foreign Quota would be: 30% - 70%, a Thai owner would be able to transfer his title to a foreigner without any issues as it would be under the 49% - 51% rule.

Let's point out that, it is very rare (in Bangkok at least) to reach a Foreign Quota since the vast majority of investors and speculators are wealthy Thais who are absentee owners and want to benefit from the rental income that their units will provide them (expats living in Bangkok's Central Business District) as well as the generous capital gain that they may obtain after several years of ownership upon resale.

More strategic investors don't even wait for the condominium units to be built nor completed and purchase on plan with a sale agreement – they take a risk since they are required to pay a 15% - 25% down payment of the value of the unit as well as to pay the sinking fund and management fee fund before a title deed can be issued upon completion of the building in x amount of years. In the event the developer is unable to attract sufficient buyers or secure a loan with a large financial lender to complete the project as the phases are rolled out, it may go bankrupt and these speculators may lose their investment. Luckily, since the 1997 crisis, much tighter lending restrictions have been applied by the SEC and Central Bank of Thailand so that borrowers are more qualified and very few cases of Developer bankruptcy have been seen since. Having an attorney draft the sale agreement, and review the developer's conditions is always a smart idea.





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In essence, foreigners can benefit from the same advantage as Thais when it comes to investing in condominium, whether it is for personal use as a primary or secondary home or simply as an investment. When the units are completed, the developer is finally able to transfer the title deed (**Shanot**) of each unit and owners have to pay the remainder of the selling price. Savvy investors usually scout for troubled speculators; whose financial situation may have changed between the first day they signed the sale agreement with the developer (the units were still on plan) and the final day where the units are delivered nearly 2 years or more on average after the first stone is laid out depending on the size as well as the fit and finish of the building. We have seen good deals happening around the transfer time where investors want to unload units they have no intention to pay. This is also a great way to avoid paying any transfer or ownership fees since the unit has not even been registered with the Land Office.

Alternatively, foreigners can also own a condominium unit through a leasehold agreement, whereas the title deed remains in the name of a Thai owner such as a Thai spouse, partners or original owner. Again, we highly recommended the assistance of a real estate attorney to complete the legal procedure and the writing of contingencies for the benefit of the foreign owner as a person's life is not static and as a loss of revenues, death, divorce, marriage, birth of children, or any other events may impact your investment and its long-term strategy.

Payment Instruction for the Purchase of a Condominium in Thailand

Non-resident foreigners who want to purchase a condominium in Thailand must bring the fund from overseas as per the Condominium Act – a Forex certificate will be provided by your bank or financial institution in Thailand. Please note that if you send your money in several batches, it is possible that the bank won't issue a Forex certificate for amounts below \$50,000 USD but instead, issue a credit note and a letter that will be attached to the Forex certificate. The full amount for the purchase of the condominium must be coming from a foreign currency such as for example: US Dollar \$, Singaporean Dollar SG\$, Euro €, Japanese Yen ¥ or British Pound £ ...

Please note that if you convert your foreign currency into Thai Baht prior to making the transfer this will not respect the Condominium Act Law. The conversion has to be done by the beneficiary bank and the funds can be either wired into an escrow account (such as lawyer's account), the developer account for new units or your own account prior to making the Bank Certified Cashier Check in the name of the seller.

To our great regret, escrow accounts or fiduciary accounts are not very common in Thailand but we have attorneys that can handle these requests and provide the added security that these accounts provide especially when dealing with due diligences, transfer of know-how, or multi-units that involved transfer of rent income and balance of deposit.



The Foreign Exchange Transaction Certificate will be required at the Land Office for issuing the title deed (Shanot) if paid in full. Usually, for new units, the developer will keep it with the credit note and the letter from the bank until the day of transfer at the Land Office whereas for resale unit, the buyer will keep it and bring it directly at the Land Office with the instructions and purpose note for the transfer that should stipulate the following:

To purchase a condominium located at “...” unit number # with folio number #, parking space # and any other benefits included.

Please note that a payment adjustment from a surplus or shortage may occur when the Beneficiary bank will convert your foreign currency into Thai Baht as currency rates fluctuate. This will occur upon the registration of ownership of the condominium unit at the Land Office.

In the event of a resale, the brokerage assisting you or the seller, will provide you prior to the transfer at the Land Office, with the amount of transfer fees and taxes, you must pay (often shared equally between buyer and seller), the common area management fees, the transfer of sinking funds if available and the electric city meter deposit. We advise you to do a credit/debit balance based on the prorated amounts already disbursed at the time of transfer by the current owner to ensure that your transfer of ownership is complete.



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You can also contact your insurance broker to ensure that the private properties will be covered on the day of transfer if a tenant does not already pay this private home insurance, or is not already covered through the general condominium insurance. Each building has its own insurance policy and rules, and getting a copy of these, prior to the transfer, will enable you to see this clearly.

If you purchase a condominium with a tenant, you must ensure that you will receive both the deposit and the balance of rent for the remainder lease term. Your attorney will check that the clauses of the lease agreement allow for a new owner to take over, extend the lease, or break the lease as needed. The current owner may have to indemnify the tenant or ensure that he or she will vacate the premises at a given date if you desire to use the unit as your primary residence.

In addition, we always recommend for resale units that the prospective buyer investigate with his/her attorney what kind of major renovation costs may have been voted and approved by the committee and the Juristic Person for the building. Pipe replacement, roofing renovation, elevator replacement or major painting work may be expensive and if the sinking fund is not sufficient, management usually will call upon a general assembly to raise the management fee per m² for each owner to cover the major repairs. Looking at the balance sheet and accounting of the Juristic Person will enable you to get a good idea of how well the building is managed, if funds are being misplaced or if the Committee Presidency and board are controlling the building in their interest rather than in the interest of all owners.

Keep in mind that many wealthy Thais are absentee owners and do not live in the building so may differ costly and non-visible repairs or try to shift the burden to future owners especially foreigners who have little understanding of Thai laws, who cannot read Thai and who usually receive second class citizens' treatment from authorities.

New buildings usually have much higher management fees but you reduce your chances of having renovation costs in the first 5 years of ownership although the quality of construction made in the late 90's to mid 2000's were much better than the current one using Chinese made materials that may look good but are of inferior quality than those of European, Japanese or US manufacturers that were the only one available a decade or two ago. Thus, choosing a reputable developer and taking your time to look at what is available will pay in the long term.

Lastly, don't forget to make an inventory list of both fixtures and furniture that will come with the unit you purchase to avoid any conflicts once the previous owner vacates the premises and that wonderfully built-in hard wood library that was there upon your visit, has disappeared!



Home Ownership

Foreigners are not permitted to simply and directly own land in Thailand. That said, land ownership can be acquired by a company in which a foreigner can become shareholder. Indeed, a Thai-registered private limited company in which the foreigner holds a minority stake has the right to land ownership. Officially, Thai citizens must own more than half of the registered capital and comprise more than half of the number of shareholders. Furthermore, the Land Department controls in practice the financial credibility of each shareholder in the company acquiring land.

According to Thai civil and commercial law, it possible to lease a land for a term of 30 years. Such term can be renewed upon new mutual agreement between the owner and the lessee. Moreover, the right of lease can be transferred by sale or inheritance.

Furthermore, a Thai Company or individual is entitled to grant a **Right of Superficies** in favor of a foreigner, giving him the right to personally own all constructions situated on the land. By using this possibility, a foreigner can therefore be registered as the owner of a building without necessarily owning the land. The Right of Superficies can be also conceded for a period of 30 years and can be renewed for another term of the same duration.

In other words, you can own the home, its fixtures, landscaping, and improvements but not the land.

Transfer of Ownership

The following documents will be required to enable the transfer of ownership:

- Certified copy of your passport(s) if more than 1 owner
- Certified copy of your marriage license/agreement/certificate
- The Forex Certificate as well as all credit notes and the letter from the bank
- The Spouse letter of consent – if applicable in case one of the spouses is unable to join for the transfer of ownership at the Land Office
- A power of attorney if neither one of the buyer can attend the transfer of ownership for the proxy to conduct the transfer in their name
- A copy of the entry visa of either one spouse present at the time
- The title deed (Shanot) provided by the owner for a resale or by the bank if they seller has a mortgage
- A certified Bank Cashier Check to the name of the seller or the bank
- The name of the parents' buyer in Thai (mother and father)
- The Land Office documents required for transfer that will be submitted to you
- Amount for tax and transfer fees that have been estimated and shared with you



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All documents will be translated in Thai and presented with the sale agreement that can be written by the brokerage, your attorney or made by both parties directly.

To ensure impartiality it is highly recommended for an attorney to draft the sale agreement that will stipulate the deposit paid to the seller which is usually between 10% - 15%, the forfeiting clauses for either party in case of a breach of contract for non "force majeure" reasons, as well as the time limit by which the transfer of ownership should occur at the Land Office. The remainder payment is usually made by Bank certified cashier's check in the name of the seller/developer and a receipt is remitted for good accountability to you.

The process usually takes from 2 to 4 hours depending on the volume of ownership title transfer that the Land Office officials are dealing with on that given day.

For more information, special custom needs or any other queries don't hesitate to contact our real estate specialist [Marc H. Kijner](#) to schedule your personalized consultation.

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