

## **Buying a Condominium in Thailand**

Buying a unit in a condominium is one of the easiest ways for foreigners to acquire an ownership interest in Thailand real estate.

Generally, foreign persons and entities, including Thai entities owned by more than 49% foreign persons or entities, are prohibited from acquiring a freehold interest in land in Thailand. Exceptions include ownership permitted by treaty (of which there are currently none) and ownership permitted by special permissions and approvals, such as the ownership of a limited amount of land by persons investing at least 40 million baht in specified Thai investments.

Because title to a condominium unit includes co-ownership of the common property of the condominium, which in turn includes the land on which the condominium is situated, Thai law places limits on the number of units in a condominium that can be owned by foreign persons or entities.

### **Background of the Condominium Act**

By way of background, the law governing condominiums was enacted as Condominium Act, B.E. 2522 (1979). This law was liberalized to allow foreign investment in condominiums by Condominium Act (No. 2), B.E. 2534 (1991), which allowed foreign persons and entities to own condominium units on a freehold basis, but limited foreign ownership to 40% of the total area of the units of the condominium. This law was again further liberalized to promote foreign investment in condominiums by Condominium Act (No. 3), B.E. 2542 (1999), which raised the foreign ownership limit to 49% (and indeed up to 100% in certain condominiums in certain urban areas, such as Bangkok and Pattaya, for the five-year period). The condominium law was further strengthened recently by Condominium Act (No. 4), B.E. 2551 (2008), which was adopted to provide further protection for purchasers of condominium units from developers, by making developers responsible for the truth of their marketing materials, by making developers responsible for paying the ratable portion of fees and expenses for unsold units and by providing that contracts of sale had to conform to a form established by the Ministry of the Interior. See “2008 Amendments to the Condominium Act” for more information about the 2008 amendments to the Condominium Act.

Furthermore, additional protection for buyers of condominium units was provided this year through the enactment of the Escrow Act, B.E. 2551 (2008). Although the provisions of the Escrow Act are optional for condominium purchases, it does provide a way for a potential purchaser to protect deposits for condominium purchases from being used (and potentially lost) by a developer when short of funds. See “Escrow Business Law” for more information about the Escrow Act.

### **Unit Title for Owners of Condominium Units**

Under the Condominium Act (including No. 1 – 4),

a “condominium” is defined as “a building that persons are able to divide the holding of title to in parts where each part comprises title to personal property and co-ownership of common property”;

“personal property” is defined as “a condominium unit and includes structures and land provided for each condominium unit owner”; and

“common property” is defined as “the parts of the condominium that are not units, the land on which the condominium is situated and other land and property provided for use by or for the common benefit of the co-owners”.

The developer registers the condominium with the Land Department, and a juristic person representing the condominium is created.

Each owner of a unit has title to his or her own personal property and co-ownership of the common property, as evidenced by a unit title deed. The unit title deed will contain at least the following information:

1. the position of the land and the area of the land belonging to the condominium;
2. the site, the area and a plan of the unit showing the width, length and height;
3. the ratio of the title to the common property;
4. the personal and family names of the person with title to the unit;
5. the abstract of title;
6. the signature of the Competent Official; and
7. the seal of office of the Competent Official.

Section 15 of the Condominium Act clarifies that common property includes:

1. the land on which the condominium is situated;
2. the land provided for use or for common benefit;
3. the structure and structures for stability and for preventing damage to the building;
4. the building and its parts and the accessories that are provided for use or for common benefit;
5. implements and instruments provided for use or for common benefit;
6. premises provided for common services to the condominium;
7. other property provided for use or for common benefit;
8. office of condominium building juristic person;
9. immovable property bought or acquired under Section 48(1);
10. structures or systems built for maintaining security or environments within the condominium building, for example, the fire prevention system, lighting, air ventilation, air-conditioning, the drainage system, waste water treatment, or disposal of garbage and refuse; and
11. property using the money under Section 18 for maintenance thereof

Therefore, the owner of a unit is a co-owner of the land on which the Thailand condominium is situated. The proportion of a co-owner's ownership interest in common property is based on the proportion of the area of the co-owner's unit to the total area of all units of the condominium.

### **Limitation on Foreign Ownership**

Although the Condominium Act is designed to promote foreign ownership in condominium projects, there are still restrictions on foreign ownership that cannot be ignored. Section 19 bis of the Condominium Act (as amended by No. 4) provides that aliens or alien juristic persons may own up to forty-nine percent of the total area of the units of the condominium at the time the registration application for the condominium was filed. There are also further rules that define which foreigners may acquire ownership interests in condominium units and that specify when foreigners who have acquired ownership interests in condominium units are required to divest themselves of those units.

## **Which Foreigners May Own Units in a Condominium**

The Condominium Act permits five classes of aliens to own condominium units, namely:

1. aliens with a residence permit under the immigration laws;
2. aliens allowed to enter Thailand under the laws for the promotion of investment in Thailand;
3. juristic persons deemed to be aliens under the Land Code and registered as juristic persons under Thai law;
4. juristic persons with a certificate of promotion of investment under the laws for the promotion of investment; and
5. aliens or juristic persons deemed by Thai law to be aliens, who have brought into the Kingdom foreign exchange or withdrawn the money from the non-resident Baht account or withdrawn the money from the foreign currency deposit account

## **Compulsory Dispositions of Condominium Units**

If an owner of a condominium unit is an alien and any of the following occurs, such owner will be required to notify the Land Department within sixty days and divest himself of that unit within one year of acquisition or change in status:

1. an alien or juristic person deemed to be an alien acquires a unit by legacy through inheritance or otherwise, and when such alien's or juristic person's ownership is included in the calculation of the percentage of foreign ownership in the condominium units, the percentage limitation is exceeded;
2. an alien is no longer permitted to reside in Thailand or his residence permit ceases to be valid;
3. an alien is deported and has not received a relaxation;
4. an alien allowed to enter Thailand under the laws for the promotion of investment is not permitted by the Board of Investment to stay in Thailand; or
5. the certificate of promotion of investment of a juristic person deemed to be an alien is revoked.

## **Conclusion**

Although the Condominium Act has been amended numerous times to encourage foreign investment and protect purchasers of units in condominium developments, using experienced advisors, including legal advisors, is even more important for foreigners than it is for condominium purchases in their more familiar home countries.

### **2008 Amendments to the Condominium Act**

On July 4, 2008, for the first time since 1999, the Condominium Act of 1979 was amended (the “2008 Condominium Act Amendments”). The purpose of these amendments was to provide additional protection to buyers of condominium units and to make the existing protections more effective.

The 2008 Condominium Act Amendments provide the following additional protections for buyers:

1. The advertisements and brochures used by a condominium developer to sell condominium units are deemed to be part of the contract of sale of the condominium units, and any inconsistencies between those marketing materials and the contract of sale will be interpreted in favor of the buyer or prospective buyer. Those marketing materials are required to be consistent with the application for registration of the condominium filed by the developer with the Land Department, and the developer is required to maintain copies of those marketing materials until all the units have been sold. The condominium is also required to maintain a copy of those marketing materials.

2. The contract of sale for the sale of a condominium unit by the developer (but not for a resale) is required to be in the form established by the Ministry of the Interior. Any provision in a contract of sale that is inconsistent with the established form and not in favor of the prospective buyer will not be enforceable.

3. Businesses in the condominium building are allowed to operate only in designated areas, and a separate entrance is required so that business activities do not disturb the residents.

4. The developer is responsible for paying the portion of the condominium's taxes, duties and maintenance and management expenses that are allocable to unsold condominium units.

The 2008 Condominium Act Amendments also provide that foreign persons or entities are permitted to own no more than 49% of the total area of the condominium units in the condominium building at the time the developer applied to register the condominium with the Land Department.

In addition, the 2008 Condominium Act Amendments also provide provisions relating to the governance and management of condominiums, including the following:

1. Minimum qualifications and duties of the manager are provided.

2. Powers and duties of the condominium building juristic person committee and minimum qualifications of the members of that committee are provided.

3. Rules relating to general meetings of joint owners are also provided. The manager, the committee or joint owners holding not less than 20% of the votes of the joint owners may call

a general meeting. Joint owners with the right to vote not less than 25% of the total number of votes constitute a quorum, but if a quorum does not attend a meeting, a new meeting may be called within fifteen days where a quorum will not be required to transact business.

4. Special voting requirements are also provided. The following resolutions require the vote of not less than 50% of the total number of votes:

- a. the purchase or sale of immovable property,
- b. the grant of permission to a joint owner to make any modifications that affect the common property or exterior of the condominium,
- c. any amendment of regulations regarding the use or management of common property,
- d. any amendment of the ratio of joint expenses,
- e. construction that changes the common property or
- f. a seeking of benefits in the common property.

If a quorum does not attend a meeting to consider any of these matters, a new meeting may be called within fifteen days where the minimum voting requirement will be reduced to 33 1/3%. In addition, certain resolutions require the vote of not less than 25% of the total number of votes, such as the appointment or removal of the manager and the designation of businesses that the manager has the power to assign to others.

Finally, 2008 Condominium Law Amendments increased the penalties for violations of the Condominium Law and also provides penalties for joint owners who fail to make timely payments of their share of taxes, duties and maintenance and management expenses.

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## **Escrow Business Law**

*24 March 2008* | The new escrow business law was enacted by Parliament on 21 December 2007 and comes into effect on 19 May 2008. The law is intended to protect buyers and sellers of real estate from possible fraud and deceit through the services of a neutral third party who holds funds, property, or legal documents for disbursement once certain conditions are met as instructed by the buyer and seller. An escrow service provider can provide services in the areas of reciprocal contract, contracts for purchase of homes, condominiums, and land. In property purchases, the escrow service provider is responsible for overseeing that payments for purchase of property are made according to schedule and as specified by the conditions under the escrow contract. In the event of breach of contract, such as the seller cannot complete the project as stated in the contract, the funds held by the escrow service provider will not be disbursed to the seller and can be returned to the buyer.

It is not mandatory under Thai laws to enlist the services of an escrow service provider. If the buyer and seller wish to avail themselves of an escrow arrangement, a contract with the buyer, seller, and escrow service provider as signatories will be needed in addition to the contract between buyer and seller.

**The details are as follows:**

1. The escrow service provider must be a financial institution, a commercial bank, or a financial company.
2. The escrow service provider must have received authorization to provide escrow services from the Ministry of Finance.
3. The escrow contract must be signed by the buyer, seller, and the escrow service provider.
4. The escrow service provider must be a neutral third party and have no connections to buyer or seller either directly or indirectly.
5. The escrow service provider must open a bank account for the parties to the contract with a financial institution.
6. The property, funds, or legal documents held in trust by the escrow service provider must be kept separate from the escrow service provider's personal assets.
7. For escrow property agreements, the escrow service provider must inform the Land Department that the property comes under the escrow agreement and that transfer of ownership is not permitted until the escrow service provider provides the department with a written notice authorizing transfer of ownership. The department's official must make a written record to that effect.
8. In the event of disagreement between buyer and seller, the escrow service provider must not transfer funds or property to either party until the parties come to an agreement or under order of the court.
9. Once the funds have been transferred from the escrow service provider's account to that of the rightful owner and the escrow agreement comes to an end, the escrow service provider must close the escrow bank account and inform the parties immediately.