

## **FAQ – General:**

### **Why should I choose Thai Real Estate Co., Ltd sales or rentals services?**

We are an independent company who have international expertise and experience with a team of highly motivated, professional and multi lingual sales agents who are dedicated to helping you find just the right property that you are searching for. As well as almost 3,000 properties on our data base.

Thai Real Estate Co.,Ltd agent is more than just a sales person. They are a guide, an assistant, and a consultant when you're moving to a new country. They also keep very up to date on the changing property market, and will have data on a wide range of property types and areas. If you need the most current information on what is available for rent, the only way to cover the entire market is with an agent. Agencies, particularly ones that have been operating for a substantial period of time would have vast databases on properties in every area. They are true experts on what is or is not available for rent. Our Agents will save you the time and harassment of the dozens of phone calls to prospective properties just to find out that 8 out of 10 of those properties have just been rented or that they do not meet your criteria. Thai Real Estate Co.,Ltd agents are very experienced in understanding the needs of our clientele and therefore can translate your needs to landlords effectively. Not only are they a valuable source of information, they can assist in negotiating the terms and prices of properties. Because real estate agents deal with so many different areas and types of properties, they are able to quote advise a client or homeowner as to an accurate price for a particular property. In fact, the asking price of any particular property is usually lower with an agent than when asking the home owner directly. Our Agents are also usually a communications centre for anything pertaining to living in their city or the area they cover. An agent can usually locate domestic help and negotiate a price and terms with each, or will know where the best place to get service on minor repairs, internet, telephone services, cable TV, or any other domestic concern you may have.

### **How much Thai Real Estate Co., Ltd services Fee?**

As a real estate agent, our service is FREE to people looking for a property to rent or buy. (It is traditional in Thailand real estate for the agency to get all of our commission from the owners.) It is normal for us to spend several days with you, taking you around to show properties.

### **Do I have to pay you for helping me find a suitable property for sale or rent ?**

For the tenant or the buyer, our service is completely free of charge as it is the landlord who covers our agency fees and also the selling price for all properties advertised will already include all selling fees. This means there are no hidden costs or unexpected fees to pay when you choose to use our company to search for your next home or business.

### **Why should I use an agent when I buy a house or Condo in Thailand?**

The process of buying a house or condo in Thailand can be relatively complex so having our experienced sales team guide you can allow things to run smoothly and give peace of mind to both parties. For all our clients looking to buy land or property in Thailand, we can offer our knowledge and experience in the property market and assist you in your search for a suitable object. We help to avoid the pitfalls and ensure the entire process is without serious issue and remains stress free. We will take care of background checks on title deeds and make sure that there are unexpected costs both during and after the transfer of ownership and also check that the foreign quota is not exceeded within your chosen development. If you are purchasing a business, house or land in Thailand, we will assist you in the setting up of a limited company with the help of our legal team to ensure that everything will be handled correctly. We'll also draft all of the relevant legal documentation and guide you through the transfer of money according to Thai law and make sure you have all the necessary documents to transfer the property into your name.

### **Can I use an agent to purchase a newly built home?**

Yes. In fact, using an agent to purchase property is probably one of the best ways to really explore all of your options. It is an agent's job to be well informed on old and new properties and to know the pros and cons between each. They will be able to provide a concise comparative list of old and new properties for sale as well as assist in the negotiations on prices and add-on amenities. In Thailand, it is illegal for foreigners to purchase land, therefore it is impossible for someone who is not Thai to buy a house. However, condominiums are an option for foreigners wishing to buy a permanent residence in Thailand, but please note that buildings have quotas for foreign ownership that must be complied with.

### **Are the prices advertised on your website negotiable?**

It is fair to say that most advertised sale and rental prices for condos, apartments, houses and commercial units on our website are negotiable but this will depend on your circumstances such as date looking to move, length of lease and also if you have any additional requests or requirements. Our experienced sales team will negotiate on your behalf with the landlords and always try to achieve the best price and conditions for both parties.

### **Are all of the properties on your website available?**

Most property owners using multiple property agents, it is an impossible task to keep the availability up to date and 100% accurate. Once we receive an enquiry on any particular property that appear on our website, we will contact the owners to reconfirm the availability and update you as soon as possible so we can arrange for you to visit the property in person along with one of our sales agents.

## **What should I look for in a Property?**

Besides rental fees and type of property, you should probably ask yourself how difficult it would be to get around and whether or not you would need a car. Another important question is whether or not the maintenance is prompt and effective. Living in a building or a house that does not provide proper maintenance will be a headache and possibly dangerous. Previous tenants are a good source of information to the level of upkeep the property provides. Real estate agents are also a good source of information as they are usually the middle men for disputes between the owners and the tenants.

## **How much can you afford?**

The first step when you start thinking about buying or renting a new home, is to sit down and work out how much you can afford to spend. Each area has its price range and each property type has its price range as well. You might want to try checking online to get an idea of the average prices for the different areas are.

## **Where do you want to live?**

Your budget and your desired lifestyle will influence where you can live. (Please look at “How much can you afford?”). Think about what you would like to be located close to, and what you can do without before limiting your options to a specific area. In Urban area the possibility of being close to, or within easy access of shopping, restaurants, work, parks, and sporting facilities are very high. Apartment buildings, Condominiums, Townhouse complexes, and Homes in compounds have in-house sporting facilities and convenience stores and are highly secure.

## **What type of Home do you want?**

The choice of the type of property available depends on your budget bracket, area, length of stay and the lifestyle you intend for your stay.

## **What is the difference between condominiums and apartments?**

The main difference between a condo and an apartment is regarding the ownership as an apartment building is owned by just one individual or company whereas a condominium on the other hand has individual owners for each unit within each development. An individual owner/landlord contributes a monthly maintenance fee to the condominium's juristic office for the general upkeep and maintenance of the common areas and facilities. Monthly utility bills within most apartments may be charged at a slightly higher rate and will be payable directly to the management office each month whereas for a condominium, the utility costs are payable directly to the supplier at government rates.

### **What is the standard terms and conditions for rentals?**

The minimum rental period is from one week to one year for all apartments, condominiums and houses. In the vast majority of cases for residential leasing for long term, a two month security deposit and one month's rent in advance is required. The deposit will be refunded back to the tenant by the landlord, once the lease has expired and any deductions made for any potential damage or missing items and all outstanding bills have been settled. If the tenant were to break the lease agreement by vacating the property within the contracted period, then the two month security deposit will be retained by the landlord. It is possible for a 'diplomatic clause' to be included within the lease agreement for multinationals who are likely to be transferred outside of the Kingdom of Thailand by their employers. However, the landlords will usually insist on a minimum stay of either 6 or 12 months before the clause becomes effective. After fulfilling the minimum stay period, a 60 day written notification in advance is required along with supporting company documents must be presented in order for the security deposit to be returned.

### **What do I need to know about buying land or property in Thailand?**

As a foreigner in Thailand, it is possible to own a condo outright. The only restriction for foreign ownership is that they cannot own more than 49% of the total number of units in any one building. As a foreigner, it is not possible to own land in your own name but it is possible to own 49% in a Thai Limited company, in which you would be the sole director. What this means is that the foreign director is the only person who is permitted to commit or bind the company in contractual dealings. When buying land in this way, the foreign minority shareholder will control the company and its assets. In some cases, a foreigner can obtain a lease but this will be limited to 30 years and the viability of renewal is as yet untested.

All sale objects will be subject to some form of government fees and taxes, such as 2% Transfer Fee, 0.5% Stamp Duty, 3% Withholding Tax and 3.3% Business but each of these are dependent on the ownership history and will be adjusted accordingly. Our agency commission is fixed at the standard and will always be included within the final selling price

### **What is a condominium under Thai law?**

The Condominium Act (The Commonly-Owned Housing Act of 2522) defines a condominium as a building featuring privately-owned property and common property. The owners of condominium unit own the land through a juristic person of condominium.

### **Can a foreigner legally own a condominium unit in Thailand?**

Any non-Thai who has legally entered into Thailand may have a freehold ownership over a condominium unit, constructed on a land of less than 5 rai, of certain projects in municipal jurisdictions of the Kingdom, such as Bangkok, Pattaya, and Phuket. However, condominium units owned by a foreigner shall not exceed 49% of the total space of the condominium project. Other restrictions are applicable. A non-Thai owner of a freehold condominium unit may transfer a

property to other foreigners. If you wish to buy a condominium in Thailand, there are certain points of which you should be aware before choosing your new property:

- How much will monthly maintenance fees and charges be?
- How much are sinking funds? (For a use of common parts of condominium).
- Some condo units have never been finished, so consider carefully before buying.
- Verify that the total of foreign-owned units is no more than 49%.

### **Can a foreigner legally own a land in Thailand?**

Normally, a foreigner cannot own land in Thailand; however, other alternatives exist for a foreigner is allowed to acquire land. Under the 1999 amendment to the Land Code, foreigners who invest a minimum of 40 million baht are permitted to buy up to 1,600 square meters of land for residential use, with the permission of the Ministry of Interior. Foreigners are also permitted to own buildings on land that is leased, because there are no restrictions on building ownership. Foreigners can, thus, lease land and build on it and are permitted to own the structure.

### **Am I allowed to own any structure on land?**

Legally, any building is considered as being a part of land over which such building is constructed. However, a building may be considered as a separation part when it is a tenant of land who builds a building under a leasing agreement. Therefore, a foreigner may own any building on his rented land.

If your spouse is Thai, and you are planning to build a house on his/her land, you are recommended to sign a lease agreement with your spouse indicating that you are a tenant. This way, you shall have a joint ownership over such construction, not a land, together with your spouse.

### **How do I obtain a construction permission?**

Construction permission may be obtained at the Local Administration organization (Aor Bor Tor), or the Municipal Office, where your land is located. Structure Plans submitted shall be certified by an architect or an engineer. A building must have the specifications indicating in the permission.

### **What are Thai laws regarding a land lease?**

A land lease for duration of 3 years and more must be registered with the Land Department, and some fees must be paid. The maximum duration is 30 years, which may be renewable for another 30 years. In case the parties agree for a lease of 60 years (30 years with an option to renew for another 30 years), a deposit payment against the rent payable during the 2<sup>nd</sup> part of contract shall be made at the same time a payment of 1<sup>st</sup> half's deposit. The land title deed should be in possession of tenant to ensure his rights under an agreement. This sort of leasing agreement may become problematic in case a land passed on to a tenant's heirs.

### **My land was secretly transferred. What are my rights?**

Any unregistered action, with the Land Department, regarding a land is not recognized under Thai Property Law. You are a sole owner of the land.

### **Can I buy a property in Thailand in my absence?**

Yes. A person wishing to buy a land, including a foreigner, may purchase a land without being present at the time of registration of ownership at the Land Department. This shall be done by appointing, by a power of attorney, a lawyer to act on your behalf. Nevertheless, if you are married to a Thai, you, a foreign spouse of a Thai, is required to declare in a written agreement that a fund, of a purchase of land, is purely of your Thai spouse as her personal affair before marriage. This procedure may be done by signing such declaration abroad, and demand for a certification at the Consulate of Thailand in your country.

### **Can I legally rent out a property in Thailand?**

Yes. A foreign-owned property may be rented out. Some banks may allow you to open an account to collect the rents. You, as a non-resident, must be aware that personal income tax shall be deducted from your income earning in Thailand.

### **What are the units of land measurement in Thailand?**

In Thailand, Land is measured in Rai, Ngan and Wah.

- 1 Rai = 4 Ngan (or 1600 Sq.m.)
- 1 Ngan = 100 Wah (or 400 Sq.m.)
- 1 Wah = 4 Sq.m.
- 1 Acre = 2.5 Rai
- 1 Hectare = 6.25 Rai

Land prices are usually expressed in Baht per Rai or Baht per Wah. Condominium prices are usually expressed in Baht per Sq.m.

### **What are the Property Taxes in Thailand?**

Property taxes are payable upon the sale of a property at the Land Department. The rates are:

- Transfer fees: 2% of the Registered Value of the Property
- Stamp Duty: 0.5% of the Registered Value, Only payable if you are Exempt from Business Tax

- Withholding Tax: 1% of the Land Department Appraisal Value of the Property
- Business Tax: 3.3% of the Land Department Appraisal Value of the Property, payable if the property is sold within 5 years of Purchase (for Both Private & Corporate ownership), For Thai nationals if you own a property and Register the property as your residence (in the House Registration book) for a period of 1 year or more, then you will be exempt from this.

### **Does Thai Real Estate Co., Ltd Offer relocation services?**

We do not offer a full range of Relocation service internally, however we do have strong contacts with several International Movers who can assist you in moving from anywhere in the world. Our agents are able to give you adequate information and recommend which neighborhoods suits you best, should one want to be near their childrens school, or within easy access to public transportation or nightlife etc.. we can certainly find you suitable accommodation in the more desirable locations.

### **What Foreigners need to know wishing To Buy Or Sell Condominiums ?**

Under the 1991 condominium act, non-residents who purchase condominium units must transfer the funds to pay the unit from overseas, coming into Thailand as foreign current. Purchasers need to obtain a "Foreign Exchange Transaction" certificate for each payment from the beneficiary bank, and all these certificates must be shown to the Land department in order to register the condominium. When the money is sent to Thailand, the purchaser needs to include in the transfer instruction that purpose is to buy a condominium unit. Banks will only give "Foreign Exchange Transaction" certificates for amounts over US\$ 20,000. For amounts below this, purchasers must obtain a credit note from the Bank. If the foreign purchaser has Permanent Residence, they can purchase the condominium in Thai Baht (no need to use "Foreign Exchange Transaction").

### **How do Transferring money to Thailand?**

1. The money must be T/T (Telex-Transferred), with a document identifying the name of the purchaser in the form of either the sender's or receiver's name. For example: Mr. Smith wants to buy a condominium in Thailand. He has his own account at an overseas bank to buy the condominium, he has to instruct the overseas bank to issue the document in his name as the sender of that amount to his (savings) account in Thailand, or CB Richard Ellis, or any law firm (with the permission from the particular firm) after which the appointed company will buy that condominium for him,

(or)

It is possible for the buyer to ask a third party to transfer the money for him to buy the property by identifying himself as the receiver.

2. The purchaser has to include the transfer instruction indicating that the purpose of this money is to buy a condominium unit.

The bank that receives money in foreign currency will issue the document (Foreign Exchange Transaction) which contains the following information:

- The transferred amount in foreign currency
- The transferred amount in Thai Baht
- The name of money sender
- The purpose of transferring

Normally in the transfer process, the purchaser has to instruct the gateway bank to identify the name of the sender to be same as the receiver of the transferred money.

**\*\*Remark\*\***

If the money receiver is an individual but wants to put the unit in the name of two people, the land department will allow them to do so.

The amount of money must be equal to or higher than the selling price declared to the Land Department. In order to obtain a "Foreign Exchange Transaction", the amount of money must be above US\$20,000; lesser amounts require the purchaser to obtain a credit note from the bank.

**Why do we need to use "Foreign Exchange Transaction?"**

1. Because the Bank of Thailand controls the flow of foreign currency, every single baht must have a source and a reason, and the Land Department must perform in accordance with this regulation. By this restriction, every foreign buyer must transfer money from abroad.
2. Non-residents who sell the condominium and transfer the money out of country do not have to pay the remittance tax (normally the tax is around 30%).
3. In case of transferring money out of the country, the tax-free amount is determined by the initial amount transferred.

**What Documents needed for Individual Purchaser?**

- Passport (copy if applicable, marriage/divorce certificate including a letter of consent from your spouse if marriage [Thai Language]).
- Tor Thor 3 (prior to April 2004) or Foreign Exchange Transaction (April 2004 onwards) credit note.
- Power of attorney, if anyone but yourself is representing you, in Thai script with a notarization by Notary public or overseas by the Thai Consul.



## What Documents needed for Company Purchaser?

Corporate documents:

- Certified copy of the certificate of incorporation
- Certified copy of the memorandum of association
- Notarise certificate
- List of shareholders (in English, but must be accompanied by Thai translation)
- Minutes of directors' meetings which have a resolution to sell/purchase the property (specifying name and number and agenda dealing with the finance of the purchase if the company's registered capital is less than the purchase price)
- Letter of advice regarding specific signature
- Power of attorney, if the authorized directors do not make the transaction by themselves (Land Department)
- Free debt letter
- Foreign co-owner letter
- The certified copy of the I.D card of the authorized directors
- The certified copy of the house registration of the authorized directors
- Title deed of the condominium unit

## What is a Thor Tor Sam (3)?

A Thor Tor Sam (3) is an official bank document issued by the receiving bank upon the receipt of foreign currency into your bank account in Thailand.

You must request a Thor Tor Sam from your bank when you are remitting funds to Thailand for the purpose of purchasing a condominium, and the Thor Tor Sam must specify that the remittance is solely for the purpose of purchasing a property - Code 5.22.

The image shows a Thai Foreign Exchange Transaction Form (TOR TOR SAM) with a large red watermark 'Tor Tor Sam' overlaid. The form is filled out with the following information:

- Form Number:** TOR TOR SAM (3)
- Customer Information:**
  - Name: ONE STOP REAL ESTATE GROUP (จำกัด)
  - Address: 111/111/111 ถนนสุขุมวิท แขวงคลองเตย เขตคลองเตย กรุงเทพมหานคร 10110
  - Country: Thailand
- Bank Information:**
  - Bank Name: HSBC CORP. (THAI) LIMITED
  - Branch: HSBC BANK (THAI) LIMITED
  - Address: 111/111/111 ถนนสุขุมวิท แขวงคลองเตย เขตคลองเตย กรุงเทพมหานคร 10110
  - Country: Thailand
- Transaction Details:**
  - Transaction Type: Foreign Exchange Transaction
  - Amount: 25,000.00
  - Currency: THB
  - Code: 5.22
- Signatures:**
  - Customer Signature: [Signature]
  - Bank Representative Signature: [Signature]
- Date:** 2008-07-26

## Do they have Title Deeds in Thailand?

Yes it is called Chanote, "Nor Sor 4 Jot" and is the only document which can be described a land title deed, because it alone confirms ownership of land. The land is accurately surveyed and its area and boundaries are set using GPS. There is no need to publicize any legal acts, and it is possible to partition (divide) the land into smaller plots.

For areas which are not surveyed, there are other documents for land possession such as evidence of the possession of the right to utilize the land or other interests in the land.

These documents are called "Nor Sor Sam (3) and Nor Sor Sam (3) Kor". Unlike the Title Deeds, these Nor Sor documents are issued to show the possessors' exploitation of the land. Though these documents do not provide ownership rights, as do Title deeds, they can still be registered for transfer of the lands for which they are issued.



Title Deed Front Page

The image shows the back page of a Thai title deed. It is a table with multiple columns and rows, containing detailed information about the land, including its location, area, and the names of the parties. The table is filled with Thai text and numbers. There are several red circular stamps on the right side of the page, likely indicating registration or official approval.

Title Deed Back Page

## My Wife is a Thai National, Can She Own Land?

Prior to 1998, any Thai woman who married a foreigner would lose her right to purchase land in Thailand. She could, however, still retain land that she owned prior to marrying the foreigner. However, the recent (1999) Ministerial regulation now allows Thai national's married to foreigners the right to purchase land, but the Thai spouse must prove that the money used in the purchase of freehold land is legally solely theirs with no foreign claim to it. This is usually achieved by the foreign spouse signing a declaration stating that the funds used for the purchase of property belonged to the Thai spouse prior to the marriage and is beyond his claim.

## **What Taxes and Costs are Applicable to Purchasing Property in Thailand?**

Whenever a property in Thailand is bought and sold, there are four taxes that need to be taken into account.

1. Land registration (transfer fee) of 2.0% of assessed value of the land.
2. Stamp Duty/Fee of 0.5% of the assessed value or the sale price - whichever is higher.
3. Specific Business Tax of 3.3% of the assessed value or the sale price - whichever is higher - this will be applied to all sales by companies and to any private sales that occur within 5 years of the date of purchase.
4. Income Tax - this is calculated on a very complex formula based on the assessed value of the property, the length of time owned and the applicable personal income tax rate. In practice, this will work out to under 2% of the price for low to medium value properties, and up to 3% for higher value properties.

The local system of taxing property is based on an arbitrary assessed value as determined by the local Land Department, rather than true market value price. There are no set rules as to who pays for which taxes, and it is just another part of the bargaining process for purchasing property in Thailand.

## **Service Charges for Condominium?**

Service charges here in Thailand are extremely low, this is to maintain the common areas of the building, i.e. lifts, pools and corridors. A small % is deducted for the sinking fund that covers any major external repairs; therefore there are no hidden costs once you have purchased your condo.

## **Can I obtain a mortgage loan?**

Foreigners generally cannot obtain a mortgage for properties in Thailand, however, most of the financial institutions in Thailand provide loans for real estate purchasing to Thais and Thai companies.

It is common for a real estate developer to arrange for his customers to have a financing package from a financial institution. In most real estate development projects, a down payment can be made in instalments from 10 to 24 months.

After the down payment has been paid, the sale contract will be made and the balance amount is paid through the loan which is financed from a financial institution. The financial institution requires you to mortgage the property with it as collateral against the loan.

## **Are There Property Taxes in Thailand?**

There are no property taxes as such in Thailand that are exactly equivalent to the property taxes in the west, however, the most comparable taxes on properties in Thailand are the Land Tax and the Structures Usage Tax. The Land Tax levied on land is so miniscule, that in practice the body charged to collect it, rarely bothers to do so, and if they do, they usually wait several years until the amount accumulates. The second tax, the Structures Usage Tax, relates to buildings, is collected by the municipal office or district office, and is only applied to properties used for commercial purpose.

## **Are all apartments in Thailand governed by the Condominium Act?**

There are 2 types of residential apartment buildings in Thailand: condos registered under the Condominium Act with a condominium license and apartments not registered under the Condominium Act. Only condominiums registered under condominium laws and licensed with the Land Department offer full individual apartment unit ownership (with a government issued unit ownership title deed), and are regulated by the Thailand Condominium Act. Legally registered and unregistered condos cannot be compared and when it comes to buying an unregistered (holiday leasehold) apartment or an apartment unit in a registered condominium a completely different set of rules and procedure must be followed .

## **What are the requirement in size and number of units in a condominium?**

The Condominium Act does not specify in any detail the specific requirements necessary in order for it to be identified and licensed as a condominium. As long as the building is able to hold ownership separately according to the area, whereby each area consists of private ownership in the property and joint ownership in the common property (section 4 Condominium Act). There are no specifications in the Condo Act outlining height or space requirements, nor are there any specifications outlining the minimum amount of individual units necessary within the building, but the City Planning Act and Building Control Act puts a limit on what can be built in a location. Technically a condominium can also be a group of attached low rise units (villa condominium). The legal definition of a condominium and requirements for condominium development can primarily be found in the Thailand Condominium Act .

## **How are condominiums managed?**

Condominiums are regulated by 1 - its rules and regulations (*internal*), and 2 - the Thailand Condominium Act (*external*). The Condominium Act specifies for example the procedure and requirements for a multi unit apartment building to be licensed as a condominium. The internal regulations (set of Bylaws) of a condominium for example regulate how the building is run (e.g that the units cannot be used as a business or company address, rental restrictions and matters relating pets). The rules and regulations of the condominium are amended by voting of the unit owners in the condominium general meetings .

## **What are condo fees?**

Every condominium must be maintained and managed and for this each owner pays condo fees which are based on the square meters of each apartment (section 18 Condominium Act). The fees/ expenses of juristic condominium are paid in advance according to the condominium regulations and/or according to a special resolution of the General Meeting. Condo maintenance fees are charged monthly or 2 monthly or with longer intervals and are each owner's share in the common

expenses and maintenance of the condominium. Condos can also have a special reserve fund for repairs and upgrades of the building. Condo management and management fees, the size of the reserve fund (*sinking fund*) and possible future major repairs could be an additional financial burden to consider before buying a condo.

### **Condo manager and condominium meetings?**

Every condominium shall have at least one manager who is appointed in the general meetings of the joint owners. Learn more about the responsibilities of the condominium manager, the condominium committee, procedure for meetings and expenses of the condominium in the condominium handbook.

### **Can a condo building in Thailand be 100% foreign owned?**

In case of a condominium building with 100 equal units, each having the same floor area, not more than 49 of the units can be foreign owned, at least 51% of the condo building must be Thai owned. Between April 1999 and April 2004, as a temporary measure and an attempt to reduce the number of empty and newly developed condos for sale, foreigners could under certain restrictions and in specified areas own up to 100% of the units in one single condominium building. This has since (without exemptions) been amended back to 49% of the total floor area of all units for private ownership in a condominium building combined .

### **Can all foreign nationals buy a condo in Thailand?**

There are no restrictions on nationality and every foreigner who can enter Thailand legally (there are no visa-class requirements) can buy and own a condo unit within the foreign ownership quota of the condominium, but every foreigner must personally qualify for ownership under section 19 of the Condominium Act. Usually this means that the purchase price for the condo must have been transferred into Thailand as foreign currency and exchanged into Thai baht by a licensed financial institution inside Thailand. Foreign ownership and the foreign ownership quota is governed in the Condominium Act by section 19 .

### **Can a Thai company own a condominium unit on my behalf?**

Since the initial 2006 Land Office regulations issued by the Land Department and Ministry of Interior preventing the misuse of Thai nominee shareholders by foreigners and a serie of new regulations this practice in less common. A company set up to circumvent foreign ownership restrictions (buying a condo in the Thai side of the condominium) and dormant holding companies are not allowed under Thai law. Even though generally considered illegal this structure is often still pushed to sell the remaining units to foreigners in the Thai side of expensive condos in the tourist resort areas of Thailand .

### **Can ownership of a condo be passed on to my children?**

The right of foreign ownership of a condo in Thailand is granted to the individual foreigner and not also to his foreign successors. Any foreigner who receives a condo in Thailand by inheritance or through a gift must again individually qualify for ownership of the condo under section 19 of the Condominium Act, or he must (section 19 under 7) sell the unit within one year of acquisition by inheritance. Ownership can be passed on to foreign heirs, but generally they cannot register ownership and must dispose of the apartment unit within 1 year .

### **Can I buy a condo leasehold?**

When the foreign freehold ownership in a condominium reached the limit of 49 percent the remaining units may be leased to foreigners under a 30 year lease agreement. One of the major disadvantages of Thai property law is that Thailand does not know lease or leasehold laws as a real property right, but only lease as a hire of property contract with limited real rights associated with it. Under hire of property laws a condominium leasehold purchaser in Thailand in essence becomes a tenant with a pre-paid tenancy contract and having a personal right of use and possession of the unit for the registered term of the contract. Similar to a condominium under a usufruct a lease contract in Thailand is not freely transferable during the term of the lease and as a tenant the leasehold purchaser has no vote in the joint owners meeting and matters relating to management of the condominium. In addition, as a personal tenancy, a leasehold contract is under Thai law terminated upon death of the lessee and not automatically transferable to the heirs of the lessee. The financial drawback of lease is that it is a diminishing asset and creates through the contract a yearly rental tax for the lessee .

### **Can I buy fractional ownership?**

Time-share and fractional ownership schemes almost always sell an interest in unregistered leasehold apartment buildings and not in a licensed condominium building offering individual apartment unit ownership. Timeshare and fractional ownership apartment or hotel buildings are usually **unregistered** leasehold (holiday) apartments .

### **Can a foreign company own a condominium?**

Foreign juristic entities (e.g. a (BVI)-company) can register ownership within the 49% foreign ownership quota of a condominium just as any natural foreign person. A minutes of meeting is required approving the purchase, company documents of incorporation must be prepared, notarized, translated and submitted with the land office (all or specific company documents, depending on the local land office requirements), together with documents such as a foreign exchange transaction form, as when a foreign individual is buying a condo in Thailand.

### **Is joint ownership with my Thai wife foreign owned?**

When the condo is registered in your Thai wife's name or both your names as joint ownership between husband (foreign) and wife (Thai) this will count as full foreign freehold ownership of the unit. A condominium apartment purchased by a Thai national married to a foreigner falls within the foreign ownership quota of the condominium, **unless** there is a legal document (like a letter of confirmation) that the money expended on the condominium is personal property of the Thai national. In this case the condo falls within the Thai side of the condominium. Some condominium sale contracts offered to foreigners married to a Thai national are worded as an 'and/or contract'.

### **What is a FET-form?**

FET form means Foreign Exchange Transaction form, previously known (and for some still) as Thor Tor 3 (Thor Tor Saam). An authorized financial institution (bank) inside Thailand dealing with the exchange of foreign currency exceeding 50,000 USD (or an equivalent in any other currency) must under BOT banking regulations prepare a FET-form and report this transaction to the Bank of Thailand. For foreigners buying a condominium an original copy of this form with their name either as the receiver or sender of the foreign currency is part of the required documents for registration of foreign ownership at the Land Department (proof of compliance by the foreigner with section 19 of the Condominium Act) .

### **I do not have a FET-form?**

For the exchange of foreign currency in amounts less than 50,000 USD the bank does not need to prepare a FET form and therefore will not issue a FET form copy. In this case foreigners can request from the bank a confirmation letter for the transfer of foreign currency and exchange into Thai baht. This letter contains the same information as the FET form (e.g the transferred amount in foreign currency, the exchanged amount in Thai Baht, the name of money sender, the name of money receiver, the purpose of transferring the money) and can be used as proof of compliance with section 19 of the Condominium Act. This proof must be submitted to the Land Department when registering foreign ownership.

### **No FET-form because I sold my old condo?**

When a foreigner sells his condo apartment and he wants to buy a new one he can use the proceeds from the sale to buy a new condo apartment in Thailand, however he must again comply with the condominium act section 19. When this is under section 19/5 he can transfer the money out of Thailand and back into Thailand in foreign currency, or he can exchange the Thai baht received into foreign currency inside Thailand and transfer it into a foreign currency account and withdraw the money from this account and use it for the purchase of the new foreign owned apartment unit.

## **Buying a condominium off-plan pre-construction?**

The most common problems foreigners encounter when buying an off-plan condo unit in Thailand are; the developer goes bankrupt or becomes short of money (often because of failing sales), a substandard product is delivered, the project takes far longer to complete and finish than originally planned. In off the plan property developments in Thailand the developer usually requires that during construction all payment under the sale and purchase agreement are made directly into his bank-account and not into a third party escrow account. Payments into the developer's bank account as opposed to an escrow account (i.e. money held in the account of a licensed financial institution in Thailand that receives and disburses money depending on the escrow agreement) has serious risks and disadvantages for the buyer .

## **How to pay for my condo?**

Price per square meter is one of the key elements to determine the value for money and is the basis to compare affordability of projects in an area. In case of an existing condo the price for the condo usually paid at the time of transfer of the condominium at the land office by cashier's check (a check issued and guaranteed by your bank in Thailand - i.e. the bank that will also issue your foreign exchange documents). In case of an off-the-plan condo the purchase price is usually paid to the developer's bank in Thailand in installments with a final payment at the time of transfer (note importance of escrow arrangements). Payment terms in the contract are negotiable .

## **Can I rent out my condo and do I have to pay tax?**

Unless restricted in the by laws of the condominium (the adopted rules and regulations of the condo) a foreigner is free to rent out his unit. Only if it is considered operating a business of renting out properties in Thailand by a foreign investor the foreign owner would be restricted by the Foreign Business Act (list 3) and possibly the Foreign Employment Act. A non-resident individual (foreigner in Thailand) is subject to tax only on assessable income from Thai sources, regardless of payment location. The received rent is subject to personal income tax (Revenue Code section 40 under 5) and over properties put to commercial use or rented out by the owner 'housing and land tax' must be paid.

## **When I sell my condo do I have to pay taxes?**

When you sell your condo taxes must be and are paid at the Land Office at the time of transfer. This includes transfer fee, business tax or stamp duty and income withholding tax. With the land office tax-receipt, sale documents and documents confirming the previous transfer of foreign currency into Thailand, the bank is allowed to transfer the full amount received from the sale of a condominium by a foreigner out of Thailand without any deductions .



## What are the transfer fees and taxes?

There are a variety of taxes and fees involved when transferring a condominium unit in Thailand; transfer fee, stamp duty, withholding tax (personal or corporate) and specific business tax (if applicable). How these costs are divided between the buyer and seller in a re-sale depends on what is agreed in the sale and purchase agreement and can vary from buyer pays all to seller pays all. When buying in a condominium development the seller (developer) can under consumer protection laws only pass on up to half of the 2% ownership registration (transfer fee) to the buyer .



The government program to stimulate condominium sales business by reducing the transfer tax and fees ended in 2010 .

## What is a condo unit title deed?

Each apartment unit in a condominium building has an ownership title deed issued by the Land Department. The title deed must among others contain the following information: 1 - position and location of the land and area of the land of the condominium 2 - position and location, area and plan of the apartment showing the width, length and height 3 - ratio of ownership of common property (ratio of voting rights) 4 - name and surname of the person having the ownership of the apartment 5 - index for the registration of rights and juristic acts (if there is for examp a mortgage registered it will show on the backside of the title deed and should be removed prior to the transfer of ownership) 6 - signature, position and seal of the Competent Official. Transfer of ownership of a condominium and amendment on the title deed always takes place at the land .

## What is a house book in a condominium?

A house book or blue book or Ta Bien Baan is a residential address registration book issued by the local government municipality. It states the location and apartment address and registers the Thai persons having their legal residence (domicile) at the address. For foreigners a house book (tabien baan) is not an important document and is less relevant as it is not an ownership document but

merely a house and resident registration document, and, unless a foreigner is a resident in Thailand, he is not registered in the (blue) house book.

In official registration procedures foreigners can use a letter of residence issued by the local immigration to proof their address in Thailand or the owner of the condo registered on the condo title deed can use the (empty) blue book together with the condominium ownership title to proof his residential address in Thailand .

### **Sale and purchase agreement?**

The sale and purchase agreement for a condominium specifies in detail the responsibilities of the buyer and seller of the condominium. A sale and purchase agreement covers among others the agreed price and payment schedule, transfer date, exact details of the condominium, responsibilities for transfer fees and taxes, warranties and matters relating to due diligence. A sale and purchase agreement with a developer in a condo development is a contract controlled business (*not the leasehold sale agreement*), and the standard sale contracts must comply with the condominium act and consumer protection laws. For a re-sale of an existing condominium the parties do not have to make a sale and purchase agreement but making a sale and purchase and specifying in detail the responsibilities of the buyer and seller is strongly recommended (template *contract*). Transfer of ownership takes place at the provincial or local Land Department's branche office and at the time of transfer a second official Thai script land office sale agreement is signed and transfer fees and taxes must be paid.

### **Financing and mortgage for the condo?**

Normal mortgage financing from a Thai bank for the purchase of a condo is generally not an option for foreigners in Thailand. Basically only foreigners with residency, income and an employment history in Thailand can, depending on the bank's policy, obtain a mortgage for the (part) financing of a freehold condo (and then only for a real condo as this is the only immovable property foreigners can obtain outright ownership of in Thailand). But even if the foreigner meets the criteria Thai banks are generally reluctant to lend money to foreigners. Banks will not give a mortgage for a condo to non-resident foreigners. Foreigners can also not register ownership without having complied with the Condominium Act section 19 which usually means having transferred foreign currency into Thailand for the purchase of the condo. If the foreigner is married to a Thai national the bank's requirement could be that the condo is registered as a personal property of the Thai spouse where the foreigner is merely the guarantor of the loan without ownership rights in the condo.

### **Saleable floor area?**

The apartment price in the contract for a not yet completed condominium is based on the size of the condo according to the plans of the building with a price adjustment based on the final size of the unit. Saleable area in the sale contract means the area on which the contract price is based, and

registered area (upon which the final price is based) means the exact floor area upon completion of the condo as measured by the Land Department surveyor.

The final size of the unit mentioned in the unit title deed could be significantly larger than the size mentioned in the contract which is based on the building plans. A maximum price adjustments should be agreed in the sale and purchase contract for the condo.

### **What other documents on purchasing are important?**

When buying an existing or re-sale condo the seller must supply a letter of guarantee issued by the condominium juristic person that the condo unit falls within the 49% foreign ownership quota of the condominium and a letter that there are no outstanding fees for the unit to the condominium juristic person. Other documents required at the transfer are among others the ID-cards or passports, a marriage or divorce certificate (*if applicable*), a land office Tor Dor 21 power of attorney if you are not going to the land office yourself for the transfer of ownership, check guaranteed by a bank for payment of the balance of the purchase price to the seller (if applicable) and cash to cover the transfer fees and taxed.

### **What is a Nominee owner?**

Nominee owner refers to a situation where a Thai national purchases or where it appears based on the circumstances a Thai national is purchasing land on behalf of a foreigner or acts as the agent for the foreigner in the land purchase. In practice it occurs that foreigners purchase land and register ownership in a Thai national's name and in return is given a lease, superficies or usufruct. This could be combined with a loan agreement and sometimes a mortgage registration. This structure is legal as long as the Thai national is not restricted in exercising his or her absolute ownership rights in the land which in essence relates to the right to manage the land - such as the freedom to encumber, sell and transfer the land. If such rights are restricted and lies with the foreigner it could deemed that the Thai national acquired the land under section 96 of the Land Code Act 'as the owner in place of a foreigner' or acquired land on behalf of a foreigner as his agent. If it is deemed the Thai national acquired the land under section 96 of the Land Code Act both the foreigner and the Thai national are liable for fines and even imprisonment.

### **What is a Usufruct?**

Usufruct contract refers to the agreement and the right to use or occupy another's real property for a term up to 30 years but in any case not exceeding the life of the person granted the right of usufruct. A right of usufruct in Thailand gives the right to use and manage a real estate property during a person's natural life. The right in the real estate property exists so long as the usufructuary (the holder of the usufruct right) is alive. After his or her death the real estate property reverts back to the owner. Often a usufruct is given to a family member such as a foreign spouse with the idea that the foreign spouse is protected in the event of death of the Thai spouse (owner). A usufructuary is not allowed to sell the property (this right remains with the registered owner of the property) and under sections 1417 to 1428 of the Civil and Commercial Code the usufructuary has the obligation to maintain the property and take normal care of the property.

If the usufructuary fails to do so and the property would lose value or becomes in a poor state of repair the owner has the right to terminate the right of usufruct. The usufructuary is liable for loss of value or destruction of the property unless he can prove that damages are not caused by his fault. The creation of a usufruct could in certain circumstances be an effective option to protect a foreign spouse during his marriage in Thailand and upon death of his or her Thai spouse, however in some cases a usufruct is not the best option.

### **What are the rights of Superficies?**

Right of superficies (sections 1410 to 1416 of the Thailand Civil and Commercial Code) in Thailand is a civil law real estate right. A right of superficies legally separates ownership over the land from anything on the land. The right of superficies must be registered on the land title deed to be complete and enforceable. A superficies can be registered as a separate right or as a supporting right (i.e. in combination with a land lease agreement). The person in the agreement granted the right of superficies obtains ownership over the building he builds upon the land without obtaining or having ownership rights in the lands. Registration of a right of superficies will be allowed before construction or during the construction of a building, but an existing building requires transfer of ownership (and payment of transfer tax) first.

### **What is the right of Habitation?**

The right of habitation (sections 1402 to 1409 of the Thailand Civil and Commercial law) refers to the right of a person to live in the house of another gratuitously. The right of habitation differs from a usufruct contract that the person granted a usufruct is allowed to transfer the exercise of his rights to a third person (not the actual usufruct), where the right of habitation grants only the use of a property for the residence of the grantee himself and family. A habitation contract refers to the right of dwelling in a house. The right of habitation is granted gratuitously, otherwise the matter would become 'hire of property'. A right of habitation can be created by last will in Thailand (the owner grants the right of habitation in his last will or testament) or by gift from the owner to a third party. A right of habitation is complete upon registration and endorsement on the title deed at the land office where the property is located.

### **What is a Servitude?**

Servitude is for a part the Thai legal equivalent of an English easement. It is a non-possessory interest in land. Servitude is governed by the Civil and Commercial code sections 1387 to 1401. Section 1387: 'An immovable property may be subject to a servitude by virtue of which the owner of such property is bound, for the benefit of another immovable property, to suffer certain acts affecting his property or to refrain from exercising certain rights inherent in his ownership'. Servitude usually involves two or more separate properties/ plots of land, one of which is burdened and the other benefited by the servitude. The burdened parcel is called the servient property and the benefited parcel the dominant property.

Servitude can involve several kinds of benefits and burdens, but usually it involves the use of neighboring well, the use of an access road over adjoining land plots, laying irrigation ditches, laying pipelines or utilities over neighbouring plots. A registered right of servitude is an important right in case a plot of land is surrounded by other plots without direct access to a public road. In this case a right of servitude registered over adjoining plots guarantees uninterrupted access to dominant property.

### **Can Buying real estate in foreign controlled Thai company?**

Up to the 2006 land office guidelines issued jointly by the Ministry of Interior and the Land Department it was common practice for foreigners to form a Thai company for the purchase of land or condominium beyond the foreign ownership quota in Thailand. As long as the company had majority Thai shareholdings there were no restrictions when purchasing a property and the partly foreign owned company was treated like any other Thai company. Currently the government is restricting this illegal use of Thai companies and nominee shareholding structures by foreigners. Under new regulations for land offices and business registration departments the officials must now follow procedures when confronted with a Thai company with any foreign shareholders involved or a foreign director authorized to sign or co-sign on behalf of the company. The procedures must prevent the illegal use of Thai nominee shareholders and front companies by foreigners. The practice of holding companies for property purchases by foreigners is currently much less common. When a foreigner under the new land office procedures is advised to buy a property in Thailand on a Thai company name the foreigner will generally not appear on the company formation documents (Memorandum of Association/shareholder list). Only after the property has been transferred to the 100% Thai company up to 49% of the (preference) shares will be transferred to the foreigner. Note that a Thai company formed merely as a front for foreign property ownership is illegal and leads to unlawful foreign ownership. A company that owns a real estate property must appear to be a normal active company running a business and file yearly balance sheets and correct accounting. It may not be a dormant property holding company.

### **What are the Land Titles?**

The most important part of any real estate investment is the land title deed. Does the land have a suitable and legally issued title deed. The land title deed is the official a document administrated by the Land Department which states and proves a person's legal right to own or possess a piece of land, its survey status, as well as rights, obligations, or mortgages on the property. The ONLY viable land titles for investment, whether freehold through a company, by a Thai national or through leasehold is in the first place the Chanote (N.S.4.J) freehold land title followed by the Nor Sor Sam Gor (N.S.4.G). Less attractive is the Nor Sor Sam (N.S.3) as this land title is not (yet) accurately surveyed and the area must be confirmed with neighboring land. This land may only be sold subject to a 30-days notice period in which it is not uncommon that boundry or ownership disputes are started. This type of land can be upgraded to a Nor.Sor.3.Gor or Chanote.

Overview of all titles issued by the Thai Land Department Sor Kor Nung (S.K. 1), Nor. Sor. Song (N.S. 2), Nor. Sor. Saam (N.S. 3), Nor. Sor. 3 Gor (N.S. 3 G.), Nor. Sor. 3 Khor (N.S. 3 K.), Nor. Sor. 5 (N.S. 5), Nor. Sor. 4 Jor (N.S. 4 J.) or Chanote title deed. Land titles issued by other government departments Sor. Por. Gor. 4-01 (S.P.G. 4-01), Sor. Tor. Gor. (S.T.G.), Por. Bor. Tor. 5 (P.B.T. 5), Nor. Kor. 3 (N.K. 3), Gor. Sor. Nor. 5 (G.S.N. 5)

## **How much Property Tax for commercial use?**

There is currently property tax in Thailand for land and properties put to a form of commercial use (rented out, company owned properties, used as storage, investment (or i.e. not used as the main residence of the owner)) an annual land and house tax is charged at a rate of 12.5% over the yearly rental or assessed yearly rental. There are plans to reform the current tax system and introduce a more general property tax. There is also a small local maintenance tax which has as object of tax undeveloped land only.

## **Which party usually pays which tax when transferring real estate?**

Unless you are buying from a developer in a licensed housing or condominium development there is no fixed rule for who pays which part of the land office transfer fees and taxes. It is part of the overall price negotiation to come up with an appropriate formula for sharing these costs and it can vary from purchaser pays all to seller pays all. It's most important that you have resolved this in the sale and purchase agreement so the seller doesn't try to force in this provision a week before the transfer or you must work out such details when you arrive at the land office. It should clearly exclude the seller's personal withholding tax, because of the wording in the contract it has happened that the buyer was forced to pay the seller's personal income withholding tax, as this is part of the taxes to be paid at the land office when transferring land.

## **The seller wants the declared price to be less than what I'm going to pay?**

The appraised (government assessed) land office value of a property is often pretty much lower than the actual sale price or market value of a property. The appraised property valuations are set by the Treasury Department and the Land Department and adjusted every 4 years. In practice when selling a property the Thai seller tends to insist on declaring and registering a sale price close to the appraised value as this decreases his personal income and transfer taxes. Undervaluing the sale price is a known practice in Thailand but not so common and is an illegal practice. The parties are required by law to state the correct true sale price at the Land Department. In case the purchaser is a company, for accounting purposes the company accounts should reflect the purchase price as reflected in the actual sale and purchase contract (separate from the land office sale agreement). These are the accounts that will eventually be audited and on which the company tax return will be based. In case a lower price is declared there is a risk that this valuation discrepancy will be caught in the future. This is for Revenue Department comparing the official land office documents with the company accounts. In this case the situation would have to be corrected and a substantial fine to be paid.

## **How do if Share transfer if the owner is a company?**

If the owner/ seller is a Thai incorporated holding company selling to another foreigner a share transfer agreement is usually drawn up. The property (land, house or condo unit) sale will look like a share transfer, without the necessity of re-registering the property at the Land Office.

It could be deemed a tax evasion to create such legal arrangements. Selling a property naked you will be liable for all of the taxes and fees that were applicable at the time of purchase over the sale amount. The proceeds derived from the sale of property by a company are taxed as corporate income tax.