

LEGAL ARTICLE

Liberal interpretation of condominium law paves way for foreign buyers to legally acquire piece of land in Thailand.

Getting Around Foreign Land Ownership Restriction

By Narit Direkwattanacahai, LLM (Cambridge)

The saleslady says this unit is a condo that a foreigner is allowed by law to purchase and put under his name. But hey...this place looks like a townhouse, and a townhouse couldn't possibly be a condo. As if it is not confusing enough, that piece of land is also sold along with this unit, the saleslady continues her sale pitch. By this time, the perspective foreign buyer looks puzzled and struggling to digest what the saleslady told him. Nevertheless the sale pitch does sound appealing to this perspective foreign buyer about having a possibility to own a townhouse - apparently more spacious than a condo...with the land!

Hold that thought for a second, isn't a foreigner is not allowed to own a land in Thailand? Wondering if it is scam or some short, the perspective foreign buyer turns to his legal advisor for his advice, and this is what his lawyer said.

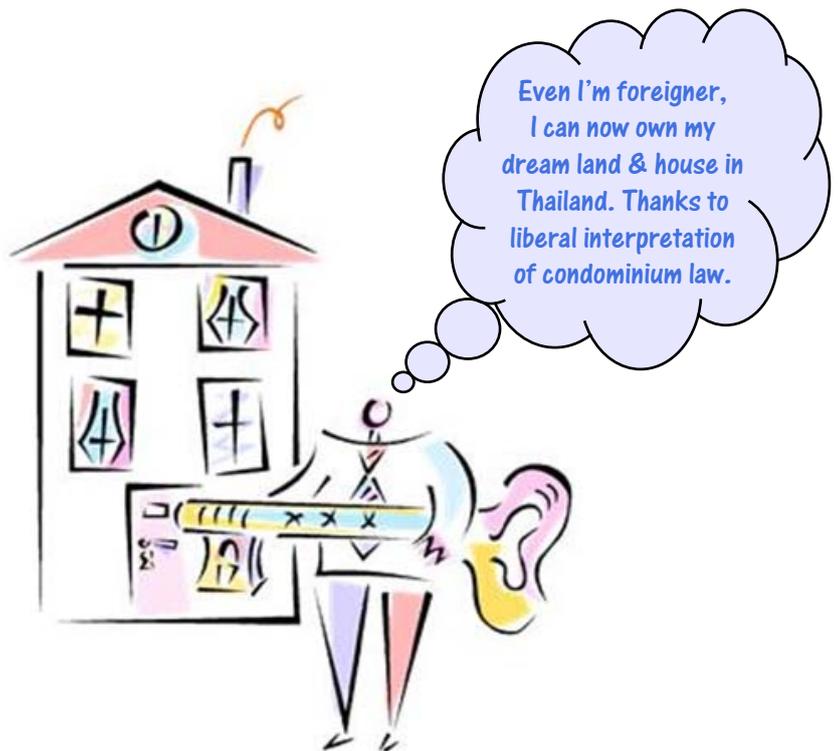
It has been widely known that aliens are not allowed to own the outright ownership in a land plot in Thailand. So, legally speaking foreign buyers have few options to acquire a property in Thailand with full rights of ownership, meaning the property is registered under the owner's name, and the owner has the right to use or sell the property at his/her own discretion.

One popular option is the 30 year leasehold where a foreign buyer is allowed to hold a leasehold title for 30 years with the possibility of extending for another 30 years. Another option is

to purchase a freehold condominium unit, provided that foreign individuals and companies own up to 49% of the total areas of each condominium. Condominium ownership in fact has been primarily used as a vehicle for foreigners to purchase a freehold property in Thailand.

In Thailand, the term "condominium" is commonly understood to mean the residential condominium building or the commercial building which is divided into multi units; each unit is individually owned and all unit owners share the ownership of the common areas.

So, typically when we think of a condo, we refer to one room in a high rise building that has a nice lobby and full facilities, such as elevator(s), 24 hour security guard, or a fully equipped gym with a swimming pool. But, there is a catch here. The land where the building is built on is not owned by the unit owners, but belongs to the common property. So does the exterior of the building. The unit ownership is limited from the (middle of) wall to (middle of) wall, from the floor to the ceiling. So, another way of looking at it is, when a foreign buyer purchases a condo unit, what he gets is merely an *air space* in one high rise building, along with the right to use common facilities.



As the foreigner seems to agree with that explanation, his lawyer continues defining what a townhouse is. Put simply, a townhouse is a particular design of a house that is built attached to adjacent house. Typically it is built in rows and has 2 or 3 stories. The main difference between a townhouse and a condo is that the ownership of the townhouse comes with the ownership of the land where it's built on. The exterior of a townhouse also belongs to the owner, but there are also common areas shared among townhouse owners. Since the townhouse comes with land, most people commonly perceive that it is only available to Thai citizen, not foreigners. It holds somewhat true until the Council of State issues its legal opinion to clarify this matter.

According to the Condominium

Act, B.E. 2522 (1979), a "condominium" means a building that person may separate the ownership into proportions; each of which consists of the personal ownership of the personal property and the common ownership in the common property. Let's examine

this a little more closely. The definition emphasizes on separate ownership of property, but does not however stipulate the *format* of the building. So, the Council of State is of the opinion that so long as a building can be separated into the *private property* and the *common property*, regardless of the format of the building, it can be considered a condominium.

This is where some developers get creative by offering a townhouse style building with a condominium ownership. They build townhouses or row houses where the areas can be distinctly divided into personal property and common property, and to make more attractive, a piece of land outside the building is included as part of the *personal property*. Hence, according to the Council of State's interpretation, this can be registered as a condominium because it has separate personal and common property. Effectively such registration may cause buyers, including foreigners, to obtain the ownership in both building and land. In practice, it will depend on the land official who takes the registration at the local land office. In case the land official

allows the registration of such townhouse with condominium ownership, it will pave the way for foreign buyers to get around the law restricting foreign land ownership in Thailand.

In conclusion, the Council of State's liberal interpretation of condominium law makes it possible for foreigners to have the right over the building and the land, but the land officials would have the final say on the success of the condominium application.

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