

CONDOMINIUM INHERITANCE AMONG FOREIGN INVESTORS

In one way or another, foreign ownership restrictions over real property have always existed in Thailand. Although foreign ownership of land is strictly forbidden (except through some investment promotion laws), foreigners are allowed to own houses and condominium units. Condominium ownership, in particular, has become an increasingly popular method of investment by foreigners. When making the decision to purchase a condominium, however, foreigners must comply with several conditions under the Condominium Act of 1979.

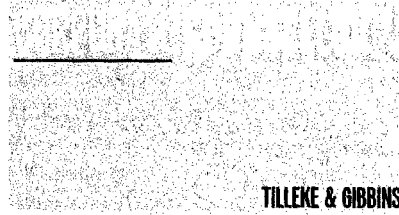
One issue frequently raised by foreign investors is what will happen to their condominium if they pass away. Given the broad range of conditions attached to condominium ownership, foreign investors are justified in wondering about the requirements that will apply to their successor. Are children or relatives abroad able to inherit a condominium in Thailand? Can the condominium be transferred to a successor? Is it possible to arrange a final will to bequeath the condominium to any particular person?

In principle, the answer to all the above questions is "yes", but certain conditions and restrictions will apply. The Condominium Act allows only certain types of foreigners or foreign entities to purchase a condo in Thailand:

- ◆ individuals with Thai residency;
- ◆ those entering Thailand with investment promotion privileges;
- ◆ Thai-registered entities with the majority of shares/ownership held by foreigners;
- ◆ foreign entities granted an investment promotion certificate from the Board of Investment;
- ◆ individuals or entities bringing foreign currency into Thailand or withdrawing money from a non-resident baht account or from a foreign currency account.

In any event, foreigners cannot hold ownership exceeding 49% of the total area in a given condominium project.

The Condominium Act directly addresses the issue of inheritance in case of foreign ownership. It states that only the aforesaid permitted foreigners are entitled to acquire and maintain a condominium through inheritance, whether as statutory heir or inheritor by will, provided that the foreign ownership limitation of 49% of the total condominium area is not exceeded. What this means is that any heir or inheritor will only be able to take ownership of a condominium if they meet the above qualifications. In order to ensure compliance, some decide to bring foreign currency into Thailand again to repurchase the condominium of the deceased and then remit the funds back out of Thailand after completing



registration of the transfer. In case the foreign heir prefers to sell the condominium of the deceased rather than acquire it, he must file a petition and obtain a court order appointing him as an estate administrator to manage the condominium.

If a foreign heir does not meet the above criteria but has nevertheless already acquired the condominium by way of inheritance, he is required to inform the competent land authority in writing within 60 days from the date of acquisition. After providing this notice, he is then further required to dispose of the condominium within one year. This may sound dubious, but it is a clear requirement under the law.

If the inheritor fails to comply with this requirement within the one-year period, the director-general of the Lands Department will have the power to dispose of the condominium. A foreigner who fails to report to the competent officer within the specified period will be subject to a fine not exceeding 10,000 baht and an additional fine not exceeding 500 baht per day throughout the period of violation.

Finally, this leaves the issue of how the statutory heir or inheritor can proceed with claiming ownership of a condominium transferred by way of inheritance from a deceased foreign owner. If the heir wishes to claim ownership, the competent land authority will require him to submit evidence related to ownership of the condominium for investigation. The authority will post a written public announcement at the relevant land office (or in the general vicinity) for 30 days and send out a notice to all other heirs, if any.

The land officer will then register the transfer of the condominium only if no objection or dispute is raised by other persons. This 30-day notice period will not be applicable in the event such an heir has obtained a court order officially appointing him as an estate administrator, in which case the land officer will register the transfer without much question, as long as the above requirements are also met.

This article was written by Dussadee Rattanopas, attorney-at-law, Corporate & Commercial Department, Tilleke & Gibbins. Please send comments to Andrew Stoutley at andrew.s@tillekeandgibbins.com