

## Inheritance of condominium units by foreigners in Thailand

Published: 1/11/2013 at 12:00 AM

Newspaper section: [Business](#)

Condominium units are valuable properties that owners often wish to see passed on to their heirs upon their death. In Thailand, there are a significant number of foreign condominium owners, many of whom are uncertain about property inheritance laws. This article will explore some of the pertinent issues surrounding inheritance by foreigners of foreign-owned condominium units.

The Condominium Act: The Condominium Act B.E. 2522 and its amendments allow foreigners \_ both foreign natural and juristic persons \_ who meet certain qualifications to purchase and own condominium units in Thailand. But the Act stipulates two unwavering legal requirements:

- First, foreign ownership in a condominium project must not exceed 49% of the total floor area of all units combined (51% of the total floor area of all units must be owned by Thais) as specified in Section 19 bis of the Act.
- Second, every foreign individual purchasing a condominium unit must qualify for foreign ownership, as prescribed under Section 19 of the Act.

The following foreign persons are qualified for foreign ownership, so long as the foreign-Thai ownership quota is not exceeded, under the relevant subsections 1, 2 and 5 of Section 19:

- (1) foreign individuals who hold a Permanent Residence permit;
- (2) foreign individuals who reside in Thailand under the laws governing investment promotion;
- (5) foreign individuals who bring foreign currency into Thailand or withdraw money from a non-resident bank account or foreign currency bank account.

Additionally, the Act also states that when a foreigner, who falls under Section 19 (1) and (2), has acquired a condominium unit by legacy in the capacity of statutory heir or inheritor under a last will and testament or by other means, that foreigner is permitted to own the unit, provided that registering ownership of the condominium unit does not cause foreign ownership to exceed the 49% quota, as stated above.

If such registration causes total foreign ownership to exceed the 49% limit, the foreigner will not be eligible to own the unit, and will be forced to dispose of it within one year from the date it was acquired.

Foreign individuals other than those stipulated under Section 19 (1) and (2) who have acquired a condominium unit by legacy must inform the competent authority in writing within 60 days and dispose of the unit within one year from the date of acquisition, regardless of whether the unit is under the 49% foreign ownership quota.

To briefly summarise, a foreign individual may own a condominium unit in Thailand when he or she qualifies as a foreigner under Section 19 (1), (2) and (5). Foreigners who hold a Permanent Residence permit under Section 19 (1) or who reside in Thailand under the laws governing investment promotion under Section 19 (2) may inherit a unit that does not exceed the 49% foreign ownership quota without having to dispose of the unit, while other foreigners can inherit a unit but are required to dispose of the unit within one year.

In our experience, foreign individuals in Thailand usually acquire a condominium unit by remitting foreign currency into Thailand under Section 19 (5). The question here is whether legal heirs or inheritors who fall under Section 19 (5), but who do not meet the requirements under Section 19 (1) and (2), can inherit the unit without having to dispose of it within one year.

This issue was recently clarified by the Land Department, in response to official inquiries. Although the Condominium Act restricts foreign ownership to those who fall under Section 19, and only allows foreigners under Section 19 (1) and (2) to inherit a unit without having to dispose of it, attention must be paid to Sections 1599 and 1600 of the Thai Civil and Commercial Code (CCC), which is the principal law governing succession. This law shall also apply to foreigners' inheritance.

The Thai Civil and Commercial Code: Sections 1599 and 1600 of the CCC rule that when a person dies, his or her estate shall devolve to his or her heirs. The estate of a deceased person includes his or her properties of every kind, as well as his or her rights, duties, and liabilities, except those which by law or by their nature are purely personal to him or her.

Based on the above, if a deceased foreigner remitted foreign currency into Thailand, purchased a condominium unit, and was a qualified foreign individual under Section 19 (5) of the Condominium Act, his or her legal heirs (if also foreigners) would inherit the deceased foreigner's rights, and would also be deemed as foreigners under Section 19 (5). The foreign legal heirs would possess the same rights formerly held by the deceased person and would inherit the unit without having to dispose of it.

After inheriting a condominium unit, the legal heir or inheritor under the last will and testament must register the unit with the relevant Land Office, and must present to the land official the death certificate of the deceased former owner, the last will and testament (or other documents showing the inheritance), a court order appointing an estate administrator (if any), a family tree, and any other requisite documents.

Without a court order appointing an estate administrator, the registration of an inherited condominium unit will be subject to a 30-day public notice requirement. The registration will also be subject to a transfer fee and a specific business tax (if applicable), which is calculated based on the official assessed price of the condominium unit as determined by the Land Office. Inheriting a condominium unit will not be subject to personal income tax and stamp duty.