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Buying a Condo in Thailand

Free Legal Guide

Under the right circumstances, buying a condo in Thailand can be a rewarding purchase and a good investment. If you are a foreigner interested in buying a condo in Thailand there are several issues you need to be aware of.

- Thai law only allows foreigners to buy condos in certain circumstances.
- The listed price of the condo may or may not include applicable taxes, which can be substantial.
- The relative costs and benefits of buying a new condo from a developer or buying a condo secondhand.
- The tax implications of any rental income, and the advantages and disadvantages of setting up a offshore corporation to own your condo.

2 principle restrictions on foreign condo ownership

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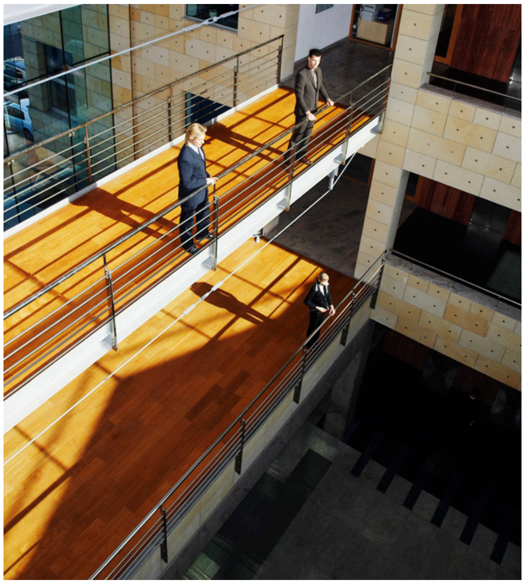
When Can Foreigners Buy Condominiums in Thailand



Restrictions on foreign condo ownership

Thai law is very restrictive when it comes to foreign real property ownership. Buying a condo is generally the only way foreigners are allowed to purchase real property in Thailand outright. Other options include negotiating a long term lease (up to 30 years) or buying real property using a Thai dummy corporation, a practice which, although common, is technically illegal.

There are two principle restrictions on foreign condo ownership. First, foreigners may only own 49% of a single condo development. This is calculated based on the area of the condo units. The total area of the condo units owned by foreigners cannot exceed 49% of the total area of all saleable condo units. If you are buying secondhand from a Thai citizen, check in the development's condo association office to make sure the building has not reached the foreign ownership quota. It is hard to find a completed building in Pattaya or Phuket that has space available for foreigners, so you may have to buy a condo in a development that is still under construction.

The second restriction on foreign condo ownership is a requirement that the foreigner pay for the condo with foreign currency. The foreign currency must be transferred into Thailand and converted into Baht within Thailand. Notice that this requirement prohibits foreigners from financing their condo purchase with a mortgage. Make sure that the money transfer comes from a foreign account in the buyers name or is transferred to an account in the buyer's name. If you bring in cash, make sure to get a receipt showing this from customs. If you are married and purchasing joint property, make sure the transfer is in both of your names. Thai law requires that a Foreign Exchange Transaction Form (FETF) be filed for large foreign currency transactions; make sure you keep copies for your records!

Long Term Leases & Thai Dummy Corporations

Leases in Thailand can last up to 30 years, and can be renewed for another 30 years.

If you are determined to buy a condo in a building that has reached the foreign ownership limit, you have two options. One option is to arrange a long-term lease. Leases in Thailand can last for up to 30 years, and can be renewed for another 30 years. Many developers will tell you that the leases can be renewed in perpetuity-this is false. When you buy a long term lease, plan on it only being valid for 30 years. Although a lease can contain a renewal clause that is valid for one renewal, a renewal clause will only be effective if the landlord cooperates. Check to confirm that the party you are leasing from is the actual owner of the property, or has the owner's power of attorney. You can also sublease from another renter, but only if their lease specifically allows them to sublet. Make sure your lease specifically gives you the option of subleasing the unit to others, or you will be locked in for 30 years. A long-term lease is only valid if it is registered at the Land Department, so insist on officially registering the lease.

In the past, it has been relatively common for foreigners to own property in Thailand by setting up a dummy corporation. The foreigner gives money to Thai friends who set up a Thai corporation to buy the land. Although the Thai citizens own the shares of the company on paper, they are actually nominees or sit-ins for the true foreign owners. This practice is illegal, and recently there has been increased enforcement. Thai citizens who are caught acting as nominees face criminal penalties and stiff fines. Another downside is that corporations owning land must pay a annual tax of 12.5% of the estimated rental annual rental value.

Transfer Taxes

When anyone buys or sells immovable property in Thailand, several taxes must be paid. Keep the cost of taxes in mind when you are looking for a condo. The Land Department collects these taxes when the deed is transferred. When you buy secondhand, the buyer usually pays all of the taxes! This happens because it lowers the purchase price and thus the total taxes due. When buying a condo directly from the developer, the developer usually pays the Special Business Tax (SBT) and splits the rest of the taxes with the buyer 50/50.

The Special Business Tax (SBT) is a 3.3% tax on the sales price. The tax is only applicable if the seller has owned the property for less than 5 years. If you buy a unit in a new development, the SBT will apply, but the sales contract will usually specify that the developer pay it. If the seller has owned the property for 5 years or more, a 0.5% Stamp Duty is owned instead of the SBT.

The second applicable tax is the Transfer Duty, which is 2% of the assessed value. The Land Department assesses a property's value, and the assessment is usually lower than the sales price.

The final tax is the Withholding Tax. The Withholding Tax is a prepayment of the seller's income taxes. If you buy a condo from a developer or a company, the Withholding Tax will be 1% of the assessed value or sales price (whichever is higher). If you buy a secondhand condo from an individual, the Withholding Tax will be higher. When an individual sells a property, the Land Department calculates the amount of Withholding Tax based on the assessed value, and the duration of the sellers ownership. Although the tax is payment for the *seller's* income tax liability, the buyer usually pays.

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Should I Buy A Condo From A Developer Or Buy Secondhand?

Both buying from a developer and buying secondhand have advantages and disadvantages. The greatest advantage of buying second hand is the fact that you know what you're getting. You can tour the condo, and decide whether you like it. On the other hand, the seller will want to make a profit. Buying a unit secondhand is often more expensive than buying from a developer.

When you buy from a developer, you are buying based on a brochure with a floor plan. The developer may have demonstration units set up where you can get a feel for what your future condo will look like, but there is no guarantee that your condo will reach the demo unit's quality standard. But buying from a developer may be your only option if you are looking to buy a condo in a tourist destination such as Pattaya or Phuket, where condo developments rapidly reach their 49% foreign ownership limit.

If you buy from a developer, it is important to make sure that you buy from the right developer. The safest bet is to buy from a developer with a proven track record. Development companies traded on a stock exchange are a safe bet.

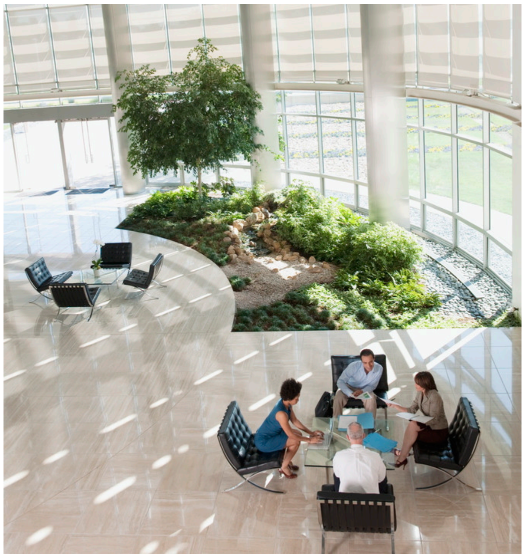
Buying form a first-time-developer can be problematic. First-time-developers have less experience complying with government regulations and getting the required permits. Banks are reluctant to finance their projects, and construction may stop if the developer is unable to pre-sell enough units to pay the bills. If the project fails, you may lose your money. On the other hand, many first time developers are successful, and you may get a great deal if you can stomach the risk!

Rental Income in Thailand

If you plan on using your Thai condo as an investment, don't forget to factor in taxes on rental income. All rental properties are subject to a House and Land Tax, which is 12.5% of the annual rental income. On top of that, the rental income is taxable, and owners will have to pay Thai income taxes on the money. Thai income taxes are calculated using a progressive scale ranging from 0-37%.

The final issue is withholding tax. If you rent the property to a company, that company will deduct 5% of their rent and pay it directly to the government as prepayment of your income tax. This will apply if your developer offers a rental guarantee. If the rental income is being sent offshore, a 15% withholding tax will apply.

The greatest advantage of buying second hand is the fact that you know what you're getting. You can tour the condo and decide whether you like it or not.



Benefits & Drawbacks of Owning a condo through foreign corporation…

Owning a Condo Through An Offshore Corporation

Some foreign condo buyers choose to set up an offshore corporation to own their condo. There are two major benefits to this.

1. When you sell the condo, you can avoid paying the transfer taxes. Instead of selling the condo, you will selling the shares of your company to the condo buyer. Because the company is incorporated outside of Thailand, the sale will not be subject to Thai taxation.
2. The property will be easier to pass on in the event of your death. If you own the property as an individual, you will need to write a Thai will to pass the property on to your heirs. Shares in an offshore company, on the other hand, are considered movable property and will be passed on according to your primary will.

Owning a condo through a foreign corporation has two notable drawbacks.

1. The condo will be subject to an annual House and Land tax. This will apply whether or not you rent out the property, and is calculated on 12.5% of the actual or estimated annual rental income, whichever is higher.
2. You will also have to pay corporate maintenance fees. Setting up a corporation isn't free, and you will have to pay taxes every year to keep it going, even if the company isn't making a profit.

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