

PRE-MARRIAGE & MATRIMONIAL ASSETS LEGAL GUIDE



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The purchase of property almost necessarily follows the founding of personal relationships. Investments for one's future family take front row in projected expenditures. Some couples make these investments even before they tie the knot, while some others choose to wait until they have a legal union to base their decisions on.



Beyond the romantics of planning for one's future family, there are other considerations that must not escape one's mind when taking the investment plunge. One foremost consideration is the law.

The laws of Thailand define which property shall be considered as belonging to the marriage, and which shall be deemed as pertaining to the spouses individually. Aside from this, the laws also dictate which can be owned by whom before, during and after a marriage.

The increasing number of mixed [marriages in Thailand](#) – or that between a Thai national and a foreigner – have made foreigners highly interested in understanding their rights and limitations under Thai law. It is because of this valid curiosity that lawyers are constantly sought out to answer and provide protection to their clients.



Thai law forbids foreign [ownership of land in Thailand](#), save for some exceptions. Marriage of a foreigner to a Thai does not work to lift the prohibition. This poses a big question for foreigners who are planning to invest for their family, yet wish to feel secure with their finances in case the marriage turns wary.

While it is always better to hope that marriages will last a lifetime, there is no harm in preparing for possible setbacks in the union. Even if there is no security on how long the marital bliss will last, the guarantees of the law should stand as a good motivation for one to go beyond emotions and take extra legal caution.

FOREIGN OWNERSHIP OF LAND IN THAILAND

As a general rule, only Thai nationals can own land in the country. Any land bought can only be registered in the name of the local, even if all the funds for the land purchase actually came from the foreign party.

The registration will likewise bear no trace of the foreigner's investment. Before registration is allowed, the foreign spouse is made to confirm in writing that all of the money used to purchase the land belongs to the Thai national spouse and that the foreign spouse has no claim over this money or the property as a common [property of the marriage](#).

There are other means to better protect your assets in Thailand, even when you are married to a Thai spouse. There are several other alternatives available for foreigners to acquire property in Thailand and it is always advisable to seek good legal advice from a reputable law firm before you make any momentous leaps in Thailand.

WHAT COMPRISE SEPARATE AND MARITAL PROPERTY?

Let us have some understanding first of what Thai law considers as separate and marital property.

Under **Sec. 1471 of the Thai Civil and Commercial Code (Thai CCC)**, the following are considered as **Sin Suan Tua** or **Separate Property**:

1. Property belonging to either spouse before marriage;
2. Property for personal use, dress or ornament suitable for station in life, or tools necessary for carrying on the profession of either spouse;
3. Property acquired by either spouse during marriage through will or gift;
4. Khongman (engagement gift given by the man to the woman as evidence that the marriage shall take place; should not be confused with the Dowry or “Sin Sod”).



Sec. 1472 of the Thai CCC likewise provides that if the Sin Suan Tua had been exchanged for other property, or sold for the purchase of some other property, such other property or the proceeds of the sale shall continue to be considered as Sin Suan Tua.

On the other hand, **Sec. 1474 of the Thai CCC** enumerates the following as **Sin Somros** or **Marital Property**:

1. Property acquired during marriage;
2. Property acquired by either spouse during marriage through a will or gift made in writing and declared in such will or document of gift to be Sin Somros;
3. Fruits of Sin Suan Tua.

In case of doubt as to whether a property is Sin Somros or not, it shall be presumed to be Sin Somros.

A COMMON SCENARIO

The flourishing of commerce and [businesses in Thailand](#) opened the country to foreign guests. Inevitably, the visits have led to romantic relationships between foreigners (called “farangs”) and Thais. The internet also contributed to the increased figures. Presently, there are a healthy number of dating sites promoting friendships and eventual relationships between farangs and Thai locals.

Many successful and genuine marriages had resulted from these. Sadly, such is not always the story. We hear narratives of foreigners losing their lifetime savings to women they marry, only to feel scorned when their ulterior motives unravel. Most likely aware that their foreign partners cannot own land in Thailand, some have used the law to their “advantage.” After the foreigner spouse is lured into buying property for her and even her family, he is dumped with a divorce and left with almost nothing to support himself. Some have even enticed their partners to buy them land before marriage so the purchase is considered a “gift” before marriage and thus, considered as separate property of the local.

A foreigner should not feel helpless. Thai law provides safeguards in which the foreign party may avail of to help him have secure investment options.

YOUR LAWFUL OPTION: *BUY A CONDOMINIUM INSTEAD OF A HOUSE & LOT*

The Condominium Act of 1990 (as amended on April 1999) authorizes qualified foreigners to own condominium units in Thailand. The total area of foreign-owned units within the condominium project must not exceed 49% of the total area of all units within the same project.

The following foreigners qualify for condominium unit ownership:

1. Individuals with permanent residence status in Thailand;
2. Individuals who have been permitted to enter Thailand under BOI privileges;
3. Juristic entities registered in Thailand but are classified as “foreign” under the Land Act;
4. Juristic entities which have been granted investment privileges by the BOI;
5. Individuals or juristic entities that have brought foreign currency into Thailand for the purpose of purchasing the condominium unit.



Because a foreigner can [buy condominiums in Thailand](#), registration of the property can be in his name alone, and not the foreign partner or spouse. If the purchase is done before marriage, the unit is considered a separate property of the foreigner. He then has a free hand in disposing of the condominium unit when needed. If it is purchased during the marriage, the investment is considered as a marital property, and the foreign spouse is still entitled to half of the property’s value.

HAVE A LOAN AGREEMENT FIRST, THEN A PRENUPTIAL AGREEMENT BEFORE THE MARRIAGE

For couples who are not in a hurry to tie the knot but are preparing early for their future, having a Loan Agreement is a good option. The Loan Agreement may carry a statement where the local party acknowledges owing money to the foreign partner for the purchase of the property. The loan must be recoverable at any time. Should the intended marriage not push through, the local agrees to pay the foreigner the value of the loan.

When plans for getting married become clear, the couple may enter into a Prenuptial Agreement. The main reason for this is because at the time of marriage, the loan agreement earlier entered into by the engaged partners ceases to become valid. Thus, there would be a need to secure agreements on how property shall be shared, divided and managed during the marriage.

A **Prenuptial Agreement** is a written contract entered into between future spouses as regards the designation and control of marital assets and liabilities, treatment of property and earnings during the marriage, and the potential division of marital property in case of dissolution of the union.



The prenup may contain a provision stating that in case of a divorce, the parties agree to sell the property and share in its proceeds. The local may also choose to pay out her share in the property if she/he is keen on keeping the property for personal use after the divorce.

Some may find the notion of offering the loan or prenuptial agreement unromantic or offensive. Experienced family lawyers will tell you otherwise. The offer of a prenup is a good opportunity to discover the true intentions of the parties to the marriage. The foreign party will realize if the local's intent for the marriage is for love one that is for convenience only. On the other hand, the Thai national will be able to ascertain, through her partner's demeanor and the provisions made in the prenup, if her foreign fiancé is offering marriage only as a means to secure a long-term marriage visa in Thailand.

A well-drafted prenuptial agreement provides the following benefits:

1. It ensures the protection of each of the parties' respective properties by specifying beforehand how these will be disposed of, divided, transferred from one spouse to the other, or whether such will be considered as joint or separate properties;
2. It protects business assets by requiring a spouse to waive all rights to the owner-spouse's interest in the business should the couple divorce or if one of them dies;
3. It protects one spouse from the other spouse's debts. In cases where one spouse incurs debts before marriage, the debtor spouse can waive any claims to the other spouse's assets thereby protecting his or her creditors;
4. It ensures that the children of a previous marriage or relationship, as well as that of the present marriage would be given ample financial support;
5. It keeps the ownership of family businesses and assets within bloodlines by not giving the new spouse any right to make claims on these assets;
6. It helps avoid or at least minimize the possibility of the spouses having to go through the legal battle over property, thereby sparing them from legal expenses in case the matter reaches the court.



The prenup may bear a provision granting sole management of any jointly owned property between husband and wife to only one of the spouses. Without the said provision, management of marital property is automatically shared by both spouses.

LEASING THE LAND FROM THE THAI SPOUSE

While Thai law prohibits foreigners from owning land in Thailand, it does not prevent them from owning the house or building standing on the land.

But how then can the foreigner construct the house or building without a land? He can lease the land registered in the name of the Thai spouse/partner and build the structure on that location.

The Thai CCC makes it possible for foreigners to lease land in Thailand, subject to two qualifications:

1. It must be in writing and be registered at the Land Office if the term of the lease exceeds three years;
2. The lease should not exceed thirty years, although it may be extended to another thirty after its expiry.

This set-up is very common amongst mixed couples buying property in Thailand. The foreign spouse rents the land owned by the Thai spouse, builds a house or building on it, and has the house or building registered in his name. A lease can last for 30 years, and renewable for another 30.

USUFRUCT OR SUPERFICIES

Another means for foreigners to protect their property interests in Thailand is through a contract of [usufruct or superficies](#).

Usufruct is a right to use, manage and derive fruits from immovable property belonging to another. Usufructs may last for the entire lifetime of the usufructuary, or the person who enjoys the usufruct. Unlike a lease, payment of rent is not an element of a usufruct. No other consideration is also needed to make the contract valid.



On the other hand, a Superficies is a form of easement granting the right to use another's undeveloped land for a specific purpose. Like a usufruct, a right of superficies also does not require the payment of rent or any other consideration.

Once a right of usufruct or superficies is registered at the Land Department, the foreign party may enjoy the property.

Foreigners may exercise joint ownership over the building upon the land with their Thai spouse, or even sole ownership over the structures build upon the land. In case of registered ownership over the house, this will become marital property which requires joint management by the spouses. This prevents sole management by the Thai spouse both over the land and house. Thus, consent from both husband and will be required for any act needed to be done on the property.

Other prevalent legal strategies:

Formation of a limited company or a joint venture

As a result of the foreign land ownership restriction, a common strategy employed by foreigners is the formation of a "Thai majority owned but foreign controlled company." Here, the company is structured in such a way that majority in both capital and shares are held by Thais, but the controlling interest over the company's management and affairs is with the foreign investor.

The formation of a [Thai limited company](#) requires the participation of at least 7 shareholders, 4 of which must be Thai. All other legal procedures must be in place in order to protect your investment. Remember too that the regulatory and reportorial requirements must be complied with so the company's status is maintained. Inactive companies that are not generating income may be delisted, so make sure that balance sheets are filed annually and that the company's address is maintained.



Division of Marital Property

The division of [marital property](#) is one issue to be dealt with in case of a divorce, bet it contested or uncontested.

Generally speaking, everything that had been purchased or acquired during the marriage shall be considered as marital property, and must be distributed equally between the divorcing spouses. Any separate property belonging to each of the spouses must not be included in the separation. The Prenuptial Agreement of the parties must also be considered in the task of dividing the assets.

Reaching an agreement on the separation of property is a herculean task. Disagreements on who-takes- what or who-takes-how-much consume hours and hours of negotiation and confrontation. Immovables which are part of the division may be sold, and the proceeds be shared following the division proportion agreed upon by the parties. One spouse may also pay- out the portion of the spouse so he/she may keep the property long after the divorce is granted.



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