

## BUYING CONDOMINIUM IN THAILAND

Before buying a condominium in Thailand, there are many questions in legal aspects that the foreigner should know the answers, below are the listed questions and answers for the foreigners before making decision to buy;

### WHAT IS A CONDOMINIUM?

A condominium is a building or group of buildings that has been created and registered with the Thailand Land Department as a condominium project pursuant to the Thailand Condominium Act B.E. 2522, each of which comprising of personal property separately owned by the owner and common property jointly owned by all or designated owners.

### WHAT IS THE PERSONAL PROPERTY?

Personal property is condominium units located within a condominium project and includes other constructions or land area specifically provide for unit owner (Such as parking lot, garden, storing room, etc.)

### WHAT IS THE COMMON PROPERTY?

Common property is the project land and all common facilities in the condominium including all other parts that are not the personal property, such as swimming pools, lobbies, meeting rooms, elevators, fitness, car parking area etc.

### WHO WILL MANAGE AND LOOK AFTER THE COMMON PROPERTY?

Under the Condominium Act, common property of a condominium project must be managed and looked after by its condominium juristic person appointed or approved in the general meeting of unit owners.

### CAN FOREIGNER HAVE OWNERSHIP OVER CONDOMINIUM UNIT?

Under the Thailand Condominium Act, Foreigners are allowed to own condominium units in Thailand. There is however on a restriction of not more than 49% of the total combined floor area of all units in a condominium project can be owned by the foreigners, for example if there is the total combined floor area of all units in a condominium project is 1,000 square meters foreigners can have ownership over the condominium units for the total area of not more than 490 square meters, the left of 510 square meters must be owned by Thai entities (Thai individuals or Thai companies or partnership) or sold to the foreigners as leasehold condominium units.

### WHAT ARE THE STEPS IN PURCHASING A CONDOMINIUM FROM A DEVELOPER?

The following steps are practicable when purchasing a condominium from a developer or a homeowner. The basic steps are as follows:

1. The seller will ask you to sign a reservation agreement and make a reservation deposit (usually 10 percent of the purchase price), after that they will give you a draft of sale and purchase agreement and time for signing the final agreement (usually within 30 days after signing the reservation agreement) Read the documents right away or take them to a lawyer and have them explained to you.

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2. According to the reservation agreement, you have time for usually 30 days before signing final sale and purchase contract with the seller, in this period you should find a Thai lawyer to review the document (draft of contract presented by the seller) and start the legal due diligence for the purchasing condominium unit to ensure that you are receiving clear and unencumbered title to your purchasing unit.
3. After contact reviewing and the due diligence are clear by your lawyer, you can sign the final sale and purchase contract with the seller and make payment of the price pursuant to the terms in the signed contract.
4. At the closing, the seller's representative and your lawyer will go to the land office to register the transfer of title to ownership of the purchased condominium unit from the seller to you.

### HOW CAN I MAKE PAYMENT OF THE PRICE TO THE SELLER?

Unless the foreigner is permitted to have residence in Thailand under the Immigration law or permitted or to enter Thailand under the investment promotion law, the main requirement under the Condominium Act purchasing condominium unit by a foreigner is that the full purchase price for the condominium unit must have been remitted into Thailand in foreign currency. The seller's bank in Thailand will convert the amount of foreign currency into Thai baht and will issue a Foreign Exchange Transaction form for amount exceeding 20,000 USD or for lesser amounts a credit note and confirmation letter of the transferred amounts on request. Without proof of remittance of the full purchase price into Thailand in foreign currency the land department cannot register ownership of the condominium unit in the foreigner's name.

### DO I HAVE TO PAY ANY TAX WHEN PURCHAING A CONDOMINIUM?

At the Land Office and on the registration date of transfer ownership of the condominium unit, there are taxes and fees must be payable to the Land Office by the seller and the buyer as follow;

1. Transfer fee at the rate of 2% of the appraised value of the condominium unit. This fee will be paid by the seller or the buyer or shared half-half (It can be negotiated and agreed in the sale and purchase contract)
2. In case you purchase the condominium unit from the developer, there is income tax at the rate of 1% of the higher value between the appraised value and the purchase price. Under the Consumer Protection Act, the seller must be responsible for this tax. OR if you purchase the condominium from individual homeowner, the income tax will be collected in a progressive rate by specific formula (case by case), please contact lawyer to calculate the certain amount, however, this tax can be paid by agreement.
3. Business Tax (3.3% of the higher value between the appraised value and the purchase price) OR Stamp Duties (0.5% of the higher value between the appraised value and the purchase price). In case you are buying the condominium unit from the developer or buying from individual homeowner who has owned the condominium unit for not exceeding than 5 years, the business tax of 3.3% will be applicable, however if you are buying from homeowner who has owned the unit for more than 5 years, the stamp duty of 0.5% will be instead. Under the Consumer Protection Act, if buying condo from the developer, the seller (Developer) must be responsible for this tax but if you are buying condo from individual homeowner, the tax can be paid by agreement.

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## DO I HAVE TO PAY ANY TAX WHEN OWNING A CONDOMINIUM?

There is property tax in Thailand (Building and Land Tax), however the condominium homeowner is exempted and does not need to pay the property tax to government from owning condominium for private/family residential purpose. But if condominium unit is rented or leased to the lessee, the unit homeowner will be responsible to pay building tax at the rate of 12.5% from the yearly rent received from the lessee.

## DO I HAVE TO PAY ANY OTHER PAYMENT WHEN PURCHAING A CONDOMINIUM?

There are payment other than the purchase price that the buyer may be responsible such as sinking fund (onetime payment), Common Area Maintenance Fee (monthly or yearly), electric & water meter installation fee, telephone installation fee, and other facilities (if any), all of these payments should be written up and agreed in the sale and purchase contract.

## CAN I SELL OR RENT MY CONDOMINIUM?

You may sell or rent out your condominium unit, but some condominiums may restrict or control renting/leasing and it is very important that you make yourself aware of these policies before buying if you are purchasing as an investment.

## IS THERE ANY TAX FROM MY RESALE?

When you resell your condominium unit, the following taxes and fee will be applicable again;

1. Transfer fee at the rate of 2% of the appraised value of the condominium unit. This fee will be paid by agreement.
2. Income tax will be collected in a progressive rate by specific formula (depends on how long you have owned your condominium unit), please contact lawyer to calculate the certain amount, however, this tax can be paid by agreement.
3. Business Tax (3.3% of the higher value between the appraised value and the purchase price) OR Stamp Duties (0.5% of the higher value between the appraised value and the purchase price). In case you are selling the condominium unit within 5 years, the business tax of 3.3% will be applicable, but if you are selling it after 5 year, the stamp duty of 0.5% will be instead. This tax can be paid by agreement.

## DO I NEED A LAWYER FOR MY PURCHASE? WHY?

Having a lawyer from the very beginning is most important. If you are purchasing a condominium from a developer, you may have 30 days to rescind the reservation agreement for the purchase and your deposit will be refunded. Consult your attorney well before this period expires and before signing the purchase contract. Your lawyer will not only make sure you are getting what you expect, but will alert you to any hidden pitfalls in the condominium contract. One further protection is that your lawyer will be certain that you will receive a clear title to the condominium unit.