

Can your heir inherit your freehold condo . . . are you sure?

If you are a foreigner who has purchased a condominium unit on a freehold ownership basis in Thailand, you may be under the impression that part of the value you purchased was the peace of mind in knowing that you could easily leave the unit to your heir. However, if your heir is also a foreigner then, unfortunately, this is only partially true. Thailand's well known stringent restrictions on foreign freehold ownership of immovable property also curtail if and how a foreigner can own an inherited freehold condominium unit.

Thailand's legislation on condominium ownership is laid out in the Condominium Act (1979) and as further amended (the "Condominium Act"). Only under certain conditions does the Condominium Act allow foreigners to own a freehold condominium unit. Perhaps the best known current foreign ownership restriction is the "49% foreign freehold quota"; with very limited exceptions, foreign freehold ownership cannot exceed 49% of the total floor space of a condominium project in Thailand. Furthermore, pursuant to Section 19 of the Condominium Act, even where foreign freehold space is available, only foreigners who meet one or more of the following conditions are entitled to receive a freehold title to a condominium unit in Thailand, regardless of how they received the unit:

- (1) *Any foreigner permitted to permanently reside in the Kingdom under the Immigration Act;*
- (2) *Any foreign immigrants permitted to enter the Kingdom under the Board of Investment Act;*
- (3) *Any alien juristic person registered under Section 97 and 98 of the Land Code;*
- (4) *Any alien juristic person qualified under the 24 November 1972 Announcement of the Revolution Committee No. 281 and which has had a Board of Investment Certificate granted under the Board of Investment Act; or*

(5) *Any alien or alien juristic person who has brought foreign currency into Thailand or who has withdrawn Thai Baht currency from their foreign resident Thai Baht account or who has withdrawn money from a foreign bank on deposit in Thailand. [Pursuant to Section 19 ter (5) of the Condominium Act, the amount of currency required under this paragraph (5) is defined as “not less than the price of the unit to be purchased”.]*

The Condominium Act outlines clearly that any foreign person who does not fulfil at least one of these conditions is not entitled to own a condominium unit in Thailand.

What does this mean with regard to inheritance? Obviously, if you are a foreigner and your heir is a foreigner then, the 49% quota would not be an issue as the unit would pass from one foreigner to another maintaining the same foreign/Thai ownership ratio before and after inheritance. However it is quite possible, even quite likely, that your foreign heir might not meet any of the additional Section 19 criteria for foreign freehold ownership of a condominium. In such case, while your heir may have legally inherited your condominium unit, they will not be legally eligible to continue owning it and Section 19 septem of the Condominium Act, as follows, would then be applicable:

All foreigners not qualified under Section 19 who receive the condominium unit either by inheritance or in any other way, must report the matter to the relevant administrative official within 60 days from the date they receive such property and they must then sell the property within one year from the date they receive it, otherwise, the provisions of Section 19 quinque shall be applied mutatis mutandis.

Section 19 quinque of the Condominium Act provides that if the said foreigner fails to sell the condominium unit within the time allotted, the Director of the Land Department shall have the right to sell the unit.

Thus, if your condominium unit is inherited by your foreign heir, such heir must inform the land officer at the Provincial Land Office or the Branch Land Office respectively where the condominium is located within 60 days of such inheritance. Then, if your foreign heir does not meet the criteria under Section of 19 of the Condominium Act, such heir must comply with Section 19 septem Condominium Act and either sell the condominium unit themselves or face having the Director of the Land Department sell the unit. Note, however, that your foreign heir would have up to one year after inheriting the unit to either sell the unit or comply with Section 19. Most likely the best, if not the only, option for your heir to comply with Section 19

would be for your heir to then transfer the relevant foreign currency into Thailand. After such transfer your foreign heir would then be entitled to continue to own the freehold condominium unit in perpetuity.

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