

# Buying & Selling Property in Thailand : F.A.Q

## Can I Own a House and Land in Thailand?

*Ownership of land is governed by the Land Code BE 2497 (1954), the Civil and Commercial Code, Land Reform for Agriculture Act BE 2518 (1975) and the regulations set forth by the Ministry of the Interior.* Under Thai law, any person can register any type of building in their own name, therefore a foreigner can own a structure (for example a house) erected on the land and may register such ownership (with proof) at the Amphur (local district) Land Office. Certainty of possession of land and house is assured by being the owner of the house. If arranged in this manner, then the house will be separate from the land, and will not be a component part under Civil Law. Ownership of land by foreigners, on the other hand, is a totally different story, and is highly restricted in the Kingdom of Thailand. Having said that, it isn't impossible for a foreigner to own freehold land, provided they abide by some strict rules and/or fall within certain conditions as follows:

- **Become a Thai resident/citizen**
- **Receive an inheritance** as a statutory heir under section 93 of the Land Code, in this instance, the total area including the land which has already been acquired (or has not yet been acquired) shall not exceed that specified in section 87 of the Land Code, i.e. not more than 1 Rai for a residential purpose.
- Bringing money into the Kingdom for investment to the amount as prescribed in the **Ministerial Regulation**, which shall be **not less than Baht forty million**. In this instance, the land to be acquired must be for a residential purpose and must be of not more than 1 Rai in area, provided also that permission must be obtained from the Minister. Under section 96 of the Land Code, the application for such acquisition of land shall be in accordance with rules, procedures and conditions set out in the Ministerial Regulation
- Applying for acquisition of land under other laws such as the **Promotion of Investment Act, B.E. 2520 (1977)**, the Industrial Estate Authority of Thailand Act, B.E. 2522 (1979), the Petroleum Act, B.E. 2514 (1971). Detailed Information regarding the Promotion of Investment Act and the Industrial Estate Authority of Thailand Act can be obtained from the Board of Investment (BOI) at tel. + 66-2537-8111 and from the Industrial Estate Authority of Thailand at tel. +66-2253-0561 respectively.
- **30 Year Lease with Options** - you can have a 30 year lease with a prepaid option to renew for a further two periods of 30 years each. The foreigner may also be given the option to purchase the land should the law in respect of foreign ownership of land change in the future. In order to be enforceable, any lease for a period of longer than three years must be registered, which involves payment of a registration fee and stamp duty based on a percentage of the rental fee for the whole lease term. The original registered lease remains in force and effect even if the property is sold. The drawbacks to a lease include the fact that the parties can contractually agree to renewals, but this right cannot be registered and is not effective against a purchaser of the property, and that the lessee cannot (without the lessor's consent) sublease, sell or transfer his or her interest.
- **Usufruct Interest (Sidhi-kep-kin)** - gives you temporary ownership rights to things on or arising from the land. In practice, a usufruct is limited to a 30 year maximum period; like leases, the agreement can be successively renewed. In contrast to a lease, a usufruct interest can be sold or transferred, although it expires upon the death of the holder of the usufruct and therefore cannot be inherited.
- **Limited Liability Company** - this form of purchasing property is the most popular with foreign investors as the Articles of Association can be varied to allow greater protection for foreign minority shareholders where majority Thai ownership is required under the "Alien Business Law". Thai Law requires that 51% of the shares be held by Thai juristic persons, however, any company with more than 40% foreign interest that purchases land will be investigated by the Central Land Office in Bangkok (under Section 74 of the Land Code) to ensure that the company has not been organized in an attempt to circumvent the prohibition against foreign ownership of land. This results in the foreign ownership of the company being limited at 39%, but with changes to the Articles of Association, the use of two tiered stocks (ie. Ordinary Shares and Preferred Shares with different voting rights), plus the foreigner being the only director of the company who can commit or bind the company in any contractual dealings - it is possible to effectively give the minority shareholder control over the company. Further information can be sought online at the Department of Lands information pages.

## My Wife is Thai, Can She Own Land?

Prior to 1998, any Thai woman who married a foreigner would lose her right to purchase land in Thailand. She could, however, still retain land that she owned prior to marrying the foreigner. However, more recent Ministerial regulations (1999) now allows Thai's married to foreigners the right to purchase land, but the Thai spouse must prove that the money used in the purchase of freehold land is legally solely theirs with no foreign claim to it.

This is usually achieved by the foreign spouse signing a declaration stating that the funds used for the purchase of property are Thai spouse's and are beyond his claim.

## Can I Own a Condominium in Thailand?

**YES.** Buying a condo is perhaps the simplest and easiest option available to foreigners. The only restrictions on purchasing a condo, are that the percentage of units sold to foreigners within the building complex cannot exceed forty nine percent (49%) *although this has varied at times* of the total number of units in the condo block; and that the funds used to buy the condo have been remitted from abroad and correctly recorded as such by a Thai Bank on a **Tor Tor Sam**. Purchases of condos by foreign individuals come under the jurisdiction of the **CONDOMINIUM ACT (No. 3) B.E. 2542 (1999)**. The owner of each condo is issued with a certificate of unit ownership. The certificate also has a statement saying exactly what percentage of rights over the common areas of the building each owner has.

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*We hope that you find this brief guide useful. If there are any points that aren't listed here or if you need more information, please get in touch with us at [info@thai-realestate.net](mailto:info@thai-realestate.net) or call us on Tel. +66(0)38-757079*



## Do They Have Title Deeds in Thailand?

There are broadly 4 types of Title that are used as evidence of ownership, possessory rights & other interests in land:

- **Chanote, or Title Deed (shown in the image on the right)** - A Chanote is a certificate for ownership of land. A person having their name shown on the deed has the legal right to the land, and can use it as evidence to confirm the right to government authorities. This is the most secure type of land title and is highly recommended. The title deed has been issued by using GPS to set the area and boundaries of the land, which is a very accurate method. It is the long term goal of the Land Department that all land in Thailand will be covered under the Chanote title system. The chanote document is issued in Thai language. Over the years, the document has modified its appearance. Nowadays, this document usually is issued on a single sheet of paper (36 cm tall and 24 cm wide), with content on both sides. The symbol of the Thai Nation, centrally on top of the front-side, is printed in red color. All these documents show the word CHANOTE in the headline, and, in addition in newer documents, the official classification, N. S. 4 J., appears on the top, right hand side. The front-side includes name and address of the landlord, the land size (in rai, ngan and tarang-wah), a map of the land (north-oriented) with all boundary-markers and its numbers, plot-numbers, and the scale of the map. The original scale of the map is often 1 : 1,000; however, the map in the document might be displayed in another given scale. The reverse side of the document includes chronologically all legal changes, e.g. the name of the new landlord when the land was sold, a person or bank granting a mortgage, a lease-holder (if the owner leased out his land for 30 years), or usufructuray (for life).
- **Nor Sor Sam Kor (Confirmed Certificate of Use)** - This certifies that the person named on the certificate has the confirmed right to use the land, implying all requirements for the issuance of the title deed have been met and issuance of the deed is pending. They may be sold, leased, used as mortgage collateral and etc. The holder of this certificate cannot leave the land unattended for more than 12 years. The N. S. 3 K. document is issued in Thai language. It looks like a chanod document and consists of a single sheet of paper. The symbol of the Thai Nation, centrally on top of the front-side, is printed in green color. The headline is given as หนังสือรับรองการทำประโยชน์ (which reads as 'Nung-seu rub-rong gahn-tum-pra-yoht' and means *document for having obtained a title* or simply *title*). It does not contain the word โฉนด (chanod). The official classification น. ส. ๓ ก. (N. S. 3 K.) appears on the top, right hand side. The front-side includes name and address of the land-lord, the land size (in rai, ngan and tarang-wah), a map of the land (north-oriented) with all boundary-markers and plot-numbers, and the scale of the map. The original scale of the map is 1 : 5,000; how-ever, the map displayed in the document might be reproduced in a larger scale, e.g. 1 : 1,250. The reverse side of the document includes chronologically all legal changes. Land with this title was surveyed decades ago by an old method which was not as precise as a modern method (GPS-based) nowadays in use. The geographic position is often determined by aerial survey photography. One should expect to get a roughly defined boundary (of a few meters) of a certain plot, rather than a precise one, especially when border poles cannot be found.
- **Nor Sor Sam (Certificate of Use)** - Similar to the above Confirmed Certificate of Use except that not all of the formalities to certify the right to use have been performed. Before a transfer can be made, a notice of intent must be posted and then 30 days public notice is necessary before any change of status over the land can be registered. The N. S. 3 document is issued in Thai language. It usually consists of a single sheet of paper. The symbol of the Thai Nation, centrally on top of the front-side, is printed in green color. The headline does not contain the word *chanod*. The official classification น. ส. ๓ (N. S. 3) appears on the top, right hand side. The front-side includes name and address of the landlord, a map of the land (north-oriented) with all its boundaries, and the scale of the map. Land with this title was surveyed not precisely, and not marked with border poles. The borderline and position of the land was only recorded in relation to neighboring land. Consequently, the borderline remains unclear, maybe up to a few meters, and the area size of the land is inaccurate. There is a legal requirement that 30 days of public notice is necessary before any change of status over the land can be registered, which enables neighbors to raise objections. A land that holds this title cannot be partitioned. Before a sales contract is made, detailed and comprehensive information should have been obtained. A wise precaution is to ask the landlord to stake out the boundaries and then ask neighboring land-lords to confirm the vendor's interpretation of the boundary. The results, being written down, mapped and simple surveyed, should be acknowledged by signature from all parties, including the village mayor and witnesses.
- **Sor Kor Nung (Certificate of Possession)** - This recognizes that a person is in possession of land but the Certificate does not imply that there are any rights associated with the possession. It is not transferable, but a person in possession may transfer physical possession and the new possessor may apply for a new Certificate of Possession. The S. K. 1 document is issued in Thai language. It consists of a single sheet of paper (reverse side empty), and is not similar in appearance to a chanote document. The symbol of the Thai Nation, centrally on top of the front-side, is printed in black color. The headline is given as กรมที่ดิน แบบแจ้งการครอบครองที่ดิน which means translated: "Department of Lands – Notification of Taking Possession of Land". The official classification xxx (S. K. 1) appears on top, left hand side. The document includes name and address of the person who took possession of the land, the land size (in rai, ngan and tarang-wah), a description of the borderlines, and a simple sketch-map. The S. K. 1 document publicly announces who took possession of the land. In 1954, the people who took possession of land were requested by the government through the land offices to declare and register their acquisitions. Upon this, the S. K. 1 document was issued with official signature and seal. In 2005, registration ended; thereafter no such documents are issued. In case there is proof that the person who took possession of land acted in accordance with the law, then a higher-ranking document can be applied for.

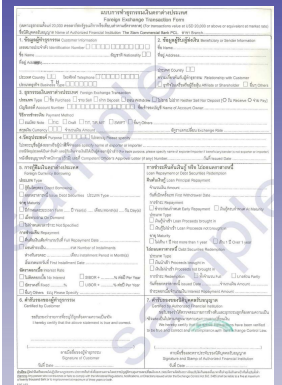
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*The Chanote and Nor Sor Sam Kor are the only titles over which registerable right of ownership or lease can exist and are as such the only ones that a prudent foreigner should consider.*

*You should always ask to see a copy of the front and back of the land or condo title deed.*



“Maintenance fees are of key importance in paying towards upkeep of communal areas and keep the property looking good, which in turn makes it more desirable and easier to sell/buy”



## What is The Condominium Act?

The Condominium Act is the pre-eminent legislation regarding the ownership, lease and use of Condominium units. Its provisions provide for the rights and duties of both landlords and tenants. It has been recently amended in order to answer for its past deficiencies particularly in the field of buyer protection. As it stands, the Condominium Act provides protection even prior to the signing of any contract. It requires that the developer and the condominium entity to secure copies of all the advertisements used in the promotion of the sale of the units until all have been sold. The law treats these advertisements as being incorporated in the purchase agreement and any deviation from the terms and conditions found in both the agreement and the advertisements shall be construed against the seller and in favour of the buyer.

Another important amendment is the requirement of observing a standardized form of contract for all condominium purchases. Failure to do so would result in the agreement being unenforceable. The amended law also provides for the party who shall pay the taxes, common service expenses, and common maintenance of unsold condominium units. The law also provides for regulations

## What is a Tor Tor Sam?

A Tor Tor Sam (TT3) is an official bank document issued by the receiving bank upon the receipt of foreign currency into Thailand. In English, it is called a “Foreign Exchange Transaction Form” and is required if you are purchasing a condominium in Foreign Ownership where value is equivalent or more than \$20,000 USD. You must request this from your bank and the Tor Tor Sam must specify that the remittance is solely for the purpose of purchasing a property - Code 5.22 This document must be presented at the Land Office when transferring ownership into your name, it is very important and the transfer cannot be done without it. Similarly if you are buying in Foreign ownership but the amount is less than \$20,000 USD, you should request a Credit Advice Note from your Thai Bank that states the money has originated outside Thailand. Just remember that if you are a foreigner and are buying in foreign ownership, then you must show that your money is foreign too. This form will assist if you wish to take your money back outside of Thailand or buy another property at a later date. The following lists the scenarios for obtaining a Tor Tor,

- If you transfer foreign currency greater than \$20,000 USD to Thailand straight into the developer's bank account, then the developer can get the TT3 form from the bank for you.
- If you transfer foreign currency greater than \$20,000 USD to Thailand into your real estate agent's bank account, then the real estate agent can get the TT3 form from the bank for you.
- If you transfer foreign currency greater than \$20,000 USD into a bank account you hold in Thailand and subsequently transfer the money to the developer's/ Agent's bank account in Thailand then YOU are responsible for getting the TT3 form from your bank.

Please note that if you have transferred money into Thailand over 10 years ago and you lose or did not get a TT3 banks don't hold records that long and there is no way the bank can provide you with a TT3. Keep any and all TT3 in a safe and secure place.

## How is a Condominium defined by Thai law?

The Condominium Act (The Company-Owned Housing Act of 2522) defines a condominium as a building featuring privately-owned property and common property, and a building that can have its separate portions sold individuals or groups for personal property ownership. The owners of condominium unit own the land though a juristic person of condominium.

## Land Appraisals & Valuations

Finding the exact appraisal price for land is difficult, since there are generally three different appraisal rates; the government rate, the appraisal company's rate and the rate which is considered to be fair market value of the land. Over the last few years all of these rates have begun to come closer together.

## What Are Maintenance Fees & Sinking Fund?

**Maintenance Fees** are applicable when you buy property that is part of a gated development (House & land), or in a Condominium, or other building complex that share a ‘common area’ such as gardens, swimming pool etc or share services such as elevators, security guards etc. The Maintenance fees are of key importance in paying towards upkeep of communal areas and keep the property looking good, which in turn makes it more desirable and easier to sell/buy. You should try and ascertain how much the monthly maintenance fees (also known as ‘common area fees’ or Strata/Body Corp in Australia) are. This will often be documented within purchase contracts of new buildings or when buying off-plan with a developer, but are often omitted from any resale contracts. You can find this out easily either by asking your agent, the seller, or Juristic office at the Condominium. Fees can vary greatly but must be in accordance to the ration of space that you own – therefore is often shown as a “price per square meter” rate. This amount is also registered under the rules and bylaws of the condominium at the relevant land office and any increase must be agreed with a majority vote amongst all co-owners of the building.

**Sinking Funds** are mostly applicable to new-build condominium developments ie. Buying off-plan from a developer rather than re-sale purchases, for example. The Sinking fund is normally a one-time payable fee that is set aside as a ‘reserve’, to pay for any non-routine maintenance, structural damages or repairs and replacement to commons areas or infrastructure. This fund can be used only if agreed to buy the condo association. As the age of the development increases over time the Sinking Fund may need to be ‘topped up’.

## What Taxes and Costs are Applicable to Buying & Selling Property?

Whenever a property in Thailand is bought and sold or ownership transferred on the title deeds, there are four taxes that need to be taken into account - many buyers, especially foreigners, fail to take these into account. These 'taxes' are applied at the local Land Registration Department (for properties in Pattaya, the Land Office is located on Soi 17 Pattaya, South Pattaya).

**Land registration** (transfer fee) of **2.0%** of assessed value of the land.

**Stamp Duty/Fee** of **0.5%** of the assessed value or the sale price - whichever is higher.

**Specific Business Tax** of **3.3%** of the assessed value or the sale price - whichever is higher - this will be applied to all sales by Companies and to any private sales that occur *within 5 years* of the date of purchase.

There are no hard and fast set rules on who pays for which taxes, although the majority of transfers are shared equally between both parties. It also often is part of the negotiating process, so make sure you discuss it with the agent/lawyer. Income Tax (see below) however is largely seen as the responsibility for the seller.

**Income Tax** - this is calculated on a very complex formula based on the assessed value of the property, the length of time owned and the applicable personal income tax rate. In practice, this often works out to around 2% of the price for low to medium value properties, and up to 3% for higher value properties. Because of the local system of taxing property *on an arbitrary assessed value* as determined by the Land Department, rather than true market value, these taxes could amount to a considerable percentage of the purchase price. Therefore, if you haven't determined during the negotiations that the seller will pay the taxes upon transfer, you could get a nasty shock when a tax bill arrives - often some two or three months after the sale is completed.

Here's a guide as to how income tax is derived: A person earning money from selling property in Thailand is taxed as follows: A withholding tax (from 0 to 37%) the tax rate varies based on the income of the seller. The basis of the tax is the government appraised value less a deduction of between 50% and 92%, depending on how long you own the condo. **The longer you own the condo, the lower the deduction from the appraised value**, and therefore your withholding tax liability is higher.

### Withholding Tax Rates

|                                  |       |
|----------------------------------|-------|
| Income of 0 to 80,000 Baht       | : 0%  |
| Income of 80,001 to 100,000      | : 5%  |
| Income of 100,001 to 500,000     | : 10% |
| Income of 500,001 to 1,000,000   | : 20% |
| Income of 1,000,001 to 4,000,000 | : 30% |
| Income of 4,000,001 and above    | : 37% |

### Specific withholding rates are as follows:

|   |
|---|
| 92% if you have held the property for one year; |
| 84% for two years;                              |
| 77% for three years;                            |
| 71% for four years;                             |
| 65% for five years;                             |
| 60% for six years;                              |
| 55% for seven years;                            |
| 50% for eight years or more.                    |

So, for example, you have bought a condo **6** years ago with an assessed value of **646,000** Baht and you are selling it today, when the land office has assessed the value at **1,030,000** Baht. This is an increase of **384,000** Baht. Using the lists above; Withholding tax rate for 384,000 Baht = **10%**. Specific withholding rates for 6 years = **60%**

Therefore we can calculate:  $384,000 \times 0.1 \times 0.6 = \underline{\underline{23,040 \text{ Baht}}}$

## Are There Property Taxes in Thailand

There are no property taxes as such in Thailand that are exactly equivalent to the property taxes in the west (things like council tax etc rather than stamp duty taxes when buying/selling a property which will be talked about separately), however, the most comparable taxes on properties in Thailand are the Land Tax and the Structures Usage Tax. The Land Tax levied on land is so miniscule, that in practice the body charged to collect it, rarely bothers to do so, and if they do, they usually wait several years until the amount accumulates. The second tax, the Structures Usage Tax, relates to buildings, is collected by the municipal office or district office, and is only applied to properties used for commercial purpose.

## Where Can I get Further Information?

For further specific advice on property ownership, buying and selling please contact us at [info@thai-realestate.net](mailto:info@thai-realestate.net), or call us on Tel. +66 (0)38-757079, +66 (0)38-757230

## What is a 'Free of Debt' Letter?

This document is required if you are selling your condo and as the name suggests it is a letter that is issued by the Juristic Manager of the Condominium development to show that you don't owe any outstanding monies, such as unpaid bills, maintenance fees etc. This is the responsibility of the seller to arrange this.

It is often overlooked in its importance and allows for a 'clean transfer' to the buyer. Sellers should keep in mind that some Juristic Managements can be slower to act than others and that this needs to be arranged in a timely manner because the transfer cannot be done at the Land Registration Office without it.

*Whilst every care has been taken to ensure that all the information compiled here from various sources is accurate, please bear in mind that laws and ministerial regulations are subject to change and revision from time to time.*

*We therefore are unable to accept any responsibility for inaccuracies, omissions, loss or damage as a result of any information provided in good faith contained herein.*

*Thank you for your kind understanding.*