

## Can your heir inherit your freehold condo? UPDATE

If you are a non-Thai 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. For quite sometimes the inheritance of a condominium unit by a non-Thai person or entity was the subject of legal debate in Thailand. And until recently, and as we explained in our previous article on this subject, the prevailing opinion was not fortunate for a non-Thai person or entity.

By way of a bit of background we should explain that 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 non-Thais 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 non-Thais 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 non-Thai permitted to permanently reside in the Kingdom under the Immigration Act;*
- 2) *Any non-Thai permitted to enter the Kingdom under the Board of Investment Act;*
- 3) *A juristic person under Section 97 and 98 of the Land Code which was registered as a juristic person under Thai law;*
- 4) *Any non-Thai 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 non-Thai individual or 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*Thailand or who has withdrawn Thai Baht currency from their foreign resident Thai Baht account or who has withdrawn money from a foreign bank on deposit in Thailand.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* non-Thai person who does not fulfill 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 non-Thai and your heir is a non-Thai then the 49% quota would not be an issue, as the unit would pass from one non-Thai to another maintaining the same foreign/Thai ownership ratio before and after inheritance. But it is possible, even quite likely, that your non-Thai heir might not meet any of the additional Section 19 criteria for foreign freehold ownership of a condominium. In such a case, it has been argued, and it was previously government agency policy, that your heir would *not* be legally eligible to continue owning the inherited condominium unit and that Section 19 septum of the Condominium Act, as follows, would then apply:

*All non-Thais 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 unique shall be applied mutatis mutandis.*

Thereafter, Section 19 unique of the Condominium Act provides that if the said non-Thai heir failed to sell the condominium unit within the time allotted, the Director of Land Department would have the right to sell the unit. Thus, if your non-Thai heir inherited your condominium unit, he would be required to inform the relevant Land Office within 60 days of such inheritance. *And then if*, your non-Thai heir did not meet the criteria under Section of 19 of the Condominium Act, he would be required to comply with Section 19 septum Condominium Act and either sell the condominium unit or face the requirement that the unit be sold no later than one year after inheriting it.

The “legal debate” that we mentioned hereinabove relates to the issue of whether or not a non-Thai heir fulfills the conditions outlined in Section 19 (5) of the Condominium Act that would allow him to keep owning the inherited unit. In other

words: is it legally possible for the heir to fulfill Section 19 (5) Condominium Act without the need to bring additional foreign currency into the Kingdom?

The Land Department has revisited this issue in light of the succession sections of the Civil and Commercial Code of Thailand (“CCC”). Section 1599 CCC and Section 1600 CCC provide that an heir inherits “*properties of every kind, as well as his rights, duties and liabilities, except those which by law or by their nature are purely personal to him.*” For some time many have argued that this means that an “heir” (any heir, Thai or non-Thai) inherits, among other things, the “right” to own a condominium unit if the original right was established by the deceased under Section 19(5) of the Condominium Act.

Fortunately for non-Thai heirs, the Land Department’s most recent formal legal opinion on the matter corresponds with this interpretation—in other words, that a non-Thai heir inherits not just the condominium unit but also the rights under Section 19(5) by which the deceased owner acquired such right which allows the heir to retain ownership of the unit indefinitely.

However, in closing it should be noted, that the Land Department’s interpretation has no legal effect. It is merely an opinion. And until the courts begin to sufficiently and consistently treat any such cases or better, the law in this regard is further clarified, the legal grounds of long-term ownership of an inherited condominium unit by a non-Thai remain uncertain.

---

DUENSING KIPPEN is an international law firm specializing in business transaction and dispute resolution matters, with offices in Bangkok and Phuket, Thailand and affiliated offices in 45 other countries. Visit them at: [duensingkippen.com](http://duensingkippen.com)