



## **Thai property law (legal opinion): buying land and ownership registered in your Thai spouse's name**

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As foreigners can't own land themselves many foreigners living in Isaan buy land and register ownership in their spouse's name or sometimes in the name of a Thai fiancée or girlfriend. Almost every foreigner in the North-Eastern part of Thailand, and who invested in Thai real estate, made the investment in land through their Thai spouse or Thai partner.

### **Can I buy land or real estate on my Thai spouse's name?**

Foreigners married to a Thai national can't own land themselves but the Land Department will allow transfer of ownership of the land to the Thai national who is married to a foreigner after a joint statement ' [letter of confirmation](#) ' by the couple stating that the money expended on the land is personal property of the Thai spouse and not a common property ( *Sin Somros*

) between husband and wife or a personal (

*Sin Suan Tua*

) of the foreign spouse. This procedural requirement is based on a regulation issued by the Ministry of Interior (March 1999).

The regulation issued in 1999 is based on the principle of section 1472 of the Civil and Commercial Code that if personal property has been exchanged for other property (in this case land) that property becomes a personal property of that spouse. If the land would have been bought with personal property of the foreigner or with money part of the common property between husband and wife the land would under the section 'property between husband and wife' in the Civil and Commercial Code become a marital property and therefore would lead to unlawful joint ownership in land by the foreigner.

- Read more: [Information on the procedure issued by the Land Department](#)

Thai law requires that the land (in practice this will often be land and house) becomes a personal property of the Thai national during marriage and not a matrimonial or joint property between husband and wife.

### **Management of property between husband and wife**

Certain legal acts with regards to jointly owned immovable properties between husband and wife must be jointly managed by husband and wife (section 1476 of the Civil and Commercial Code), however; a prenuptial agreement, correctly made prior to the marriage, may grant sole management of jointly owned property between husband and wife to one of the spouses. Without a prenuptial agreement, immovable property which is jointly owned by the spouses must under Thai law be jointly managed by the spouses. However, if one of the spouses is a foreigner the land can't become a joint matrimonial property between husband and wife and section 1476 does not apply. As a personal property of the Thai spouse it will be managed by the Thai spouse, irrespective any prenuptial agreement (e.g. the Thai spouse can sell the property without the consent of the foreign spouse).

Foreigners can however protect their interest in the property by entering into a separate usufruct agreement with their Thai spouse, or in case of undeveloped land a right of superficies. Secondly, it's only the land aspect of the property that is restricted for foreign ownership, not the structures upon on the land or immovable property as a whole. Foreigners are allowed to have joint ownership over the building upon the land with the Thai spouse, or even sole ownership

over the structures built upon the land. If the foreigner has registered joint ownership over the house he prevents sole management by his spouse over the property as a whole (land and house). The spouses would require mutual consent to manage the property (section 1476). Ownership or co-ownership must be registered at the Land Department. In this case it is not possible to also register a usufruct, but in case of undeveloped land a right of superficies is possible.

The right to avoid any agreement between husband and wife in section 1469 of the Civil and Commercial Code will have partly effect on registered real rights like the right of usufruct or superficies (as long as they are registered on the title deed at the Land Department). When registered the usufruct or superficies becomes a real right (passed the agreement stage) and therefore the Thai spouse would need a Court order to cancel the usufruct agreement, therefore making registered real rights an acceptable protection for a foreign spouse. Even though the usufruct could be avoided or canceled in Court in a divorce, as it is entered into during marriage, the land or value will not per definition be allocated to the Thai spouse in a divorce. How the properties will be divided depends on several factors (keep a records of all payments) and the section property between husband and wife in the Thailand Civil and Commercial Code.

Section 1469: 'Any agreement concluded between husband and wife during marriage may be avoided by either of them at any time during marriage or within one year from the day of dissolution of marriage; provided that the right of third persons acting in good faith are not affected thereby'.

Protection in case of land and house purchase on the name of the Thai spouse:

- (a) agree on the registration of a Right of Usufruct in favour of the foreign spouse, or;
- (b) separate land and house and register the structure upon the land as joint or personal property of the foreign spouse. (in this case an additional Right of Usufruct is not possible, but as a general protection keep a record of all documents and payments made to be used as proof in case of a divorce), or;
- (c) land and house is registered in the Thai spouse's name and the foreign spouse accepts full management and ownership by his or her Thai spouse.

In case of undeveloped land purchased by the foreign spouse in the Thai spouse's name the options are:

- (a) agree on the registration of a Right of Superficies in favour of the foreign spouse
- (b) apply for the building permit in the foreign spouse's name (option a an b guarantee full ownership of the structure and use of the land by the foreign spouse)
- (c) the building permit is in the name of both spouses and de house becomes a joint property (in this case a Right of Superficies is not possible, but as a general protection keep a record of all documents and payments made to be used as proof in case of a divorce), or;
- (d) the land and building permit is in the Thai spouse's name and the foreigner accepts full ownership and management by his or her Thai spouse.

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### **Thailand Prenup or not?**

A [prenuptial agreement](#) correctly made with your Thai fiancée prior to the marriage certainly has some benefits as it specifies the intentions regarding financial arrangements and personal properties of the parties at the time of marriage. However, as the most important asset in Thailand during a marriage is often real estate the effect of a prenuptial agreement is limited, as land or land and house is owned as personal property of the Thai spouse and therefore is not governed by the prenuptial agreement.

### **Buying land in a Thai Girlfriend's name**

If you buy land in a Thai girlfriend or friend's name the Land Department does not require proof that the money expended on the property is personal property of the Thai national. The reason for this 'letter of confirmation' by the Land Department in case of a Thai foreign marriage is simply to prevent the land to become a joint matrimonial property between husband and wife under Thai family laws, which would not be allowed under the Land Code Act. In case of a Thai girlfriend this is not the case. The foreigner may loan the money for the property to his girlfriend or she may accept the land as a gift. It is not allowed under the Land Code Act when the Thai national is 'acting as the nominee owner or agent on behalf of the foreigner'. On registration the Land Office could require proof from the Thai national that he or she is not acting as a nominee owner or agent on behalf of a foreign buyer as this would not be allowed under the Thailand Land Code Act.

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