

## PROPERTY IN THAILAND: Part 32 \_ Defining a condominium

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To start we will look at exactly what a "condominium" is.

The definition of a condominium under Thailand's Condominium Act (2008) is broadly consistent with the corresponding definition in many other countries: a building that can be divided into units for individual ownership and in which owners will have ownership of common property. In effect, this describes an adjoining group of townhouses or flats in which the individual owners own their discrete unit outright and have a joint ownership interest in, and responsibility for the common property.

There are no specific requirements regarding the number of units or the dimensions of the building or its units.

The Condominium Act includes in its list of common property the land on which the condominium is situated, the land provided for common benefit and the building and its parts that are provided for use or for common benefit.

In layperson's terms, this incorporates the underlying lands, the building's superstructure, the hallways, the lifts and the stairwells, among other things.

In up-market developments, common property may also include perks such as sheltered parking areas, landscaped gardens, a private playground, a pool and a gymnasium.

The joint ownership of common areas is a distinguishing feature of condominiums, as can be seen in the derivation of the word from the Latin words *com* (together) and *dominium* (domain).

The proportion of a co-owner's ownership interest in the common property is based on the proportion of the area of the co-owner's housing unit to the total area of all housing units of the condominium at the time the condominium is registered.

It is this "joint ownership" of common property that is the key distinction between apartments and condominiums.

Structurally, an apartment will be indistinguishable from a condominium, but legally it will not have been registered under the Condominium Act. Therefore, foreigners will not be able to own freehold (ie in perpetuity) and owners will not own the common property or be able to participate in the management of the building.

Owners of a condominium will get an ownership certificate issued by the Land Department certifying their ownership of their individual unit and their ownership ratio in respect of the common property. In contrast, with an apartment (in effect an unregistered condominium), the developer retains title to the building and all units within, and individuals lease their units for defined periods of time.

It is the joint ownership and control of condominiums that are a common source of financial and legal difficulty for condominium owners. All owners are responsible for their share of common expenses irrespective of their ability to pay those expenses at the time. Usually these expenses will be covered by the monthly maintenance or "condo" fee charged to condominium owners, but occasionally larger expenses may arise that result in the need to access funds from the condominium's sinking fund or, where that is insufficient, directly from the owners.

Furthermore, decisions regarding joint property will be made that are binding on all condominium owners, whether or not everybody agreed with them.

A condominium will be established as a separate "juristic person" (ie legal entity). It will have regulations, also known as by-laws, that are agreed to by its owners and that set out the rules applicable to the condominium and its owners.

Depending on the desires of the owners, these rules can be very restrictive, prohibiting, for example, pets, rentals to third parties or certain modifications to externally visible areas.

The day-to-day affairs of a condominium will be managed by a manager appointed by the owners, with general oversight and decision-making handled by a committee of owners elected by the owners annually.

Condominium ownership can be an excellent way for people to achieve their dreams of owning property, provided they understand their rights and obligations as condominium owners and undertake reasonable due diligence before making their purchase.

In future articles in this series we will examine in more detail issues relating to the purchase and ownership of a condominium in Thailand, such as pitfalls and practices for buyers of condominiums, title deeds, sinking funds, restrictions on ownership by foreigners, condominium by-laws and condominium committees.

We will provide examples of many of these issues by drawing on our own experiences as condominium owners, or as advisers to condominium owners, in Thailand and abroad.

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