

# 新住民不動產相關問答集

## New Immigrant Real Estate Related Q&A

### 1. 何謂繼承權?登記實務上，繼承從哪一天開始?

**What is the right of inheritance? In registration practice, what day shall an inheritance come into effect?**

因被繼承人死亡，而發生之繼承權利。所以在登記實務上，「繼承開始之日」就是被繼承人死亡之日。

The inheritance right is incurred by the death of the decedent, so, according to the registration practice, the “inheritance start day” is the day that the decedent dies.

### 2. 如果配偶死亡，外籍配偶有不動產繼承權嗎？尚未取得國籍有關係嗎？

**Does a foreign spouse have the real estate inheritance right if his or her spouse dies? Does it matter if he or she has yet to have the citizenship of the Republic of China?**

根據中華民國民法，外籍配偶和國人配偶一樣擁有繼承包括動產與不動產的權利。如果配偶不幸死亡，必須依法辦理財產的繼承，同時依法申報遺產稅。但繼承不動產時，必須外籍配偶之原屬國與本國間有平等互惠的關係，才能繼承不動產，繼承登記應自國人死亡 6 個月內向土地所在地之地政事務所提出申請，超過 1 個月處應納登記費 1 倍之罰鍰。

According to the Civil Code of the Republic of China, foreign spouses and local spouses are alike to have the right to inherit movable property and real estate. If their spouses unfortunately pass away, they shall process the property inheritance and declare their inheritance tax by law. However, an equal and reciprocating relationship between foreign spouse's country of origin and the Republic of China shall be existent when a foreign spouse inherits real estate. The inheritance registration shall be applied to the Land Administration Office at the place where the land is located in six month after the death of the decedent. In case of any delay, a fine equivalent to the registration fee for each month in arrears will be imposed.

依中華民國涉外民事法律適用法第 58 條：

繼承，依被繼承人死亡時之本國法。但依中華民國法律中華民國國民應為繼承人者，得就其在中華民國之遺產繼承之。

According to Article 58 of the Act Governing the Choice of Law in Civil Matters involving Foreign Elements:

A succession upon death is governed by the national law of the decedent. However, if a national of the Republic of China is an inheritor under the law of the Republic of China, he/she is entitled to inherit the part of the estate which is located within the Republic of China.

所以配偶雖尚未取得中華民國之國籍，但被繼承人為中華民國之國籍，依該法律條文之述，當以中華民國之民法規定辦理。

As prescribed by this Article, if a spouse has yet to have the citizenship of the Republic of China and the decedent was the citizen of the Republic of China, the inheritance shall be processed in accordance to the Civil Code of the Republic of China.

### 3. 外籍配偶與子女或其他人同為繼承人時，其繼承權如何計算？

#### **How shall the order of inheritance be determined if a foreign spouse and children or others are all ranked as inheritors?**

民法規定的繼承順序

The inheritance sequence prescribed by the Civil Code:

1. 第一順位 直系血親卑親屬(如子女，孫子女，以親等近者為優先)。  
1<sup>st</sup> order of inheritance: Direct lineal blood relatives (e.g. children and grandchildren, in which the closest kinship shall the highest priority).
2. 第二順序 父母  
2<sup>nd</sup> order of inheritance: Parents
3. 第三順序 兄弟姐妹  
3<sup>rd</sup> order of inheritance: Siblings
4. 第四順序 祖父母  
4<sup>th</sup> order: Grandparents

如無先順序繼承人，才會由後順序繼承人繼承。

When there are no inheritors in the higher order of inheritance, the ones in the subsequent order can then inherit the estate.

在沒有遺囑，且無人拋棄繼承的狀況下，配偶之應繼分：

When there is no will left and no one abandons the inheritance, the successional portion for a spouse shall be as follows: :

1. 與第一順序之繼承人同為繼承時，其應繼分與他繼承人平均。

When inheriting the estate with other inheritors in the 1<sup>st</sup> order of inheritance, the successional portion shall be equally shared with other inheritors.

2. 與第二順序或第三順序之繼承人同為繼承時，其應繼分為遺產二分之一。

When inheriting the estate with other inheritors in the 2<sup>nd</sup> order or the 3<sup>rd</sup> order of inheritance, the successional portion shall be half of the estate.

3. 與第四順序之繼承人同為繼承時，其應繼分為遺產三分之二。

When inheriting the estate with other inheritors in the 4<sup>th</sup> order of inheritance, the successional portion shall be two thirds of the estate.

4. 無第一順序至第四順序之繼承人時，其應繼分為遺產全部。

When there are no inheritors from the 1<sup>st</sup> order to the 4<sup>th</sup> order of inheritance, the successional portion shall be the total estate.

#### 4. 聽說在取得中華民國身分證之前，外國人可能不能繼承取得不動產？

**It is hearsay that, prior to obtaining the ID of the Republic of China, a foreigner cannot inherit any real estate. Is it true?**

土地法第 17 條第 1 項規定的土地，不能移轉外國人，如因繼承或遺贈取得，要在 3 年內出售給本國人。

The land prescribed by Paragraph 1 of Article 17 of the Land Act shall not be transferred to foreigners. If the land is acquired through inheritance or bequest, it shall be sold to local nationals within three years.

1. 下列土地不得移轉、設定負擔或租賃於外國人：(1) 林地。(2) 漁地。(3) 狩獵地。(4) 鹽地。(5) 礦地。(6) 水源地。(7) 要塞軍備區域及領域邊境之土地。但不包括因繼承而取得土地。但應於辦理繼承登記完畢之日起 3 年內出售與本國人(如是新加坡人因繼承或遺贈取得，應於 5 年內出售給本國人)，逾期未出售者，由直轄市、縣(市)地政機關移請國有財產署辦理公開標售。

The land listed below shall not be transferred, be pledged as any encumbrance or be leased to foreigners: (1) forest land; (2) fishery fields; (3) hunting grounds; (4) salt fields; (5) mine land. (6) water source land. (7) fortified military zone and territory frontier land. It does not include the land acquired due to inheritance. However, the land shall be sold to local nationals within three years after completing the inheritance registration (if the land is inherited or acquired by a Singaporean as a bequest, it shall be sold to local nationals within five years). In case of any delay in the sale of the land, the special municipality or county (city) government shall transfer the case to the National Property Bureau for public tendering.

2. 外國人申請在我國取得或設定土地權利時，應符合平等互惠原則，並依土地法、外國人在我國取得土地權利作業要點及相關規定辦理。

When a foreigner applies for acquisition or pledge of the land right in our country, the application shall meet the equal and reciprocating principle, and be processed in accordance with the Land Act, the guidelines governing the operation for foreigners to acquire the land right in Taiwan and relevant regulations.

## 5. 如果配偶死亡不辦理繼承登記，是否有罰則規定？

### **Is there any penalty for not registering the inheritance when a spouse dies?**

有。

繼承登記得自繼承開始之日起，6 個月內為之。聲請逾期者，每逾 1 個月得處應納登記費額 1 倍之罰鍰。但最高不得超過 20 倍。（土地法第 73 條）

Yes.

The inheritance registration shall be processed within six months after the day the estate is inherited. In case of any delay, a fine equivalent to the registration fee for each month in rears will be imposed, but it is limited to no more than twenty times of the registration fee (please refer to Article 73 of the Land Act).

## 6. 其他繼承人不願意配合辦理繼承，可以單獨申請嗎？

### **Can the application be filed alone if other inheritors are not willing to jointly process the inheritance registration?**

可以。

繼承人為 2 人以上，部分繼承人因故不能會同其他繼承人共同申請繼承登記時，得由其中 1 人或數人為全體繼承人之利益，就被繼承人之土地申請為共同共有之登記。（土地登記規則第 120 條第 1 項前段）

Yes.

If more than two inheritors are covered in an inheritance and some of the inheritors cannot jointly apply for the inheritance registration with other inheritors for any reason, one or several inheritors may apply for joint possession registration for the decedent's land in order to meet the interest of the entire body of inheritors (Please refer to the first half of Paragraph 1 of Article 120 of the Regulations of the Land Registration).

## 7. 外籍配偶可以主張夫妻剩餘財產嗎？剩餘財產如何計算？

## **Can a foreign spouse claim the residual matrimonial property? How is the residual matrimonial property calculated?**

依 100 年 5 月修正後涉外民事法律適用法第 13 條第 1 項規定，夫妻財產制依結婚時「夫所屬國之法」，如查明結婚時夫為我國國民，其夫妻財產制應適用我國民法的規定，於夫死亡時，即有請求權之適用。

According to Paragraph 1 of Article 13 of the Act Governing the Choice of Law in Civil Matters Involving Foreign Elements amended in May, 2011, a marital couple's property shall follow the "national laws of the husband's country of origin" at the time they were married. If the husband was a citizen of the Republic of China when they were married, the matrimonial property system shall be subject to the Civil Code of the Republic of China. If this is the case, the claim right is applicable to the spouse when the husband dies.

根據我國民法第 1030 條之 1 規定，法定財產制關係消滅時(一方死亡或離婚)，夫或妻現存的婚後財產，扣除婚姻關係存續中所有負債後，如有剩餘，其雙方剩餘財產的差額，應平均分配。但因繼承或其他無償取得之財產與慰撫金不在此限。

According to Article 1030-1 of the Civil Code of the Republic of China, when the statutory property system relationship is extinguished (death of either party or divorce), if there is any amount left from the husband or wife's existing post-marriage property after deducting all of debts incurred in the duration of the marital relationship, it shall be equally shared. However, it is not limited to the property inherited or acquired at no charge and the compensation amount.

## **8. 要把房屋土地過戶給外籍配偶，應如何辦理？**

### **How can the house and land be transferred to a foreign spouse?**

1. 首先查明外籍配偶之國籍是否符合土地法第 18 條平等互惠國家。First of all, please check if the foreign spouse's country of origin is among the equal and reciprocating countries prescribed by Article 18 of the Land Act.

I. 目前泰國、菲律賓可取得設定不動產權利，新加坡人允許在我國取得高逾 6 樓(含)以上之建築物之任何一層作為住宅使用，並准其取得基地所有權或地上權。

Currently, the real estate right can be pledged by the nationals of Thailand and the Philippines, whereas Singaporeans are allowed to acquire any floor of a building with six floors or more in Taiwan for residential purpose in which the ownership and superficies of the base land can also be obtained by them.

- II. 其他國家請參考「外國人在我國取得或設定土地權利互惠國家一覽表」，或提出「互惠證明文件」來辦理，即申請人之本國（或其行政區）有關機關所出具載明該國（或其行政區）對我國人民得取得同樣權利之證明文件；並經我國駐外使領館、代表處、辦事處及其他外交部授權機構驗證者。

Please refer to the “list of the reciprocating countries whose citizens can acquire or pledge the land right in our country”, or submit the “reciprocating certificate document” to file the application, i.e. the document issued by the applicant’s competent authorities in their country (or administrative zone) to certify that our citizens are also allowed to acquire the same right in their country; the document shall be verified by our Ministry of Foreign Affairs’ overseas embassy, representative office, branch office or other agencies authorized by our Ministry of Foreign Affairs.

2. 辦理程序：外國人依相關規定取得土地權利，應檢送下列文件，向土地所在地地政事務所申請，再由該地政事務所逕送請該管直轄市或縣（市）政府核准：

Application procedure: According to land right acquisition related regulations, a foreigner shall prepare the following documents to file an application with the Land Administration Office at the place where the land is located, and then the office will directly send the application to the special municipality or county (city) government in charge of the case for approval:

- (1). 土地登記申請書。

Land registration application.

- (2). 登記原因證明文件：如買賣契約書、贈與契約書等等。

The document to certify the registration reason: e.g. trading contract, deed of gift, etc.

- (3). 土地所有權狀。

Land ownership certificate.

- (4). 土地權利變更之權利人及義務人身分證明文件。

The ID documents of the obligee and obligor involving the change of the land right.

- (5). 繳稅或免稅證明文件（如土地增值稅或契稅、贈與稅繳清或免稅證明書）。

Tax payment certificate or tax-exempt certificate (e.g. land value increment tax deed tax or gift tax settlement certificate or tax-exempt certificate).

- (6). 土地使用分區證明（如屬非都市土地者免檢附）。

Land use zoning certificate (Attachment is not required for the land not in the urban area)

- (7). 授權書（如本人不能親自申請，須加附授權書）。

Letter of authorization (If the applicant cannot file the application in person, a letter of authorization shall be attached).

(8). 其他經中央地政機關規定應提出之證明文件。

Other certificate documents required by the central land administration authorities.

資料來源:新北市三重地政事務所