

WILLS IN THAILAND

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No matter how little or how much property you may own, you want to be sure that it is distributed to the right people after your death. In Thailand and in most countries, “*When a person dies, his estate devolves on the heirs.*” (Section 1599 of the Civil and Commercial Code, “CCC”)

In Thailand, if a person dies without a will, it is down to the state to decide who will benefit from the estate of the deceased. (Statutory heirs) (Section 1603 CCC).

There are six classes of statutory heirs in Thailand, each class is entitled to inherit in the following order: (section 1629 of the Civil and Commercial Code “CCC”)

- 1) *Descendants*
- 2) *Parents*
- 3) *Brothers and sisters of full blood*
- 4) *Brothers and sisters of half blood*
- 5) *Grandfathers and grandmothers*
- 6) *Uncles and aunts*

The surviving spouse is also a statutory heir (Section 1635 CCC). It must be a legal and registered marriage.

It would be very comforting to know that at the time your loved ones are mourning your death, you will have done everything in your power to avoid problems. A will lets you choose your heirs (“legatees”) and clearly outlines your last wishes. If you do not make a will, the law in Thailand will instead determine who inherits your property. A proper will is a guarantee that your wishes will be respected. It will also make settling your succession that much easier.

A will can do many things for you:

- Gives you peace of mind and protection
- Divides the estate (specifically) or gives all your asset to someone (general)
- Appoints Administrator of your estate (Executors)
- Elects Guardians for underage Children (Section 1586 CCC)
- Makes gifts of money (pecuniary legacies) or items (chattels)
- Includes specific people (i.e. step children)

- Excludes specific people (ex spouse/partner, family members)
- Protects loved ones inheritance

There are three types of wills in Thailand:

- A) An holograph will (section 1657 CCC)
- B) A will made in presence of witnesses. (Section 1656 CCC)
- C) A will made before public officials (section 1658 CCC)

(A “Secret will” (Section 1660) and an “oral will” (Section 1663) are other possibilities)

A **holograph will** is entirely handwritten by the testator and signed by him, dated, without the use of any mechanical process. It does not require the presence of a witness. No erasure, addition or other alteration in such will is valid unless made by the testator’s own hand and signed by him.

A **will made in the presence of witnesses** must be signed by the testator, dated, before at least two other persons as witnesses and meet certain requirements. The two witnesses must also sign the will in presence of the testator. Some people can’t be witnesses at the making of a will.

A **will made before public officials** is normally made at the Amphur.

SEVERAL GOOD REASONS FOR CHOOSING A THAI LAWYER TO MAKE A WILL

A will is an important legal document; the settlement of your succession is based on it. It is therefore essential that the will is well drafted, complete and free of ambiguity. In Thailand, you must be at least 15 years old to make a will. (Clause 1703 CCC)

When you have recourse to the services of a lawyer with expertise in the planning of successions and drafting of legal documents, you can be sure that there will be no problems in the interpretation of your will. Your lawyer knows how important it is to choose the right words and he will formulate your last wishes in legal terms according to your instructions. He will also help you remember everything that should be included to make the settlement of your succession an easy task.

Another advantage to choose a lawyer to make a will is that he will keep the original in a safe place, where it cannot be lost or destroyed. You will have a copy and you can also give another copy to a person that you trust. The content will remain confidential until your death (unless you tell someone or there is a Court order to disclose it) and you can always change or modify your will if you wish.

All countries have different laws. In some of them your ex-wife/husband can still make a claim on your estate in Thailand if you don’t take legal steps to exclude them. This can be done in a Thai Will.

Section 1667 states that *“In the event of a Thai subject making his will in a foreign territory, such will may be made either according to the form prescribed by the law of the country where it is made or according to the form prescribed by Thai law.”*

A legal foreign will could be acceptable in Thai Courts. However, they have to be translated and authorised by the Ministry of Foreign Affairs of Thailand. A Thai will should make it easier but it is not essential.

If you have assets in another country, the will dealing with your foreign assets **MUST** normally be valid under the laws of the county in which you are domiciled. Domicile is extremely complex and is most definitely should NOT be confused with residence. It is possible to be resident in one country and domiciled in another. If you were born in a foreign country, to change your domicile to Thai obviously involves you moving to Thailand.

If you are updating either of your wills, be very careful that you don't inadvertently revoke one of your other wills. If you do a new will in Thailand, send a translation of it to whoever holds your foreign will and ask them to confirm that your old will in your foreign country is still valid if this is what you wish.

If you make a will in Thailand, it should be in Thai language but it is not a requirement. If it is not in Thai, the executor of the estate or your heirs might have some problems. A good law firm should be able to provide you a bilingual will so that you can understand the content of it. A translation Thai to English will cost you between 300 to 500 baht per page. Some other languages could be more expensive (Scandinavian, Japanese, etc.).

Foreigners are normally not allowed to own land in Thailand. However, a foreigner who acquires land by inheritance, the ministry shall permit inheritance of the land to an alien. However, it's rarely done and the alien will have a delay of not less than 180 days or no more than one year to transfer the land to a Thai national. (See clauses 93 to 96 of the Land Code).

You may appoint a person or the administrator of your estate to arrange your funeral. Some wish their ashes to be scattered in the sea, some chose to be buried in a Chinese cemetery, some prefer not to mention anything.

One other point to bear in mind is that your foreign estate may be liable to Inheritance Tax in your country. So far, there is no inheritance or death tax in Thailand. But the Thai government has been thinking about changing the law for many years:

http://www.nationmultimedia.com/2007/02/28/national/national_30028100.php

To avoid paying too much inheritance tax in some cases, it is common in western countries to have a clause avoiding the transfer of ownership to a heir unless this person survives the testator by 30 days.

Many rules in Thailand are not exactly the same as in your country. This is why you must be careful if you don't want your will to be void. Do you know a witness to a will can't be a beneficiary? (Clause 1653 CCC) Do you know that the name of the writer of a will (if it is not the testator) must sign his name and add the statement that he is the writer? (Clause 1671 CCC) Do you know that you can appoint a “controller of property” if you desire to dispose your

property in favour of a minor, but if you don't want the parents, guardians or custodians to manage this property? (Sections 1686 and following CCC).

A Thai lawyer can explain this to you and advise you what you can do or not do in this country. It is normally inexpensive to make a will in Thailand and it can be done quickly. It will protect you and give you peace of mind.