Free Will : Your Estate in Thailand

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Nobody likes to think about dying, especially those of us who haven't, yet. But dying is on the list of inevitable things like long waits in government offices, rude airline employees, stories you've heard before from older relatives and yes, in Thailand, the VAT. The best thing to do is dwell on it for a short time, decide, take action and then sink into the same denial by which we all manage to get to the next day.

But what if you don't? Die with a will in Thailand, that is. As usual lawyers have a name for this. We call it "intestate succession." It just means who gets your possessions if you die without a will.

Here's what happens in Thailand if you die without a will.
First, property you owned with your spouse, if you have one, is divided equally. This marital property doesn't include possessions such as real estate or a car you had before the marriage. Your estate gets half plus the items you brought to the marriage. Your spouse isn't done, yet, though, because he or she will inherit part of your half, too.

Next, under the Civil and Commercial Code of Thailand (the CCC), we would look to see who your "statutory heirs" would be. This is jus t a list of relatives who might be eligible to inherit from you. The list is as follows:
1. Descendents;
2. Parents;
3. Brothers and sisters of full blood;
4. Brothers and sisters of half blood;
5. Grandfathers and grandmothers;
6. Uncles and aunts.

In general, those in the highest category divide everything equally and those in a lower category don't get anything. For example, if you don't have any children but do have parents, brothers and sisters, grandparents and uncles and aunts, your parents would divide your estate equally, because they are in the highest category.

But it isn't nearly that simple. What about the spouse? Your spouse, unless you've divorced him or her before your death, is also considered a statutory heir, even if the two of you have been living apart as result of desertion or some legal form of separation. If there is an heir in the "descendents" category, the spouse takes as an equal in this category. If there are no descendents, but there are heirs in the "parents" or "brothers and sisters of full blood" categories, the spouse gets half of the estate. If there are only heirs in the "brothers and sisters of half blood," "grandfathers and grandmothers," or "uncles and aunts" categories the spouse gets two-thirds. If there aren't any other statutory heirs, the spouse gets everything.

So, as to spouses, there's a practical side to all this. If you don't have a will and have simply drifted apart from your spouse, the spouse may inherit everything from you. Let's say, for example, you got married in a fever fifteen years ago. The fire went out a couple of years after that and you haven't seen your spouse for over a decade. The period of separation or where your spouse is doesn't matter. If you haven't divorced this person

he or she can emerge from the woodwork and take a chunk of your estate, even if you're in a more recent relationship, with children and relatives you like. So what should you do? Terminate these old, dormant relationships by divorce, for one thing.

By the way, the previous paragraph contains a couple of lines from an old song. If you recognize it, you had better read this article carefully, because it means you got your musical taste, or in this case lack of it, in the 1960s.

But back to the drudgery of intestate succession. What about children born out of wedlock? If legitimated by the father, they are considered descendents. Adopted children? They are considered descendents, as well.

Let's say somebody who would be a statutory heir dies before the person whose estate is being divided. Do that somebody's heirs take a share? The answer is yes or no. Yes in the case of descendents, brothers and sisters of half and full blood and uncles and aunts. For example, assume that you die without a will (sorry, let's try not to make anybody nervous), a certain Mr. X dies without a will and the only remaining relatives are an uncle and an aunt, but the uncle has already died. The estate would be divided into two parts. Half would go to the aunt. The other half would be divided between the uncle's heirs, who are said to have inherited by representation, because they "represent" the uncle. In the case of dead statutory heirs who are parents and grandparents, the heirs of these people are, under Thai law, out of luck.

Here's another exception to the rule. What if Mr. X dies leaving a son and a daughter, but the daughter has died. Both the son and the daughter each have a single son. The son of the son doesn't take anything, because the rule is that between descendents of different degrees, the ones of a lower degree can only take by representation. Since his father is still alive, he doesn't represent anybody. And you guessed it, the son of the daughter takes half, because his mother is dead and he does take by representation.

Had enough? There's more, but we hope by now you're convinced you ought to have a will. Under Thai law one can, by will, cut out statutory heirs. Remember, as discussed above, the property held with the spouse will be divided between the spouses and the estate is half this plus what can be shown to have been owed before the marriage by the person who died. This is the same split as with divorce, so you can't get away from this. What we're talking about is the statutory heirs to the estate, and these can be cut out by a will.

How does one make a will in Thailand? Simple. A will must be in writing, dated and signed by the testator, the person whose will it is. It must be witnessed by two people. The witnesses or their spouses should not be beneficiaries of the will. A will can be made to a public accountant, but this is not necessary. Also, a will can be hand written, but we don't recommend it- there are just too many possibilities for misinterpretation of these.

Thai law also recognizes a will executed by a foreigner under the law of his or her nationality or where the will was made. For example, if Mr. X, a Norwegian, executed a will in Japan 15 years ago and later dies in Thailand, the will is enforceable in Thailand if valid under Norwegian, Japanese or Thai law.

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