



Expat Counsel

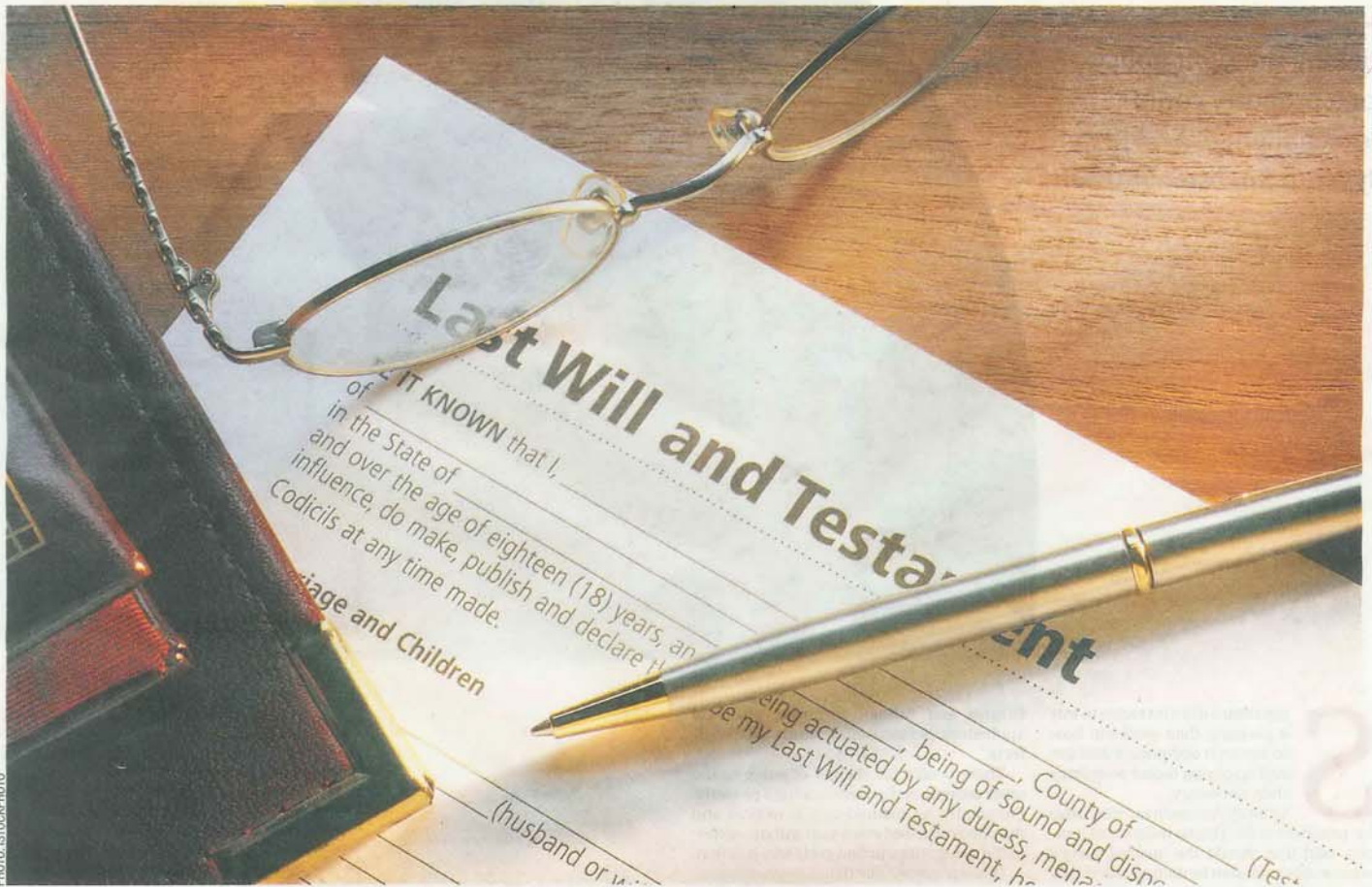


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FREE WILL: You and your estate in Thailand

Nobody wants to think about dying, and there is the occasional person who claims he will live forever. But dying is just one of those things that are inevitable. It shares the list with prolonged waits in government offices, rude airline employees, the same old stories from older relatives and what list could be complete without the VAT (in Thailand, anyway)? We don't suggest that you dwell on the great beyond for a prolonged period, but there are advantages to thinking and taking action on the subject of your estate. Taking prudent action will allow you—in no time—to get back to the normal state of denial by which we all manage to scrape by.

How does one make a will in Thailand? It is simple, really. 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 benefi-

ciaries of the will. A will can be made by declaration before a *nai amphur*, or district chief, but this is not necessary. If it is done before a *nai amphur* it can either be delivered to him/her, or it can be sealed by the *nai amphur* and kept in the possession of the testator. Also, a will can be handwritten, but we don't recommend it—there are just too many possibilities for misinterpretation. If you go to the trouble of making the will, you might as well do it right.

Thai law also recognises a will executed by a foreigner under the law of his or her nationality or the place where the will was made. An example would be if Mr X, a Norwegian, executed a will in Japan 15 years ago and died in Thailand later; the will is enforceable in Thailand if valid under Norwegian, Japanese or Thai law.

Now, what happens if you stopped reading this article after the second line? What happens if you were the guy who was supposed to live forever and thought we were making

fun of you? Well, beside being mistaken, you also didn't make a will. And then you died. Lawyers, as usual, have a legal name for this, which is "intestate succession". This is the law's way of deciding who gets your possessions if you die without a will.

In the absence of a will, property you owned with a spouse, known as "marital property", is divided equally between your estate and the spouse. Not included in marital property are any possessions (land, car, etc.) that were yours before the marriage. The items moved to the estate "pot" are the half of items left after your spouse has received his or her half, plus the things you brought to the marriage. Your spouse may get more from the estate, as you will see in later articles on the same subject, but the marital property division takes place before this happens.

Under the Civil and Commercial Code of Thailand, we would then look to see who your "statutory heirs" would be. This is essentially a list of relatives that might be eligible

to inherit from you, as follows:

1. Descendants;
2. Parents;
3. Full brothers and sisters;
4. Half-brothers and sisters;
5. Grandfathers and grandmothers;
6. Uncles and aunts.

In the majority of cases, the highly ranked statutory heirs divide everything equally and those lower down on the list are excluded. An example would be if you had no spouse and were childless, but had parents, a brother, a half sister, several uncles and a live-in girlfriend. In such a case your parents would divide your entire estate equally because they are the highest ranked statutory heirs.

Not crazy about the way the state splits up the pie after you pass on? That's the reason to have a will.

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