



Expat Counsel

WHERE THERE'S A WILL: The forgotten spouse and other loose ends

In a previous article we talked about the importance of proper estate planning in Thailand. From the cradle onwards we all are encouraged to plan ahead, especially where it comes to things nobody wants to think about — things like death, taxes and retirement.

At the risk of overwhelming you, there are some other things to think about in connection with your estate: the problem of that spouse you have not seen for years, for instance. Does he or she share in your estate? What about children born before you were married?

As we said before, if you die in Thailand without a will, your spouse takes half of the marital property and your estate gets the other half, along with possessions from before the marriage. Then the highest ranked statutory heirs — the relatives eligible to inherit from you — divide everything in your estate equally. In descending order, the list of statutory heirs is: descendants, parents, siblings of full blood, siblings of half blood, grandparents and uncles and aunts.

But it is not nearly that simple. What about the spouse? Your spouse, unless you have divorced him or her, is also considered a statutory heir, even if the two of you have been living apart as a result of desertion or some legal form of separation. If there is an heir in the descendants category, the spouse is an equal in this category.

If there are no descendants, but there are heirs in the parents or brothers and sisters of full blood categories, the spouse gets half 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 are not any other statutory heirs, the spouse gets everything. And the spouse gets all of this in addition to the 50-50 split before the statutory heirs come into the picture.

So, when it comes to spouses, there is a practical side to all this. If you do not have a will and have simply drifted apart from your spouse, the spouse may inherit everything from you. Let's say, for example, you were married in a fever 15 years ago. The fire went out a couple of years after that and you haven't seen your spouse for more than a decade.

The period of separation or where your spouse is located 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 are 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.

What about children born out of wedlock? If legitimated by the father, they are considered descendants. Adopted children? They are considered descendants as well.

Had enough? There's more, but we hope by now you are convinced you should have a will. With a will you can cut out the statutory heirs that would automatically inherit if you did not have one — including a spouse. Of course, your spouse will get his or her 50% of the property acquired during the marriage either in divorce or at the time you die. But with a will you can keep him or her from sharing in what is left over. ■

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