

Divorce, Wills, Power of Attorney, Living Wills

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When getting divorced in Thailand, it is important to hire an experienced family law attorney who understands the legal requirements of Thai law and also the personal requirements of their clients. A properly drafted divorce decree is important to minimize future conflict by clearly delineating the rights and obligations of the parties. If you hire an experienced Thai family law attorney, they will understand what is required in the divorce agreement.

What should be included in a properly prepared Thai divorce decree?

1. Party Information

The Thai Divorce Agreement should identify the parties and children of the marriage, information about the marriage relationship, and the causes of the divorce. Children of the marriage needs to be identified and Thai law requires that the cause of the breakdown of the marriage be identified.

2. Child Custody

There are two issues that need to be resolved for Child Custody. The first issue is who will have legal custody of the child. Legal custody involves the right to make decisions in regards to the needs of the child.

Under most circumstances, both parents will agree to have joint legal custody over the child. This means that the parents will jointly make the decision over the child's education, health care, and religion of the child.

Unless there is a provision that both parents have to agree on the decision, each parent can independently make a legal decision for the child. A proper divorce decree should clearly explain how decision

affecting the child should be decided in case of conflict.

The second issue is physical custody. Physical custody means which parent will the child primarily reside with and who will have visitation rights.

There are circumstances where the child lives one week with one parent and one week with the other parent. However courts prefer that the child have a primary residence to reduce disruption to the child's life.

In the divorce decree, the visitation schedule should be clearly delineated and provisions to prevent the parent with primary custody from interfering with the visitation. For parents who live far away and may not have a regular visitation schedule, a flexible minimum number of stays with prior notice can be written into the agreement. See the [Custodial Rights Under Thai Law](#).

3. Child Support

In Thai divorce, the court will generally require the non-primary parent to provide financial support to the child to ensure that the best interest of the child will be met. The court will look at the non-primary parent's financial situation and child's lifestyle to determine the appropriate amount of child support. The divorce agreement should cover who is responsible for paying child support, method of payment, and period of payment. Child support is generally required until the child becomes an adult which is when the child is married or the age of 20.

See Child Support by court order and by mutual consent [here](#).

4. Spousal Support

In Thailand, Spousal Support is not required but local court have started providing spousal support if the breakdown of the marriage is caused by the actions of one party and if the non-fault party will have difficulty in supporting themselves. If spousal support is in the divorce agreement, it is important to provide the detail of the payment including the amount, payment date, and when the support will end. Generally spousal support ends upon the re-marriage of the support receiving spouse or at a fixed term.

5. Marital Property and Debts Distribution

The section on marital property distribution details the division of property accrued during the marriage. Property that was received prior to the marriage is considered separate property unless it was

mixed with the marital property. If a [prenuptial agreement](#) was properly filed with the local provincial government office, it will control the distribution of the marital property. There are additional legal provisions which affect whether property is considered marital property or separate property.

Debt accumulated during the marriage that is necessary for the maintenance of the family is considered debt of the marriage and both parties are jointly liable for its payment. However, the court only has authority to control the distribution of marital property. The court can place the responsibility to paying the debt on one party but the debtor can still attempt to collect the debt from both parties. The parties of the divorce can sue each other to collect payment based on the divorce decree.

The marital property division provision in a Divorce Agreement should label which property is confirmed separate property and divide the ownership of the marital property and the marital debt. There should also be provision on the facilitating the property exchange including getting the required signatures and access to the property.

Getting divorced in a Thailand can be bewildering especially if a party is not fluent in Thai. It is important to be represented by an English speaking Thai attorney so that they understand their rights and duties under Thai family law. If you are contemplating marriage or a divorce in Thailand, call Charles Lima Attorney at Law.

1. Meaning of the Last Will and Testament Thailand.

A Last Will and Testament Thailand allows you to control what happens to your estate after your death.

Using this Will form, you can define assets, name beneficiaries, assign guardians for your children and appoint an executor.

Once you make your Will, you can easily make it legal by signing it with your witnesses.

In accordance with [The Civil and Commercial Code of Thailand](#):

Section 1646: Any person may, in contemplation of death, make a declaration of intention by will concerning dispositions as to his property or

other matters which shall take effect according to the law after his death

Preparing the will is not to be taken as the reminder of the death, thus, rather it should be treated positively as a legal agreement to settle the issues of properties and other assets that are to be distributed among the heirs after the eventual demise.

The importance of making a will become more significant if the properties are based in foreign locations.

2. Do you need a Thailand Last Will and Testament?

Charles Lima attorney suggests that you should draft your own Thailand Last Will and Testament for protection and security.

If you are a legal adult, you need a last will and testament. It doesn't matter if you aren't considered rich.

A will can help reduce any fighting between family members who would like to have certain items that you own when you die.

How a last will and testament can work for you depends on your life circumstances, but you definitely need one.

Use a Last Will and Testament if:

- You have assets, money or property you want to be distributed to individuals or organizations after your death.
- You need to appoint a guardian to care for your minor children if you and the other parent cannot.
- You need to appoint an executor to carry out the provisions of your Will.
- You need to appoint a caregiver and set aside funds for caring for your companion animals.

Also, if you have assets in the United States that you want to be transferred to your Thai family, you will require a Will drafted in accordance with the laws of the State in which the assets are located.

Thai living wills (as opposed to a last will) is not dealing with the assets of the testator after death but a form of 'power of attorney". It is an advance directive or instructions by a person specifying what actions should be taken in the event that the writer is no longer able to make decisions due to illness or incapacity prior to his death. Living wills are recognized and governed by the Thailand National Health Care Act 2007.

Thai power of attorney

Thai government departments in most cases require the use of their own Thai script standard power of attorney formats for specific transactions by someone else than the owner or principal, that is, if you have someone else selling or registering ownership of your condo unit in Thailand on your behalf you must use and complete the Thai script tor dor 21 land office document. You would not be able to use a poa drafted by a Thai lawyer, despite the power of attorney being properly witnessed. These government poa's are a non-durable special or limited power of attorneys to be used for a specific transaction and for a specific property, business registration or other matter.

A power of attorney in Thailand can be used for short-term specific transactions which the principal cannot handle himself, or can continue (durable power of attorney) in the event that the principal becomes incapacitated or mentally ill.

Needless to say when dealing with Thai law “get a lawyer”.