

# MAKING CHILDREN LEGITIMATE

In Thailand, it is increasingly common for couples to cohabit without first getting married. However, when unmarried couples have children, the question is whether the father has any parental rights in respect to his child.

According to the Civil and Commercial Code of Thailand (CCC), a child born of a woman who is not married to a man shall be deemed to be the legitimate child of such a woman (Section 1546). However, Section 1547 states that a child born of parents who are not married to each other is legitimated by the subsequent marriage of the parents, or by registration made on an application of the father, or by a judgment of the court.

This means that marriage is not the only option for an unmarried father to have parental rights of his child. He can also submit an application for registration at the district office or apply to the court.

In order to be able to apply to the district office, both the mother and child must consent to the application. In such cases, the process is relatively quick and straightforward. However, the child must be old enough to know who their father is and able to sign their name. It is generally accepted that for a child younger than seven, the court will have to grant an order to give consent on behalf of the child. In addition, if the mother refuses to consent, the father will have to apply to the court.

The grounds for the court to grant legitimisation are contained in Section 1555 of the Civil and Commercial Code as follows:

1. Where there is a rape, abduction or illegal confinement of the mother during the period when conception could have taken place;
2. Where there has been an elopement or seduction of the mother during the period where conception could have taken place;
3. Where there is a document emanating from the father and acknowledging the child as his own;
4. Where it appears in the Birth Register that the child is a son or daughter of the man who notified the birth, or such notification was made with the knowledge of the man;
5. Where there has been open cohabitation of the father and mother during the period when conception could have taken place;
6. Where the father had sexual intercourse with the mother during the period when conception could have taken place, and there are grounds to believe that he or she is not the child of another man;
7. Where there has been a continuous common reputed of being a legitimate child. The status of continuous common



repute is established by means of facts showing the relationship of father and child, as evidenced by the child's connection with the family to which he claims to belong, such as the fact that the father has provided the child's education or maintenance, or that he has allowed the child to use his family name, or other facts.

Evidence to support the application could include the birth certificate if the father is recognised therein as being the father of the child, DNA test results, photographs of the father and mother together while she was pregnant, witness statements to confirm that the father has made it known publicly that the woman is pregnant with his child, evidence that he has paid hospital bills for mother and child, and other expenses for the child, such as school fees.

Once the child has been registered as the legitimate child of the father, he will have joint legal custody with the mother, and will also be liable to maintain the child (Sections 1548 and 1555 of CCC). He will therefore have the following rights, jointly with the mother:

1. To determine the child's place of residence;
2. To punish the child in a reasonable manner for disciplinary purposes;
3. To require the child to do such work as is reasonable according to his ability and condition in life;
4. To demand the return of the child from any person who unlawfully detains him.

As the above rights must be exercised jointly, once legitimisation occurs, the mother cannot relocate the child's place of residence without the father's consent. In addition, the child will be a statutory heir of the father's estate when he dies, and vice versa.

If the mother of a child is married at the time of the birth, the presumption is that the child is the legitimate child of the husband. However, if the husband is not the true father, the father of the child can still apply for legitimisation by proving one of the grounds set out in Section 1555 of the CCC above.

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