

FAMILY LAWS FOREIGNERS SHOULD BE FAMILIAR WITH

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Foreigners (and Thais with foreign spouses) can encounter certain family laws in Thailand that are unique to the Kingdom. Given below are some selected parts of the law that may apply to you.

Marriage

Marriage is legal at age 17, but the Court may, for appropriate reasons, allow the marriage before attaining such age. It is registrable at any of the nation's district offices or at any Thai embassy abroad. Registered under a foreign law, marriage between Thais or between a Thai and a foreigner is considered legal in Thailand under Section 1459 of the Civil and Commercial Code.

Marriage is not registrable if it is

1. with a brother or sister;
2. with any blood relation;
3. by an adopter with any person he/she has adopted;
4. with the spouse of another living person;
5. with or between widowed or divorced persons within 310 days after the termination of the previous marriage, except when
 - a baby is born within the 310-day period;
 - remarrying a former spouse;
 - a certificate is provided by a medical doctor that certifies the female partner is not pregnant; or
 - a court order is granted that permits the marriage.

Property

Property ownership by a couple falls into two categories:

1. Separate property is owned by either the husband or the wife and includes
 - property acquired and gifts received before marriage;
 - items for personal use and tools;
 - property acquired by inheritance or as gifts after marriage; and
 - property given by a man to a woman as evidence of betrothal and security that the marriage will take place, usually the engagement ring.

2. Communal property is owned jointly by husband and wife and includes
 - property acquired during marriage (other than by inheritance or as gifts);
 - property acquired through a will or as gifts, and specified in writing as communal property; and
 - interest, profits and benefits earned or accumulated from separate property.

Where there is any doubt over the category of property ownership, it is presumed to be communal property.

Land Ownership

1. Land Ownership by a Thai National Married to a Foreigner

A Thai national married to a foreigner can purchase land, which will be categorized as separate property of the Thai spouse. When the Thai spouse is purchasing land, the foreign spouse must furnish written confirmation that the land is being purchased with the Thai spouse's own financial resources.

2. Land Ownership by a Foreigner

A foreigner may own a maximum of 1 rai (one-fifth of an acre) of land if the following conditions are met:

- Investment of at least Baht 40 million in Thailand for a minimum period of 3 years.
- The investment must be in a business beneficial to Thailand as listed by the Ministry of Interior.
- The land is in Bangkok, Pattaya or a municipal residential area in any province in accordance with city planning laws.
- The land is used only for residential purposes.
- The Land Department is notified within 60 days from starting use of the land.

Divorce

Thai law permits two divorce modes:

1. By mutual consent, which must be

- agreed in writing;
- witnessed by two persons; and
- registered at a district office or a Thai embassy.

2. By court judgment, which

- is granted only if the application is based on one of the ten legal grounds for divorce;
- becomes effective on the date of the court's final judgment; and
- must be registered at a district office or a Thai embassy.

Inheritance and Wills

When a person dies, his/her estate is bequeathed to his/her heirs: (1) statutory heirs (heirs by law), or (2) legatees (heirs by a will).

If there is no will, statutory heirs will inherit in the following order:

- children, parents and spouse of the deceased – equal shares.
- parents and spouse of the deceased – spouse receives half.
- full brothers, full sisters – spouse of the deceased receives half.
- half-brothers, half-sisters – spouse of the deceased receives two-thirds.
- grandfathers, grandmothers – spouse of the deceased receives two-thirds.
- uncles, aunts – spouse of the deceased receives two-thirds.
- none of the above – spouse of the deceased receives all.

If an heir in a higher order exists, heirs in the lower orders have no rights at all.

Wills

The regulations under Thai law governing the making of a will state:

- Any person can make a will, including a minor aged at least 15.
- A will must be made in the form prescribed by law.
- A person making a will can disinherit any/all heirs in the will.

- Probate is not required under Thai law.
- Trusts are not allowed under Thai law.
- Currently, inheritance tax is not levied. ♦