

## The importance of drawing up your will

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When Khun Nong's father passed away from a heart attack, it was a very emotional time. After several days of funeral rites, family members returned to their homes abroad, and Khun Nong was on her own and emotionally exhausted. Nevertheless, it was time to start settling the estate.

Khun Nong's father had always promised her she would one day inherit his business and all that he owned. Unfortunately, she soon learned her father had not made a will. This resulted in an outcome she was not expecting \_ one far different from what her father wanted for her. Ultimately, a sizeable portion of the inheritance went to others.

Khun Nong's story illustrates an issue we encounter frequently. We are often asked by clients \_ Thai and non-Thai alike \_ whether it is really necessary to make a will. While no one likes to think about death, most people do want a say in how their estate is managed after they pass away.

When a person dies, his or her estate is handed down to the heirs. They are either legatees (people to whom you make gifts in your will) or statutory heirs (people who receive your estate in accordance with the law if you die without a will).

For example, if you are survived by your descendants, spouse and parents, and you did not have a will, your estate will be divided equally among each of your descendants (per stirpes), your spouse and each of your parents. (The spouse's interest in the community property is a separate issue.) If you are not survived by any of the above, the law provides a list of other heirs, in rank order, who will inherit proportionately. Statutory inheritance can be very complicated.

Rather than relying on statutory inheritance, we have found clients prefer to make a specific plan for their assets. They may be motivated by a desire to make certain gifts to certain people, or to disinherit others. Some may have children with special needs and want to ensure they will be provided. Others may want to leave everything to a charity. As such, we always recommend making a will.

To make a will, one must be at least 15 years old and of sound mind. Thai law stipulates wills may only be made in accordance with forms prescribed by statute. Anything that does not meet this requirement is not a will. Thai law authorises five specific forms of will \_ written, holographic, public, secret and oral.

Most clients make written wills, as it is the most practical method. To be valid, a written will must be typed or handwritten, clearly state the date at the time of making and be signed by the testator in the presence of two witnesses. The two witnesses must also sign to certify the signature of the testator.

Witnesses must be at least 20 years of age and not adjudged incompetent. Those with certain special needs such as the blind, deaf or mute may not witness wills.

It is important to remember legatees cannot be witnesses. For example, if you are leaving a gift to your spouse, your spouse cannot witness your will.

When planning an estate, a particularly important decision is to choose the executor(s). The executor will be responsible for settling the estate and carrying out the testator's wishes. An executor must be at least 20 years old, of sound mind and not adjudged bankrupt by the court. Importantly, an executor can be a legatee under a will, and this is often what people plan, particularly those who are married or in other committed relationships.

If you have children, it is very important to give some thought to their living arrangements in case both parents pass away. Many people are also concerned about children inheriting significant sums before they know how to properly manage money. You can designate a custodian of property to manage a child's inheritance until a certain age.

When clients seek our help with estate planning, we normally start with many questions. It is important to compile a list of assets and each person who will be designated to receive gifts under the will. Some people want to leave certain items to certain people such as a treasured necklace for a daughter or an heirloom watch for a son.

Once we have gathered all the information, we begin preparing the will. After finalising it, we host the signing at our office and can even provide witnesses. Once the will is ready, it is important to store it in a safe place and let the executor(s) know how to access it.

When the end finally comes, a probate action is required to appoint an executor or administrator to settle the estate. Following appointment, the executor or administrator will be given a court order, which he or she can use to sell property, close bank accounts and wind down business in the course of settling the decedent's estate and distributing property to the decedent's heirs.

It is never fun to think about death. However, a bit of planning can save loved ones a lot of trouble with business at a time when they will want to focus on family.