

Protecting your assets: How to create an effective will in thailand

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Planning for asset distribution after death is one of the most significant actions a person can take, both to provide a better future for one's heirs and to ensure that one's intentions are fulfilled. A properly constructed will is a significant step toward fulfilling these important aims.

The primary purpose of a will is to clarify how you want your property to be distributed after you die. An equally important reason for having a will, however, is that it increases the likelihood that your assets will be transferred in the most cost-effective and efficient manner.

For those people with assets in Thailand, it is essential to have a will in place. Without a legally binding will, the distribution of your assets will be subject to the provisions of Thailand's Civil and Commercial Code (CCC), which can complicate a straightforward distribution of assets.

When drafting a will, there are several important points to keep in mind, which will be discussed below.

First, a will is only valid if it adheres to the form prescribed by the CCC. Choosing the correct form of will is important for two reasons. It can ensure the will is enforceable, and it can grant the holder specific legal rights and obligations. While several forms of wills exist, the two most common are standard wills and holographic wills.

A will in standard form is one that is made in writing, is dated at the time of making the will, and is signed by the testator in the presence of at least two witnesses who shall then and there sign their names certifying the signature of the testator.

A will in holographic form is one in which the testator uses his or her own hand to write the whole text of the document, and which includes the date and their signature. A holographic will has the key advantage of not requiring any witnesses to be valid.

It is also crucial that any alteration made to the will is done accurately and correctly. Regardless of whether the alteration is an erasure or an addition, the law requires that it be done in the same form as the will being altered. For example, an alteration to a holographic will would only be valid if it is done in the testator's own handwriting and with their own signature.

When designating a beneficiary, one should also bear in mind that CCC Section 1653 prevents a legatee from also being a writer or a witness of the will. Failure to adhere to this requirement will not invalidate the entire will, but any clause instructing the delegation of an asset to that person will be considered void.

A common question that arises is what legal rights does a beneficiary have to property that is transferred during the life of the testator? According to CCC Section 1696, the answer is "none". Under the law, a testamentary disposition is revoked if the testator has intentionally made a valid transfer of the property which is subject of the will. The same rule applies if the testator has intentionally destroyed such property.

It is advised that you should consider reviewing your will any time you go through a significant life event. In the event that changes need to be made, a testator may revoke his or her will either in whole or in part at any time. The best way to wholly revoke a will is to make another will, but intentional destruction or cancellation by the testator is also permissible. As with all wills, a will that revokes a prior will must be made according to one of the prescribed forms. Should the testator choose to revoke the will through intentional destruction or cancellation, any duplicates that may exist must also be destroyed or cancelled before the revocation will be considered complete.

It is also important to remember that making a will is considered one of the strongest declarations of intention that can be made regarding the disposition of your property. An often-overlooked consequence of this is that failure to name an heir as a beneficiary will automatically disinherit that person from the assets listed in the will. This is a powerful aspect of a will and, as such, listing or omitting any name from a will should be done with extreme care and consideration.

Finally, it is highly recommended that there be no delay in creating your will. Beyond the obvious fact that no one can predict their death, the law states that a valid will can only be made by a person of sound mind. Section 1654 of the CCC specifies that the capacity of the testator must be considered only at the time when the will is made. As you age, this requirement may become more and more difficult to fulfill.

It is said only two things are certain in life: death and taxes. Having a well-drafted will prepared before you die can help ease the burden of both.