

Legal Guide

Thai Prenuptial Agreement



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What Are Prenuptial Agreements?

A prenuptial marriage agreement is a signed and notarized contract that spells out how a couple will handle the financial aspects of their marriage. Although not very romantic, having this honest financial discussion prior to a wedding ceremony can be a very positive experience.

Prenuptial agreements are allowed pursuant to Thailand law if they meet certain requirements. It is advisable to have a qualified law office assist you with the preparation of a Thai prenuptial agreement and the translation and legalization of such an agreement pursuant to Thai law. Thai Prenuptial agreements, when prepared correctly, are generally considered valid legal agreements in jurisdictions outside of Thailand. Although litigation can be an unpredictable process and the laws of different countries may vary, it is always safer for an individual with significant assets, or even for an individual who is merely careful about his/her financial future, to have a prenuptial agreement.

Why Do I Need A Prenup?

Here is a rundown of the reasons why you should get a prenuptial agreement:

- Having a prenuptial marriage agreement does not mean that a couple is anticipating divorce.
- Financial matters need to be faced.
- Prenuptial agreements can preserve family ties and inheritance.
- If your future spouse won't sign a prenuptial marriage agreement, it may be best to discover this before the wedding.
- The financial well-being of children from a previous marriage can be protected.
- Personal and business assets accumulated before your marriage are protected.
- A prenup puts financial expectations out on the table before your wedding.
- A prenuptial marriage agreement spells out which assets a spouse may want to give to children or other family members in the event of death.
- In the event of a divorce, a prenuptial agreement eliminates battles over assets and finances.

What Happens If I Do Not Have One?

You may be perfectly convinced that there is no possible harm that could come to you if you don't prepare a Thai prenup. The truth is, there is - The Thai Courts. If the couple does not enter into the pre-nuptial agreement, the management of their property will be governed by general rules of the Thai Family Law.

Here's what the Thai Family Law states about property management:

1. Either spouse has the right to manage his or her private property.
2. Both spouses must manage the common property jointly or with the consent of the other spouse in any of the following cases:
 - (1) Selling , exchanging, selling with right of the redemption, letting and selling on the term of hire-purchase, mortgaging, releasing mortgage or transferring the right of mortgage on immovable property or movable property which is mortgagable;
 - (2) Creating or extinguishing the whole or a part of a servitude, a right of habitation, a right of superficies, a usufruct, or a charge on immovable property;
 - (3) Letting immovable property for more than three years;
 - (4) Making a loan of money;
 - (5) Making a gift, except with due regard to the family's station in life for charitable or social purpose, or in compliance with a moral duty;
 - (6) Making a compromise;
 - (7) Submitting a dispute to arbitration;
 - (8) Putting up property as guarantee or security to the official or court.

The management of the common property other than those provided in paragraph one, can be done by either spouse without the consent of the other.

If either spouse has committed a juristic act mentioned above without the consent of the other spouse, such juristic act shall be valid only when it has been confirmed by the other spouse.

If the other spouse does not give consent to the act concerned or does not confirm it, he or she, as the case may be, may apply to the court to revoke such juristic act. However if it appears that a third party acted in good faith at the time of concluding such juristic act, such act cannot be revoked.

The right to revoke is limited to the period of one year from the time when the spouse is cognizant of the cause of revocation or ten years since the juristic act was done.

The power to manage common property jointly between husband and wife does not mean that the couple must ask for consent from each other for every act. Either spouse has power to manage household affairs or to provide necessities for the family.(

Debts incurred by either spouse during marriage are common debts which are binding on both spouses equally, as follows;

- (1) debts incurred for the necessary management of household affairs, maintenance, and medical expenses of the household and proper education of the children.
- (2) debts incurred in connection with the common property.
- (3) debts incurred in connection with a business carried on by the spouse in common.
- (4) debts incurred by either spouse only for his or her own benefit but confirmed by the other. Upon termination of the marriage, the common property shall be returned to each spouse equally. Both spouse are liable for common debts to the same proportion.

Top 10 Reasons a Prenuptial Agreement May be Invalid

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1. No written agreement. Premarital agreements must be in writing to be enforceable.
2. Not properly executed. Both parties must sign a premarital agreement before the wedding in order for the agreement to be considered valid.
3. You were pressured. A premarital agreement may not be valid if one of the spouses was pressured by the other (or by his or her lawyer or family) to sign the agreement.
4. You didn't read it. If your spouse-to-be puts a bunch of papers in front of you, including a premarital agreement, and asks you to sign them quickly, the premarital agreement may not be enforceable if you sign it without reading it.
5. No time for consideration. A prospective spouse entering into a premarital agreement must be given time to review it and think it over before signing it. If the groom hands the contract and a pen to the bride just before she says, "I do," the agreement is probably invalid.
6. Invalid provisions. Although a premarital agreement can cover just about any financial aspect of the parties' relationship, it cannot in any way modify the child support obligations that either spouse would have if the marriage should end in divorce. Any other provisions of the agreement that violate the law would also be invalid. It is possible, however, that the court would strike the illegal clauses and enforce the remainder of the agreement.
7. False information. A premarital agreement is valid only if it is entered into after full disclosure by both parties -- as to their income, assets, and liabilities. If one prospective spouse provides the other with information that is not true, the agreement is invalid.
8. Incomplete information. Failing to provide pertinent information is as bad as providing false information, and it renders a premarital agreement unenforceable.
9. No independent counsel. Because their separate interests are at stake, both parties to a premarital contract should (and in some states must) be represented by their own attorneys, or the agreement will not be enforced.
10. Unconscionability. It's true that you can agree to give up your right to inherit from your spouse, which you would otherwise be entitled to do upon your spouse's death, even if he or she left you out of a will. You can sign away your right to spousal support if you should end up in divorce court, even if your spouse makes ten times as much money as you do. You can even agree that your spouse gets all of the property and you get all of the bills, if that is what you want to do. But if the agreement is so grossly unfair that one party would face severe financial hardship while the other prospered, the court is unlikely to enforce it. "Unconscionable" contracts are generally found invalid, and premarital agreements are no exception.

Do I Need A Lawyer?

**Yes, you do need a lawyer
when making a prenuptial agreement.**

Others may attempt to come-up with a Thai preup using self-help guidebooks and other resources. We say, if you want to end up with a clear and binding premarital agreement, you should get help from a good lawyer. Here's the reason why:

The laws governing marriage contracts vary tremendously from one country to another, and the Thai marriage laws could be way too different from that of your own country (which you are more familiar with). You can certainly do some of your own research to find out general information about Thai prenuptial agreements. But, if you don't want to invest too much of your time learning the ins and outs of the Thai prenups, a lawyer who knows the intricacies of these laws will be an important resource. The lawyer can help you put together a preup that meets state requirements and says what you want it to say.

Choose a Qualified Lawyer

A prenuptial agreement is an important legal document which can have a significant effect on your future. Although many law firms in Thailand deal with prenuptial agreements, only a handful of these firms are qualified enough to perform it. When selecting a Thai law firm, you should select one that has an international divorce practice, and understands issues on international prenuptial agreements and marital rights in Thailand and the other countries involved.

Siam Legal

As Thailand's LARGEST Legal Service Network, Siam Legal International ensures its clients the highest level of legal service available in the Kingdom. Our professional team of international attorneys and Thai lawyers will guide you step-by-step in drafting your Thai prenuptial agreement. Our competence in Thailand law combined with our international experience gives an assurance that your Thai preup meets the requirements of the Thai law and the minimum requirements of the law in your respective country.

Our Prenuptial Agreement Service

£ 995

\$ 1,525

Our service includes drafting the agreement in both Thai & English languages, explaining the agreement to both parties thoroughly, registering the agreement during marriage registration (if the marriage takes place in Thailand) and providing supporting documents to ensure that the agreement is legally binding in both countries of the parties concerned. We require 5 working days to finish drafting the agreement.

If you have further inquiries, please call our Bangkok office at
+66 2259 8100 or email us at info@siam-legal.com.

For more information about our other services, please visit
www.siam-legal.com