



Marriages and Matrimonial Assets in Thailand

Thai weddings are known widely throughout the world for its enchanting and colorful display as well as its deep sense of culture. Many foreigners dream of having a traditional Thai wedding for its uniqueness and as a way of getting closer to a culture they admire. The wedding ceremony itself is filled with ancient Buddhist traditions and customs which are often considered both exquisite and profoundly sanctimonious.



Doing it the Traditional Way

Most Thais believe that a wedding should be performed the traditional way. There is a deep-rooted belief that such ceremonies will bring good luck to the couples in their new lives together. The wedding itself entails several steps. The first would usually be the marriage proposal, similar in many ways to how we do it in other western traditions. That is, the man would usually seek permission from the woman's parents. At this time, the parents of both sides would come together and discuss important things such as marriage gifts, dowry, auspicious dates, location and so on. At some point, marriage gifts or 'khongman' which literally means 'engagement things' are offered to the woman's family as a token of the man's sincere intentions. These gifts usually take the form of gold, jewels or rings.

Another important aspect of a Thai wedding is the dowry or 'sinsod' which is given to the bride's parents, usually on the wedding day itself. There is no set amount but it is typically determined by the man's wealth and standing in society.

The Ceremony

There are many variations to the traditional Thai ceremony as it differs from region to region. However, a typical celebration would usually entail the following. Early in the morning, the soon to be bride and groom would normally make a morning offering to the monks as they make their usual morning alms rounds. Then they would go to the temple to be blessed by a monk. Later on, there would be a 'knot-tying' ceremony of some kind which is usually conducted by a village elder and involves the 'binding' of strings around the wrists to symbolize a sacred union.

The village elder would also be on hand to offer some helpful advice on marriage. The ceremony then normally concludes with a wedding banquet for family and friends.

Legal Registration of Marriages in Thailand

Ironically, a traditional Buddhist wedding ceremony is not legally recognized as a marriage here in Thailand. In order for it to be recognized legally, you would have to register the marriage at the local District Office or 'Amphoe'. Before this happens, you still have to pay a visit to your local embassy to obtain a declaration attesting that you are in fact eligible to marry in accordance with Thai laws. In other words, you can't still be legally married in your home country otherwise a divorce or proof of divorce must also be obtained. The declaration then has to be translated into Thai and then taken to the Legalization Division of Consular Affairs Department for their seal of approval. Once that is done, you may then go to your local District Office to have your marriage registered. Only then would the marriage be considered legally binding.

Matrimonial Property and Assets

Matrimonial assets can, in some ways, be divided into two categories. The first can be described as independent or separate property. These assets are usually acquired before marriage as gifts or by inheritance. Customarily, these assets take the form of personal ornaments, heirlooms, jewelries or other personal effects. These types of assets are managed independently by the spouse as they are often quite personal in nature.

The more common form of matrimonial property can be described as a joint-ownership. These types of properties or assets are normally acquired during the course of marriage. This can also include inheritance or gifts but only if it is indicated as matrimonial property in writing. This

joint-ownership arrangement means that both husband and wife share the assets equally. However, both spouses may manage the assets independently without the consent of the other.

Management of Matrimonial Assets

Although either husband or wife may exercise management of matrimonial assets independently, there are some guidelines on what type of activities spouses are obliged to manage jointly or, at least, acquire consent. These include, among others:

1. Selling, exchanging, leasing or mortgaging immovable properties such as land or house;
2. Either causing or terminating on a property a right of way or a right of habitation of any kind or any encumbrances upon the property;
3. Creating a lease on a property longer than three years;
4. Lending money to other parties; and
5. Putting up matrimonial property as surety or bail in a court of law.

These are the basic guidelines the law provides in accordance to Section 1476 of the Thailand Civil and Commercial Code. Couples, however, are able to manage their affairs in a different way by employing a well drafted prenuptial agreement. Prenuptial agreements will be discussed in greater detail later in this article.

Legal Right to Sue

Either spouse has a right to sue or be sued in relation to the mismanagement of the matrimonial assets. Each spouse has a right to preserve and maintain the property and to receive any benefits derived from





it. This right, however, is understandably quite controversial and gives rise to many other personal matters which must also be considered. Having a good prenuptial agreement can set out and clarify beforehand the treatment of such assets.

Setting up a Business

If you were to set up a business after or during marriage and then obtain all the assets and documents in your own name, the spouse is, by law, still entitled to half of all the profits and assets of that business. The spouse would, on the other hand, be responsible for half the debts incurred by the business as well. This is despite the spouse having no involvement whatsoever in the business. Again, a good prenuptial agreement can set out the terms of the business procedure if you do know in advance that you want to set up a business. If not, as in this case, it would most likely require a post-nuptial agreement of some kind.

Prenuptial Agreement

This is a controversial topic which has generated some heated arguments over the last decade or so. To have or not to have a prenuptial agreement seems to be the catch-cry of so many contemplating marriages. It is a difficult choice and is often a sensitive issue for many to tread. Due to this, many people decide not to have a prenuptial agreement for fear of raising doubts and complications in an already difficult and momentous decision. Many people also say that prenuptial agreements tend to de-personalize the sacredness of a matrimonial union. This is a personal decision for many and certainly a lot of thought should go into it. With that said, a prenuptial agreement is also a useful legal tool which you can use to further protect your hard earned assets and also to provide

a sound structure and understanding between you and your spouse in regards to future investments and earnings.

Who should have a Prenuptial Agreement?

Generally, you should consider having a prenuptial agreement if you fall into one or more of these categories. First, you own considerable assets such as properties, stocks, unit trusts or some form of superannuation funds. Second, you own or have considerable equity in a business. It is also advisable to have a prenuptial agreement if you are expecting a potential inheritance or you have children from a previous marriage. It is also not uncommon for people with bad experiences in the past to have a prenuptial agreement prepared.

Do keep in mind, however, that a prenuptial agreement is a contract between two parties and as such, it is bound by the contractual laws of each jurisdiction. There must be an open and frank disclosure of all assets and each party must have their own legal representation. The contract must be fair to both parties and entail all fundamental elements of a contract. If this is not done, a court of law may rescind the agreement for fear the contract was made under duress or other unfair treatments.

Benefits of having a Prenuptial Agreement

A prenuptial agreement is able to, among others, set out the terms of possession of assets, establish the treatment of future earnings, ascertain the control of the property of each spouse and determine the potential division of the assets should the marriage be later dissolved. It can be seen as a form of financial planning and having an agreement of this kind may minimize any future financial or emotional drain so often seen

in a divorce. Without an agreement, assets may go to unintended recipients and may potentially cause greater animosity and pain in an already difficult situation.

Property Ownership in Thailand

As a final point, for foreigners living in Thailand and married to a Thai spouse, the discussion on matrimonial properties may seem more like a red herring. This is because there is a clear law in the Kingdom that forbids foreigners in general from owning freehold land. There are some exceptions to this rule but for the majority of foreigners this legal rule is hard to ignore. If you have a Thai spouse and you both buy a property together, you must sign a declaration stating that you have no future rights to this property and that all the funds used in this transaction belongs wholly to the Thai spouse. In other words, should the day come when you decide to dissolve the marriage, the property will go entirely to the Thai spouse.

There are other means to better protect your assets in Thailand, even when you are married to a Thai spouse. There are several other alternatives available for foreigners to acquire property in Thailand and it is always advisable to seek good legal advice from a reputable law firm before you make any momentous leaps in Thailand.

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