



Dissolution of Marriage/Divorce

WHEN IS THE MARRIAGE TERMINATED?

Under the Civil and Commercial Code of Thailand, the marriage is terminated by

- (1) Death
- (2) Divorce
- (3) Being cancelled by the Court

If one spouse has disappeared or has left his or her domicile or residence and being uncertain whether he or she is living or dead, this circumstances shall not be presumed such spouse is dead. Therefore, the marriage shall be terminated by the other spouse petition the case to the court to divorce.

WHAT ARE THE GROUNDS TO DIVORCE?

The Thai Law allows termination of marriage when and what circumstances a divorce can be granted (Section 1516). The following grounds permit a divorce by one spouse's fault:

1. The husband has taken another woman as his wife, or the wife has committed adultery;
2. One spouse is guilty of misconduct, a criminal offence or not;
3. One spouse has caused serious harm or torture to the body or mind of the other;
4. One spouse has deserted the other for more than one year;
5. One spouse has been imprisoned for more than one year;
6. The spouses voluntarily live separately for more than three years;
7. One spouse has failed to give proper maintenance and support to the other.



HOW DO YOU GET DIVORCE IN THAILAND?

1. By mutually consent of spouses.

Either you are a Thai Citizen or a foreigner, if you previously registered your marriage legally with a Thai/foreigner spouse at any local District Office or called “Amphur or Khet” under Thai Law. Later on you and your spouse mutually agree to terminate your marriage, you both need to make mutually agreement your divorce in writing and certified by the signatures of at least two witnesses, hereto it shall be enforceable and valid only if the spouses register such writing consent to the Registrar at a local District Office as well.

2. One spouse does not consent to divorce.

If your spouse does not agree to termination of marriage, then you need to petition the case to the proper Court for obtaining the judgment. Therefore, you need to assert ground for divorce and you must make your lawsuit more implementation by supporting the specific ground for divorce, as mentioned on the previous topic, with the respective testimony and hereby the expertise attorney to present your case in the Court is very important too.

COMMUNITY PROPERTY AND LIABILITY

Upon divorce, the Community Property shall be divided equally between husband and wife (Section 1533). For the debts acquired during the marriage, upon termination of the marriage, the husband and wife shall be liable for common debts equally (Section 1535).

Where any community property has documentary title, either husband or wife may apply for having his or her name entered in the documents as co-owners (Section 1475).

Debts that both spouses are jointly liable to perform, shall include the debts as prescribed in the section 1490 which incurred by either spouse during marriage.



Can a court order maintenance payment during a divorce case or dissolution of marriage?

Yes, a court may order one spouse to pay the other temporary maintenance, while a lawsuit is pending, as well as may issue a temporary order community property and a child's maintenance.

Where an action for divorce is pending, the court may, an application of either party, make any provisional order which it thinks proper such as those concerning the community property, the lodging, the maintenance of the spouses & the custody and maintenance of children (Section 1530).

If you have an attorney, you can have more time to take longer step figure out through how is an equitable division of Community Property. How to keep the property loan which both spouses joint responsibility? How to manage the family business? How can a living spouse claim any interest at a spouse death. Moreover, you may well think of many kinds of property which will be benefit for the future, which you may cross over look for such circumstances. How about liability for the Sin Somros/Community debts, which your spouse may be responsible to pay the mentioned debts, even it shows your name alone or both names as well.

HAVING A PRENUPTIAL AGREEMENT/WILL

If you made a valid Prenuptial Agreement/Will concerning property and liability and with those contracts shall come automatically property rights for each spouse. A Prenuptial Agreement has defined clearly which spouse has the right to manage what property or how to divide the property that acquire during your marriage, which spouse is responsible for payment the incur debts during marriage or right of a living spouse to claim for interests. Whereas, a Will certainly declares what kinds of property shall be deposes to the heirs.



CHILD CUSTODY

A child is subject to parental power as long as he/she does not reach a majority/sui juris (Section 1566), and only one parent has parental power when:

- (1) the other is dead;
- (2) it is uncertain whether the other is living or dead;
- (3) the other has been adjudged incompetent or quasi-incompetent;
- (4) the other is placed in a hospital by reason of mental infirmity;
- (5) the parental power has been granted to one by an order of the court;
- (6) parents agree under the law which allows them to do so.

A child custody is held primarily responsible for the child's housing, provide the proper educational needs and food, making the decision which effect the welfare of the child, including management of the property of the child.

- In case of divorce by mutual consent, the spouse shall make an agreement in writing for the child custody / exercise of parental power over each of the children.

- In case of divorce by judgment of the Court, hereto the court trying the divorce case shall also order that any spouse fits to be the child custody.

Traditionally, courts tend to consider the happiness and interest of the child, the parent who demonstrates the most financial security, adequate parenting skills and the relative fitness of such parent to raise children. The legal child custody can also be a third person, either any interested person of the child or could be any involved person who has acted in the capacity of parent to the child thereby.



MAINTENANCE

We may call, **Spousal support, alimony or maintenance** that all refer to the amount of money which one spouse is liable to pay to the other. Maintenance is in an obligation established by Law that is based on the factors of income of both spouses and future financial prospects of the parties.

Practically, the amount of maintenance payment will be considered and ordered by the court or mutual agreement or negotiation of the parties.

Maintenance may be claim between husband and wife or parent and child when the party entitled to maintenance has not been furnished with the maintenance or has been furnish with the maintenance insufficient to his condition in life. How much and to what extent the maintenance would be granted or not will be decided by the court, by taking account of the ability of the person bound to furnish the maintenance, the condition in life of the receiver and the circumstances of the case (Section 1598/38).

CAN AN ORDER FOR MAINTENANCE BE MODIFIED IN THE FUTURE?

When any interested person can show that there has been a change in circumstances or in the names or condition in life of the parties, the Court may make alteration of the maintenance by canceling, reducing, increasing or re-establishing the amount of maintenance (Section 1598/39, Paragraph 1).

MAINTENANCE OF A CHILD

In case of claim for maintenance of a child, if there are special reasons and it is deemed proper, the Court may determine the maintenance to be furnish by any means other than those agreed upon by the parties, or other than what has been applied for by any party such as to send the child to an educational or vocational institution and the expenses incurred thereby are to be borne by the person bound to furnish the maintenance (Section 1598/40, Paragraph 2).

[If you need more information, please contact our attorney by this website.](http://www.attorneythai.com)