

LEGAL BULLETIN

Spring 2017

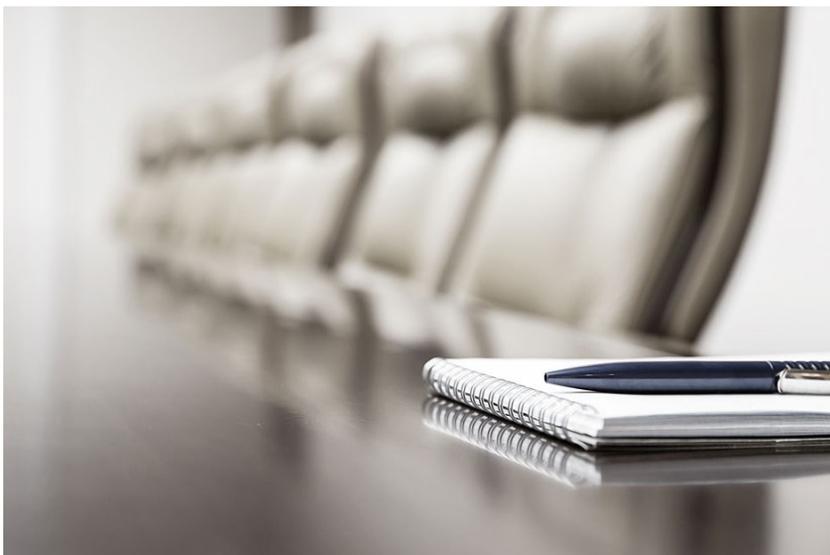
Welcome to our Newsletter

Our Law Offices specialize in providing legal services to Greek expatriates abroad as well as foreigners living in Greece.

Greek law can often be complicated, especially to those who have lived abroad. The purpose of our newsletter is to provide information to our readers. In each issue, we will review legal issues that are of a general interest.

For any further information that you might need, do contact us at info@spnlaw.gr.

Our new offices are conveniently located at the center of Athens, 7 Vissarionos str.



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Legal Issues of Divorce in Greece: Part I- Custody

How is custody determined

According to the Greek Civil Code, child custody is one of the functions that compose parental authority. More specifically, the functions of parental authority are the following : (a) the right over the physical custody of the child, (b) the right to represent the child in regards to the management of its property and (c) the right of representation of the child in any matter, legal transaction or court action related to the child's person and/or to the child's property. When custody has been granted with a court decision to one parent, then this is the parent who has the power to decide on where the child will reside as well as other day-to-day issues. Other issues that concern the other two functions of parental authority, still require a joint decision of both parents.

In order for the court to issue a judgment regarding the parent who will be awarded custody, it shall not discriminate on the basis of gender and will take into consideration the relation of the child with the parents, friends, neighborhood, schools etc. The most important factor based on which the court rules is the child's best interest. It also should be noted that the parent with whom the child does not reside as well as the grandparents and great- grandparents of the child, also have a right to communication with the child. These issues are decided upon by a virtue of a written agreement of the parents or, in the case of their disagreement, by a court decision.



Is it possible for a court to grant joint custody of children?

Greek courts usually grant the physical custody of the child to one of the parents. Moreover, during the last decades, it has been customary for custody to be granted to the mother with the exception of cases where the physical or mental well being of the child was at risk.

Yet, recently the Athens Court of Appeals with its n. 4948/2015 decision introduced significant changes by ruling that it was to the best interest of the child for the physical custody to be shared by both parents. Furthermore, the court decided that the father should directly cover the expenses that were related to his share of custody. This recent decision demonstrates of how Greek courts are moving away from traditional gender stereotypes when determining custody cases and focusing on the best interest of the child in each particular case.

The recognition of foreign court decisions in Greece

Quite often it is necessary for a Greek expatriate or a foreign citizen living in Greece to recognize a foreign court decision. (i.e. a foreign divorce)

For countries which are not members of the European Union and who have not entered into bilateral conventions with Greece, this is possible under the Greek Code of Civil Procedure with the issuance of a decision of the Greek court that recognizes the enforceability of the foreign decision.

In order for the Greek court to declare a foreign decision enforceable in Greece the following must be proven:

1. the decision is enforceable in its country of origin ,
2. the foreign court was competent to rule upon the particular case on the basis of the Greek Procedural Law,
3. the defendant was not deprived of the right to a fair trial,
4. there has not been a Greek judgment issued by the Greek courts between the same parties on the same dispute and
5. the foreign decision does not violate Greek public order.



All necessary documents that must be submitted to the Greek court should bear the Apostille stamp if they have been issued in the U.S. or Australia and in the case of Canadian documents , a certification is needed by the Greek Consulate in Canada or the Canadian Consulate in Greece. Their official translation can be then be done by a Greek lawyer. It is also necessary to provide the Greek court with an official document that states that this foreign decision is final and irrevocable in the foreign country.

In general , the Greek courts are very careful with the application of the provisions for enforcement of foreign judgments and deny enforceability when the above conditions are not met.

Recent developments in Airbnb-type rentals in Greece

Renting property through the Airbnb platform has been a very popular and quite often very profitable for property owners. With recent law n. 4446/2016 significant changes have taken place and certain regulations have been introduced.

Have you paid your ENFIA property tax?

All who own property in Greece should be extra careful about paying their annual property tax (ENFIA). In case this tax is not paid or the property has not been correctly registered, there will be problems encountered in case of future sale or other property transfers, including the acquisition of property through inheritance.

All ENFIA notifications for real estate owners in Greece are available online at www.gsis.gr and this tax may be currently be paid in five monthly installments from September to January.

More specifically, under this law, in order to proceed with these type of rentals in Greece, all of the following conditions must be met:

1. The property owner is a natural person (not a legal entity) and is registered in the "Register of Short-Term Lease Property" held at the General Secretariat of the Ministry of Finance,
2. Up to two properties for each Tax ID Number (AFM) may be posted for rent,
3. The property has an area of at least nine (9) square meters and has natural lighting, ventilation and heating,
4. The property has received all necessary building permits and is maintained in accordance with the provisions of law and
5. The rental of each property must not exceed ninety (90) days per calendar year.

For islands up to ten thousand (10,000) inhabitants the renting of each property must not exceed sixty (60) days per calendar year. The above terms may be exceeded if the total income from the rentals does not exceed twelve thousand (12,000) euro in the relevant tax year.

6. The properties rented must be furnished, without the provision of any services except the providing of bed linen.

Under the new law, the rental by the method above is exempt from VAT. However, income received is considered income from property and should be declared as such according to the relevant provisions.

Penalties:

In case the above mentioned conditions for leasing are not met, there is a fine of five thousand (5,000) euros as well as higher penalties in the case of subsequent violations.

Common Legal Issues with Rental Property

- ♦ ***My tenant has requested a rent decrease because of the financial crisis, what are my rights?***

The rent that has to be paid is determined by the lease agreement. Usually, in lease agreements there is no clause that states that the parties can re-examine the amount of rent owed due to unexpected financial circumstances that appear after the signing of the contract. Therefore, the tenant is legally obligated to pay the rent that has been agreed upon throughout the duration of the lease.

Greek Law does provide a right for the tenant to file a claim before the Greek courts and request the reduction of the rent due to unforeseeable events, including but not limited to, unexpected financial circumstances. There have been courts that have ruled in favor of tenants in such cases, nevertheless it should be noted that this has been mostly decided in cases of long term commercial leases with provisions of high annual rent adjustments that had been agreed upon before the outbreak of the financial crisis or in the early years thereof.

- ♦ ***I would like to agree with my tenant that the duration of our residential lease contract will be for two years, is that legally possible?***

The minimum term for residential leases in Greece is that of three years and binds both the landlord and the tenant. In practice, this means that it is not allowed for the tenant not to abide to the three year period without having to face the consequences of paying the rent for the remaining three year term. It furthermore means that even if a shorter duration has been agreed upon, this is invalid and cannot be legally claimed by either party. The law does provide for the reduction of this term, but this must be agreed upon with a second agreement that has to be drafted by a notary public after a six month period from the drafting of the initial lease agreement.

It is another issue that in many instances the landlord and the tenant mutually agree upon a shorter duration of the lease (i.e. two years) and then decide not to pursue their legal rights that are derived from the minimum duration of the lease.

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