

## Newsletter Summer 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@splaw.gr](mailto:info@splaw.gr).**

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

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## Family Law: Types of Divorce in Greece

According to the Greek Civil Code and provided that jurisdiction can be established in Greece, there are two types of divorce procedures in Greece: the mutual consent divorce and the contested divorce.

If the spouses choose to proceed with a **mutual consent divorce**, then it is necessary that they proceed with an agreement in which it is stated that they consent to the dissolution of their marriage, provided that their marriage had a minimum duration of six months before such agreement takes place. It is also necessary that with this written agreement they have agreed upon the custody of their minor children and their communication with them.

A **contested divorce procedure** is issued when the spouses fail to agree on divorce proceedings (or if there is an issue of disappearance of one of the spouses) and one of them initiates legal action against the other requesting the dissolution of the marriage under the following circumstances :

A. if the other spouse has disappeared and there is a court judgment issued that recognizes this person as non-living according to the provisions of the Civil Code. In this case, the marriage does not automatically cease to exist but a court decision is needed in order to grant the divorce for this reason according to article 1440 of the Greek Civil Code **or**

B. if there is an irretrievable break down of the marriage for reasons that can be attributed to the defendant or both of the spouses. Quite often we are asked what legally constitutes an irretrievable breakdown of a marriage as the law does not provide a specific legal definition of this term. The Greek courts have decided upon the following issues as legal grounds that constitute an irretrievable breakdown of a marriage: emotional detachment of the spouses, abuse, adultery, abandonment of the spousal residence etc. (it should be noted that, under certain circumstances, this irretrievable breakdown of the marriage is presumed in cases of adultery, abandonment and/or domestic violence) **or**

C. if there is an irretrievable break down of the marriage due to the fact that there is no actual or emotional relationship between the spouses for more than two consecutive years. It also should be noted that the courts do not take into account and consider it irrelevant for this two-year separation period if the spouses had made an effort at some intervals to restore their marriage.

The final step that is needed in this process is for the final divorce judgment to be submitted at the family record registry of the municipality of the place of last common residence of the spouses. Lastly, if a religious Greek ceremony had taken place, it is necessary to obtain a certificate for the religious cessation of the marriage from the church authority in order for this divorce to be registered in the municipality.

### ***What is a European Citizen Registration Certificate?***

After three months of residence in Greece, it will be required to register with the appropriate authority (designated police station) which will issue a registration certificate. This may assist with dealings at Greek public offices. This certificate is fairly simple to issue and it is of unlimited duration.

In order for this certificate to be issued, you will need a valid identity card or passport and, depending on the reason of your stay in Greece, documents proving the reason for your stay in Greece (marriage certificate and/or certification of employment etc)



## **Immigration Law: How to obtain Greek citizenship**

The process of obtaining a Greek citizenship generally depends upon whether or not the applicant is of Greek ancestry.

### **I. Greek citizenship for those of Greek ancestry:**

According to the provisions of the Greek Citizenship Code, if it can be proven that a parent or a grandparent was born in Greece and obtained the Greek nationality by birth, Greek citizenship can be requested to be granted.

The above requirements are met by obtaining a certificate from the local municipality in Greece that states that an ancestor was born in Greece. The marriage certificate of this ancestor would hereinafter be required as well as the birth certificate of his/her child etc. and then all such relevant certificates of all previous ancestors in order to establish the connection with the person applying for citizenship.

If the applicant lives abroad, then the application is submitted at the Greek Embassy of his/her place of residence. The applicant must also provide his/her birth certificate, marriage certificate, criminal record and passport. These documents need to be officially translated to Greek either by the officers of the Greek Embassy or a Greek lawyer. Then, this application and supporting documents are sent to the authorities in Greece for examination and decision.

Upon approval and registration at the Municipality, it is possible to apply for all other documents related to Greek citizenship (i.e. passport)

## **II. Greek Citizenship for those of non- Greek ancestry**

Although there are special requirements for some applicants ( i.e. Olympic athletes, children of foreigners born in Greece etc.) according to the provisions of the Greek Citizenship Code that regulate this procedure, an applicant who is born in another country is required to:

- a. Reside legally in Greece for seven years before he/she can apply for naturalization. The seven year residency requirement does not apply to a spouse of a Greek citizen or for an alien who has been a resident of Greece for at least three years and has a child.
- b. The applicant must have sufficient knowledge of the Greek language and history and is interviewed on the above in the Greek language.
- c. The applicant must be an adult at the time of application and must not have been convicted of particular crimes -- including drug trafficking, money laundering etc.
- d. The applicant must have a residence permit or other documents establishing legal residence in Greece.
- e. A birth certificate is also needed or , under circumstances, a baptismal certificate and
- f. Finally, a tax return or a copy of the tax declaration for the last tax year is needed .

The person who wishes to be naturalized as a Greek citizen, submits to the city of his/her place of residence a request for naturalization, which is addressed to the Greek Ministry of Interior, with the following attachments: (1) Naturalization statement in the presence of two Greek citizen witnesses, (2) deposit fee defined by current legislation (at present at 700 euro for those of non-Greek descent) and (3) copy of the passport or other travel documents.

Finally it should be noted that, according to the Greek Citizenship Code, the children of those who have been granted Greek citizenship become Greek nationals, without any other procedures, if at the time of submission of the application the children are unmarried minors .

## Property Law: What is the process and cost when purchasing property in Greece?

For many, buying property in Greece can seem like a complicated procedure. As lawyers, we are often asked to provide guidelines to our clients about this process. The following is a step by step guide to this procedure:

1. First of all, the property must be found. This is quite often done by a **real estate agent**. Although the fee can be freely agreed upon, usually a fee of a percentage of 2% of actual price paid for the property is agreed upon between the parties.
2. **Legal due diligence** of the property must be conducted. According to Greek law, the presence of a lawyer during the signing of the sale agreement is optional, and if there is a lawyer present, the legal fee is freely agreed upon. The title search takes place at the Land Registry Office and/or at the Cadastre Office at the property's region and includes the right of the seller and of his predecessors. Therefore, this is a very important part of the procedure since the lawyer will check if there are any encumbrances and/or rights claimed by others on this property.
3. Especially in the case where the property to be bought is land or lies off the town plan, it is necessary, in order to proceed with the legal transfer of the property, to recruit an engineer who will conduct a **technical survey** and check whether the property meets the legal conditions for construction, verify its surface and check if there any illegal structures. Nevertheless, in order for the deed of sale to be legally concluded, the notary public will request a certificate from the engineer verifying that no illegal structures were found on the property.

If **illegal structures are found on the property** (i.e. parts of buildings were constructed without permit, closure of "semi-open" spaces etc.) then these structures must be legalized. In order to do this a fine must be paid, the amount of which depends on the year that these illegal structures were constructed, their surface and type. This fine can be partially paid in installments or even withheld at the signing of the deed from the amount of the sale by the notary public and then handed over to the Greek state. It should be noted that these fines burden the seller and not the buyer of the property.

4. Before the signing the contract of sale, the buyer has to submit at the competent Tax Office the **property transfer tax return and then pay the property tax**. Currently this tax amounts to 3% of the sale amount. It should also be noted that if the buyer is Greek or an EU national, this property is bought as a residential home and the buyer has no such other property, then, under certain conditions, he/she qualifies for a tax exemption and is not obligated to pay purchase tax for property of value up to 200.000 euro (if single) and 250.000 (if married).

It should be noted that property tax is paid on the amount of value of the property according to the tables of the Greek Tax Office. If the parties have agreed upon a lower sale price than the tax value of the Greek Office, tax is calculated on the latter. If they have agreed upon a higher sale price than that of the tax value of the property, then tax is calculated on this higher price.

5. **The signing of the sale contract before a notary public**. The fees of the notary public are regulated by law and they amount to approximately 2% of the sale price (or the tax value of the property, whichever is higher).

6. **The registration of the notarial act of property transfer**. The registration at the Property Cadastre /Land Registry is approximately at 8/1000 of the above amount.

7. Finally it should be noted that once property is bought, **a tax return has to be filed every year and property tax paid** (ENFIA) even if the owner is a foreign tax resident and has no other income in Greece.

## **Business Law: What are the advantages of the Greek 'silent' company?**

The advantages of this type of company include its versatility, the absence of the need of public disclosure and formalities, therefore making it a very common company type in practice. By definition, only the parties that participate in the silent company are aware that it exists and third parties transact only with the apparent partner. This is considered as being one of the most important advantages to those who wish to form a silent company.

Due to the versatility of this company and the absence in recent years of particular laws regulating its existence, the silent company has been one of the most popular company types in Greece. Up until 2012, the silent company was regulated only by the Greek Civil Code. Then, in 2012, Law n. 4072, regulated issues that were not previously regulated by the Civil Code. These recent legislative provisions greatly assisted with the regulation of this type of company since, up until this law, all non-regulated issues were interpreted on a case-by-case basis by the Greek courts.

### **The articles of Law 4072/2012 and of the Greek Civil Code state the following regarding the set-up and operation of this company:**

- The silent company is not subject to publicity and it does not have legal personality. Therefore, no one partner can legally represent the company as it does not have a legal personality.
- It may be set-up with or without a written contract.
- The contribution of the silent partner is paid to the apparent partner.
- There is at least one visible partner, who is responsible against third parties, with which he is transacting and at least one silent partner. The silent partner (s) participates in gains and losses for the company that result from the actions of the apparent partner.
- The terms and conditions of the corporate contract are proven only with an agreement in writing by the contractual parties, the content of which cannot be proven with witnesses.
- The silent company is not registered to G.E.MI. (General Commercial Registry)
- The silent partner participates in the gains and losses of the company according to the amount that has been agreed upon in the company contract. If nothing of such has been agreed upon, all partners participate in the gains and losses equally, regardless of their contribution.
- Third parties acquire rights and undertake obligations only towards the apparent partner, this being one of the most important aspects of this type of company.
- Finally, it should be noted that the silent partner is entitled to become personally informed about the affairs and transactions of the company as well as to access the company's books and documents. This right can be considered as being quite significant since it provides for a procedure by which the silent partner can become fully aware of the dealings of the apparent partner.



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