

Legal Insights: Never let a good crisis go to waste!

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“Never let a good crisis go to waste!” This quote from Winston Churchill has never been more applicable, than in our current situation. It is also applicable to our personal relationships. We have been confined to our homes for months with our partners. We have all heard that domestic violence has spiked the last months. Relationships that may have already been strained before, reached their boiling point due to the current crisis. For some, this might seem as the perfect moment to end a relationship. This is a very emotional decision for most, but the ending of a romantic relationship may have legal implications if you have been living together. In this article I want to highlight in short, the main legal aspects to consider in cases of separation or divorce.

Underage children (<18)

The Civil Code stipulates that after a divorce, parents will continue to have shared custody of the children. Parties can agree on main residence for the children and on visitation. If the parents were not married and other custody arrangement were not made, the mother has the sole custody of the children. If the father expects difficulties in the future regarding the mother not allowing him being in the life of the child, I would recommend requesting the court for custody and visitation. The parent where the child does not live should pay alimony for the child to the other parent. The amount of alimony depends on the financial capacity the parent paying alimony.

Alimony for the ex-partner

In cases of divorce one party should pay alimony if the other party is in need. The amount of alimony depends on the need and the financial capacity of the ex-spouse. What is unknown for many is that people that have been living together for an extended period of time, can also qualify to receive alimony after the relationship ends.

Dividing property's and debts

In my experience, dividing properties and debts is experienced as difficult, especially if the persons involved have considerable assets, or have real estate property and need their bank to agree on aspects related to the mortgage. There may be goods that are excluded from the community of goods, for example inheritances. Depending on whether the persons have a prenuptial agreement, or are married in a deferent jurisdiction, different matrimonial property regimes might be applicable. In that sense, living together is legally less complicated, parties just take what they own. In both cases shared goods must be divided by buying the other out, or selling the assets and dividing the profits, if any, or sharing in the remaining debt (for example the residual mortgage debt).

In cases of divorce many persons forget to look at the division of pensions, but if married in any community of goods, I would strongly recommend these persons to take care of the division of pensions, as it becomes difficult or impossible to do when person reach the pensionable age.

The rented dwelling

By law, the spouse of the tenant becomes the co-tenant if the rented dwelling is habited by parties as the main residence. As such, in case of a divorce, the co-tenant can request a judge to rule that he/she will be the tenant after the divorce and that the other person has to vacate the house.

I would recommend every client to start with the first step: The decision to separate or not. Some will consider all the legal implications I mentioned as overwhelming, but once the decision has been made, it is easier to work out the legal aspects.

If domestic violence or abuse has prompted a person to consider separation, they can reach out to Save Haven Foundation (www.safehavensxm.sx) for help and advice. If the person and his partner are still able to communicate, and make decisions together, it is recommended to commemorate these decisions into an agreement. In this case I would still recommend seeking legal advice together regarding this agreement, especially if the (financial) stakes are high. An amicable separation or divorce is preferable for children, and to avoid stress, and limiting the (legal) costs that may be involved.

In some jurisdictions both persons must agree to a divorce. In Sint Maarten that is not the case, so if your partner does not agree with what you have decided for yourself, you can request the court a judgement on the aspect mentioned in this article. Lastly I would recommend to seek legal advice if necessary, and to go ahead with the plans for your new future.