

LEGAL UPDATE

BY ALLAN GARRÓN

In Costa Rica: Being Good Can Be a Bad Thing

Many foreigners decide to come to Costa Rica as tourists, investors or to become permanent residents. For those staying here one important goal to achieve is establishing a good relationship with neighbors, employees, friends and everyone in general. However, many have found that the worst thing they could have done was being too good to other people. This might sound strange, especially for those who live their lives under philosophical parameters claiming all positive energy sent to the Universe comes back with bigger benefits, but in the following cases you will find examples of exactly what we mean.

Employment relationships. Labor courts have established a ruling stating that if employers do not correct improper actions committed by their employees immediately, then such actions become permissible. This is partially based on article 603 of the Labor Code that says, "All rights and actions granted to employers in order to punish or fire workers will lapse within a month from the moment an employee commits a fault". This means if you have an employee who starts arriving late for work, or does not properly perform his duties, and you don't immediately apply the appropriate disciplinary action (which might include firing the person) it is the same as granting the employee the legal right to keep arriving late or to not perform duties properly. Many employers like to give people the chance to improve, or to change their attitude. To do so, however, sets the employer up for an awful surprise when the employee doesn't change, is finally fired, and the Labor Courts grant a huge compensation payment to them. In the event a transgression is detected, a warning letter should be written and given to the employee. When three letters have been issued firing is the only option unless the employer wants to assume the consequences of not doing



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so. This happened to a company in San Jose where the Manager gave warning letters for months to a person who arrived late every day. For the Labor Court "the negligence in not firing him before" gave the right to the employee to arrive late.

If you like to bring gifts to your employees from your country of origin or buy them gifts here be careful, because Labor Courts could consider it *salario en especie* or *payment in kind* in which case it is considered that their salaries are actually 50% higher in order to calculate compensation. The same happens when a small house is provided to employees so they can live alone or with their families. In this case it is better to charge at least a small amount of rent.

Renting properties. Those who rent houses, apartments, condos or commercial properties and try to be kind to their tenants can complicate things for themselves. In regard to the payment date, article 58 of the Rental Law states that "...Tenants shall have the right to pay within 7 days from the agreed payment day...". To give an example, if the rental contract states rent payment is due on the 1st day of each month the tenant can validly pay on the 8th. However, it often happens that the tenant needs more time to pay the rental in full. Many landlords try to be "good" by accepting payments later to help out. Well, you had better read article 62 of the Rental Law that states: "If the landlord accepts payment on a later date...the landlord is required to state in writing such tolerance will not be granted anymore. This is an essential requirement if any further judicial claims are to be filed...". Basically the law orders that if the tenant pays after the extra days given by law, the landlord has to provide a letter with a copy of the receipt to the tenant stating that further late payments won't be accepted and in such case an eviction process will be started. If the landlord ignores this obligation and the tenant simply stops paying, the judicial process of eviction should not be started unless proof of delivery of this letter is presented to the judge presiding over the case or it might be dismissed later. A number of Lessors have ended up paying judicial costs to tenants who are in default because they accepted their late payments once or many times.

Creating public roads instantaneously. Some land owners have heard or think if they give people the right to go across their properties for more than ten years it actually creates a right for them to keep doing so because walkers acquire something like an *easement for the right of way*. This is not true. According to the Civil Code an Easement is a right when the owner of a piece of land (called the dominant state) has the right to use in some specific way a portion of the adjoining property (called the servant state). More specifically, article 395 of the code establishes that the owner of a property without access has the right to acquire an easement for the right of way from an adjoining property by paying to its owner a compensation for the value of the land taken and any other damages caused, making some easements very expensive in places where land costs are high. Does this

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mean landowners can allow neighbors to walk through their properties and sleep well? NOT AT ALL. The problem is the Public Road Law, in effect since 1972, which states in articles 32 and 33 that any access being used by the public for more than one year must remain open until the property owner can get a judicial decree stating otherwise— on a process that could take years. What is necessary to demonstrate that the mentioned road has been used as public for more than a year? Simply starting a procedure in the local Municipality by offering three witnesses. The road owner will be virtually defenseless. Some property owners who wanted to be good neighbors but one day decided to stop allowing people through their properties have seen bull dozers appear to tear down everything at their entrances and then divide their property and lower its value in a matter of days, armed with an order to keep things that way until a decree stating otherwise is obtained by the property owner at a tremendous

cost of time and money.

Collect your money soon. Some people sell products or lend money to others who are supposed to pay within a specific period of time, including the obligation to pay interest on the debt. Frequently credit documents are signed as a guaranty for commercial invoices, letters of exchange, promissory notes, mortgages and others. When a debtor is in default it is better not to wait a long time before starting a legal collection action to recover the owed money and interest. According to article 984 of the Code of Commerce, the right to collect interest lapses within a year; which means if a debtor is in default and the creditor waits two to three years to start a collection action they may receive only one year of the interest due. Most commercial credit documents lapse within four years after the money is due (a commercial invoice lapses in only one year); so should the creditor take no action against a debtor who is reluctant to pay, the creditor could lose the right to collect even one penny.

Even though being good to a *fellow man* is an essential part of human nature and makes one feel better in the soul, some rules in the legal system ensure that the Good Samaritan may well be punished. It is sometimes better to think carefully about whether or not being nice is the way to go, because being nice can have serious consequences affecting assets accumulated during a lifetime of hard work.

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