

# Legal Advice for Expats: 5 Tips Why Being Nice in Costa Rica Can Be a Very Bad Idea

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May 4, 2018



Costa Rica has certainly become a multi-cultural country. Many foreigners decide to come as tourists, investors or to become permanent residents. Those living in CR usually try to achieve a good relationship with neighbors, employees, friends and everyone in general. However, some of them 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 claiming that all positive energy sent to universe comes back with bigger benefits. However, our legal system seems to create tools designed to discourage that good spirit. Here are a few examples:

## **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 416 of the Labor Code that says "...All rights and actions granted to employers 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 to work, or does not perform properly 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 not perform duties properly.

Many employers like to give people the chance to improve or change their attitude. To do so, however, sets the employer up for an awful surprise when the employee does not change, is finally fired, and Labor Courts grant a full compensation to them. This happened to a company where the manager gave warning letters for months to a person who arrived late every day. For the Labor Court the “negligence of not firing him before” gave the right to employee to keep arriving late. If you like to bring gifts to your employees from your country of origin, invite them for lunch or even provide a small house to live in be careful, because it can be deemed as “salary in kind” raising as much as 50% their final liquidations.

### **Renting Properties:**

Those who rent houses, apartments, condos or commercial places who try to be kind to their tenants can complicate things for themselves. In regard to the payment date, article 58 of the Rental Law starts 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. This could end up being a bad practice according to the law.

Article 62 of the Rental Law states that “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...”. If the landlord ignores this obligation and wants the tenant to start paying on time again, the judicial process of eviction should not be started unless proof of delivery of this letter is presented to the Judge, which usually involves hiring a Notary to deliver it. A number of Lessors have ended 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 walk across their properties for more than ten years it creates a right for them to keep doing so because walkers acquired something like an easement for the right of way. This is not true. According to our Civil Code an Easement is a right when the owner of a piece of land (called the dominant estate) has the right to use in some specific way a portion of the adjoining property (called the servant estate). More specifically, article 395 establishes that the owner of a property without access has the right to acquire an easement from an adjoining property by paying the owner a compensation for the value of the land.

Does that mean landowners can allow neighbors to walk through their property? Not at all. The problem is another law named 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 the use of a public road? Simply start a procedure in the local Municipality by offering three witnesses. Some land owners who one day wanted to stop people walking through their properties have seen the bulldozers appear to tear down everything at their entrance.

**Collect Your Money Quickly:**

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 guarantee. When a debtor is in default it's better to start a legal collection action to recover the owed money and interest as soon as possible. According to article 984 of the Code of Commerce the right to collect interest lapses within a year so if a creditor waits two or more years before to collect such creditor might receive only one year of the interest due. Most commercial documents lapse within 4 years after money is due, so waiting too long could cause creditor to lose all the owed amount.

**Letting People Stay For Free:**

If you have an extra house, apartment or similar where a person or family is allowed to live for free, probably with the intention to help such people, problems can arise if they are reluctant to leave when the property is needed for a different purpose. In this case, because no payment is involved, the eviction is not to be discussed in a Court of Law, but at the Legal Department of the Ministry of Security. The procedure is called "Desahucio Administrativo" or Administrative Eviction. Even though it's supposed to be a "fast procedure" such department is overloaded with work, therefore such eviction might take several months to years. (Yes years is plural)

Even though being good to a fellow man or woman is an essential part of human nature and makes one feel better in the soul and improves the balance of the universe, some rules in Costa Rica's legal system ensure that the good samaritan could very well be punished. It is better sometimes 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. The truth is that the system entitles some abusers to take advantage of those ones wanting to help them.

**About the Author:** Allan Garro was incorporated as a lawyer and public notary in 1996. He specializes in Litigation, Corporate and Real Estate Law. He has also acted as external legal consultant to Congress. He has been the author of more than 100 published English Language articles and can be reached at [\[email protected\]](mailto:[email protected])