



STEPPING INTO THE SEPERARTION PROCESS



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INTRODUCTION:

Separation is the formal legal process to terminate a relationship, precisely when one of the parties withdraws from the relationship. The law recognizes both de facto and de jure separation. Parties are said to be de facto separated when the relationship has ended, however, they have not formalised the separation into an agreement or through a judgement. On the other hand, parties are said to be de jure separated when they have formalised their separation. Moreover, this blog shall delve into different topics that relate to separation.

SEPARATION PROCESS AND MEDIATION:

Many often question how long is the separation process. However, there is not an indicated time frame per se as it depends on numerous factors, one of them being the agreement between the parties. Naturally, if the parties are on good terms, the separation process is more likely to be more straightforward and easier to navigate. On the other hand, if the parties do not agree on child-related matters such as custody and maintenance, together with things related to financial matters, this will result to a longer separation process.

It is also valuable to note that the separation process does not only consist of court sittings. Every party must always go through mediation before separation – a form of dispute resolution that resolves disputes between parties by a neutral, qualified, and impartial third party, known as the mediator. Furthermore, in order to proceed with the mediation process, if the parties have any children, it is beneficial to have a copy of each birth certificate of every child, together with the marriage certificate.

SEPARATION ENTITLEMENT:

Additionally, some also often ask whether foreigners who are married to Maltese citizens are entitled to separation in Malta. The answer is simple, **everyone** is entitled to separation. Separation may also take place nonetheless if one of the parties is not keen to separate. As mentioned previously above, separation takes place once mediation is **complete**. In order for mediation to take place, there is no need to have the consent of the other party. Thus, if the parties do not agree, the next step is to go to Court. A letter is sent by the respective lawyer of

the party who wants to separate to the Court's registrar in order to start the separation process. Furthermore, once the other party receives the notification letter from the Court, they are legally required to attend mediation.

MATRIMONIAL HOME AND ASSETS:

Moreover, in certain cases, the matrimonial home is sold and each party receives their share. However, it is also the case that one party decides to keep the matrimonial home, especially if they have children. As a result, the said party must give the other party their share. Thus, what happens to the matrimonial home depends solely on what the parties had agreed during mediation. Additionally, when it comes to assets, this depends on the matrimonial regime of the parties. The Community of Acquests is the default matrimonial regime in Malta. In this case, everything is shared if the parties are subject to the Community of Acquests, apart from any **donations** from parents or any other family member. It is crucial to keep in mind that if a party receives any profit from any rentals, their spouse or partner is entitled to receive a share from the profit made.

CHILD CUSTODY AND MAINTENANCE:

Both child custody and child maintenance are topics of fundamental importance when parents part ways. There are numerous factors that influence child custody which include any abuse such as drug and alcohol addictions as well as mental health issues. Furthermore, parents are legally bound to provide maintenance for their children until they reach the age of **eighteen**. In the event, children who have a **disability** and it is **not possible** for them to maintain themselves, the obligation to pay maintenance persists. This obligation also persists if parents have children under the age of **twenty three** that are **full-time students**. Moreover, there is **no** stipulated child maintenance rate. However, it is typically around **two hundred and fifty euros per child, subject to variation based on specific circumstances and court rulings**. That being said, the parent who will be paying the child maintenance must have the means to pay the full amount.

Naturally, there will be consequences if a parent does not pay the child maintenance as per **article 338 (z)** of the Maltese Criminal Code. Hence, if the party who is supposed to receive child maintenance does not receive the payment within **fifteen days** of its due date, they are

required to file a report to the Police. Once a report is made, criminal charges will be filed against the party who failed to pay child maintenance. If the said party fails to pay several payments, they are liable to a prison sentence. A case in point includes the case of a thirty nine year old man who was found guilty of failing to pay child maintenance to the mother of his children between March 2020 and November 2021. In another case which dates back to **2022**, a forty-eight year old woman was sentenced to sixteen months in jail for failing to pay the alimony due to her husband and child support for their children. However, once she settled her alimony duties, the court changed the sentence and acquitted her on the condition she does not commit another crime or one year for each of the sixteen offences.

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SOURCES:

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- *Woman spared 16 months in jail after paying alimony to husband*

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