

The Hidden Pitfalls of a 'Do-It-Yourself' Divorce

Many reading this article may think that I am self serving when I state that a 'Do It Yourself' Divorce is generally speaking, not a good idea. However, dealing on a day to day basis with difficulties and indeed, disasters that litigants in person have encountered when trying to represent themselves has led me to the firm conclusion that legal assistance in divorce proceedings is often an absolute necessity.

I can of course see the appeal of on-line websites offering a cheap and quick service to get divorced where you simply fill in forms and proceed to file the same with the court. This service appears to be much more cost effective than seeing a solicitor, and also overcomes the difficulty of determining which solicitor to choose. Whilst actually getting divorced can be relatively straightforward there are a number of common problems that arise within divorce proceedings which are not necessarily straightforward and where you will need specialist advice. Common examples are as follows:-

- Filing the wrong Petition i.e. it should be an unreasonable behaviour Petition as opposed to an adultery Petition.
- The petition is incomplete or incorrectly completed
- The Respondent and/or Co-Respondent, for example, in the case of adultery, is not prepared to admit their adultery, or alternatively in the case of two years separation with consent, that they are not prepared to consent to a Petition.
- The Respondent is domiciled abroad and they dispute the court's jurisdiction (i.e. power) to deal with the divorce proceedings.
- The Respondent fails entirely to respond to the Petition and the proceedings stall.
- The Respondent files their own cross Petition or raises a number of objections to matters contained within your Petition or Statement of Arrangements for Children.

A family lawyer can remove the stress and uncertainty and provide advice and support on how to resolve these issues.

It may be that a litigant in person quite smoothly progresses the divorce proceedings without any particular difficulty or hiccup, and indeed obtains Decree Absolute. However, many wrongly assume at this point that each party's financial claims against one another are automatically dismissed.

Whilst Decree Absolute does dismiss some claims, spouses and former spouses will continue to have the right to make most financial claims against each other by applying to the court for various orders. Rights can only be brought to an end in two ways. The first and most usual way is by a court order. The second way is where someone obtains a divorce and then remarries. However, the unmarried ex-spouse can still claim against the newly married spouse.

It is therefore important to seek the appropriate legal advice and sort out all financial matters before contemplating remarriage or indeed proceeding to Decree Absolute. Should one decide not to

obtain a court order resolving financial matters and remarriage does not occur, then many of the claims are simply left open. This situation is unsatisfactory as it leaves uncertainty.

It may be the case that neither you nor your former spouse wishes to make a claim against one another or indeed you have already resolved financial matters and therefore do not consider it important, or even necessary to enter into an order reflecting the terms of agreement reached. There is no guarantee that your relationship with your former spouse will continue to be amicable and indeed it may sour over the years which may result in claims being made. The best advice for anyone contemplating divorce is to ensure that they resolve financial matters prior to obtaining Decree Absolute. It is therefore good practice to consider how financial matters can be resolved at the same time as considering whether to initiate divorce proceedings.

It may be that you are uncertain as to where you stand financially within Divorce Proceedings. A lawyer will be able to advise you as to the type of financial settlement you would receive were the matter presented to the court. It is therefore important not to undersell yourself by entering into a Do-It-Yourself Agreement which you do not necessarily agree with, do not necessarily understand, or alternatively may have been put under pressure to agree. In any event, there is no guarantee that the court would approve such an order and it may be rejected. A solicitor will have your best interests in mind and will advise you with the aim to securing the best possible result for you.

Another area your family lawyer will be able to assist you with is any difficulties regarding children, which often can be the most contentious and difficult issue between the parties.

I would close by stating that a big concern of client's is that if they go to see a family lawyer they are simply going to run up huge costs. A good lawyer will listen to what you want and assess your needs. They will provide you with both practical and legal advice, but ultimately act upon your instructions. You are, after all, the client, and it is your case. There are now many alternatives to going to court to resolve matters and many family solicitors are members of the organisation 'Resolution', which aims to resolve family matters in a conciliatory and non-confrontational way. If you have concerns about what lawyer to chose, it is worth considering the Resolution website and finding a member of Resolution in your area.

In summary, the above only touches upon and highlights some of the difficulties that may be encountered but not necessarily foreseen at the outset of a matter and why your family lawyer will prove invaluable to you.

If you feel that any of the issues discussed in this article affect you and you wish to take further advice, please contact Samantha Jago, a family solicitor with Howell-Jones LLP on 01483 302000, or email her at samantha.jago@howell-jones.com.

Please note that Howell-Jones LLP do not offer Legal Aid and if you are of the view that you might eligible then you should refer to the Legal Services Commission website, www.legalservices.gov.uk, and your local Citizens Advice Bureau for further information.

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