



The Re-Marriage Trap

This article could as easily be entitled "The Pitfalls of Remarriage following Divorce". This is not intended to be an attempt to persuade previously married and now Divorced Parties not to seek another try at the greatest Partnership ever known. It is written as a warning to Divorced Parties to urge you to make sure that ALL of your Financial Issues are dealt with before you move on.

The pitfalls of Remarriage following Divorce is a reference to Section 28(3) of the Matrimonial Causes Act 1973 which highlights the real risk in not sorting out your Financial claims following a Divorce.

Section 28(3) of the Matrimonial Causes Act 1973 makes it clear that when either party remarries, they shall not be entitled to apply for a Financial Provision Order or Property Adjustment Order in their favour against the other party. This imposes an almost absolute bar on the Courts ability to consider any Financial Application made after remarriage. This prevents the former Husband or Wife making an Application for their own benefit.

Financial claims arising from a marital breakdown are not automatically dismissed when the Divorce is made final. Even when parties think there is nothing to sort out, problems can arise in the future. A party may believe that their share in a property is safe, if it remains in their joint names with their former Spouse. This may not necessarily be true. If one of the Spouses remarries, they could find themselves prevented from making an Application but leaving the other former Spouse with the ability to make that Application. In such a case, the former Spouse who has the power to make that Application has a significant advantage. That party can demand a significantly better deal from the division of the marital assets, than could have been expected if both former Spouses had identical rights.

Specialist Family Law Solicitors will include in their Client's Divorce Petition a claim for Financial Relief. This gives some protection as the Application for Financial Relief has clearly been made before the Petitioner has obtained Decree Absolute and has then remarried. Even so, the Court has not made a definitive decision on this issue and the Law remains vague.

The simple answer is, the Party should hold off remarrying until the finances have been sorted out or at least make sure that their Application for a Financial Order has been issued by the Court. If you are the Respondent, then you should file an Application even if your ex-spouse has initiated the Financial Remedy Procedure.

As Shakespeare said "a little knowledge is a dangerous thing". Do not rely on what you or your friends think the answer may be. Do not rely upon the internet as unless you know what the question is you cannot get the correct answer.

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