

"ONE IN THREE MARRIAGES ENDS IN DIVORCE IN FRANCE TOO YOU KNOW!"

You've bought the house and moved your family over to France and now you are living the dream life both of you have been planning for so long. Of course you are well prepared, you have done your homework thoroughly; you've been working on your French, you've sorted out your position with regard to tax, health insurance, pensions, banks, schools, cartes de séjour. Maybe you've set up a business, holiday lets, translation services whatever... but then something you certainly never imagined happens, something you certainly wouldn't have considered seeking advice on even if it had crossed your mind; your partner tells you they want to separate or divorce.

We don't want to be profits of doom but it isn't that unusual. After all, the new life may not suit you both equally well. One of you may find that living in a foreign country with a less than perfect grasp of the language and culture proves more challenging than you thought. Some people even hope that they can 'rescue' a relationship under pressure by drastically changing their lifestyle. It may work but it is a big risk and the odds are stacked against you. For some, life in France may turn out rather differently than they had anticipated.

What would you do if you or your partner decides the marriage or relationship is at an end? Who would you turn to for advice? A French lawyer? An English lawyer? Both? Neither?

You might be interested to know that in almost all of Europe, including both the UK and France the law relating to the appropriate country for divorce proceedings to be issued has very recently changed. Whereas before you might, depending on your circumstances, have had the opportunity to consider whether divorce proceedings in England would be more appropriate for you, since 1st March 2003 (except in very limited circumstances) you will almost certainly have to issue proceedings in the country in which you are living.

This may mean it would be a French court that would decide on the important issues, such as the division of your assets on divorce together with maintenance for your partner, yourself and/or the children. They may also decide other children issues such as where they will live and how much time they will spend with the other parent, even if you have the majority of your assets in the UK.

The speed with which this new law came into force all over Europe with the exception of Denmark took even the lawyers slightly by surprise. To show how it might work let's take an example:

A man and wife, both British, marry, live in England for many years after their marriage. They acquire substantial assets in England and raise a family here. They then decide to move to France

and transfer a substantial number, if not all, their assets to France. Shortly after, the marriage breaks down, one of them returns to England and stays there for six months thus acquiring the “habitual residence” needed to start divorce proceedings in England and indeed commences proceedings there. The English courts will be in a position to deal exclusively with the divorce and any financial and children matters and there will be almost nothing that the partner left behind in France can do about it. This could cause huge difficulties in sorting out the division of property in France as the English court only has power to make orders over property and other assets situated in England and Wales. In another scenario, if the person remaining in France issues proceedings there this could cause problems over the division of property and assets in England.

The new law could also apply even if you never intended to reside permanently in France, but just planned to spend part of each year there; provided you are residing there when proceedings are issued. Of course everyone's circumstances are different but it now looks as though anyone who finds himself in this position will need to consider very carefully whether they need to obtain advice from both sides of the channel. Any cautious person's conclusion would have to be that they do. But then we would think so we are lawyers after all! The advice you receive will almost certainly depend on where your assets are situated and, if the English way seems to be more favourable to you maybe you will need to consider whether it would be a good idea to return to the UK, stay there for six months and then issue your proceedings in the UK. Of course this might create yet another problem; if you return to the UK with your children and your spouse does not consent to your return, he or she may accuse you of child abduction and take steps to make you return to France with the children, which he or she will be entitled to do under another international Convention. That's another story that we could look at another time.

Now you see why you really might need to take that advice and when you do, you may want to consider consulting a solicitor who has experience on both sides of the Channel.

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