

# You said, “I do.”

BUT NOW YOU DON'T

by David Lefkowitz

In March I wrote about marriage and many of the legal issues associated with saying “I do.” This month the topic is divorce. It is said that 50% of all marriages end in divorce. The ratio of failed marriages probably isn't that high, but divorces are common. If you are considering one, it helps to have a little knowledge on the topic.

Those who are opposed to the concept of divorce often bemoan the fact that it is relatively easy to obtain one. Of course, if you are the one who wants the divorce, then you will be pleased that the obstacles are not high. In Georgia (and most other states), you do not have to assert a specific reason for the divorce; you can merely assert “irreconcilable differences.” You also do not have to claim that the divorce was the fault of one spouse or the other. Georgia is a “no fault” state, meaning that all one has to allege in order to be granted a divorce is that the marriage is “irretrievably broken.”

If you are in a marriage that is heading towards a divorce, you need a lawyer. If you have no kids, no assets, and thus no interest in spending a single dollar on a lawyer, you should reconsider this penny-wise dollar-foolish decision. If the divorce is uncontested (meaning that both spouses want the divorce and agree on the terms) then you can find a very inexpensive, competent attorney to handle the matter. Do not have one attorney represent both

spouses. This is a big no-no in the legal profession, yet I know some very good lawyers who have represented a husband and wife in a divorce. And I know some very smart people who have shared a divorce lawyer with their soon-to-be-ex-spouse. Don't do it. Your interests are legally in conflict with the person from whom you want to be divorced, and you cannot share a lawyer with him.

Filing for divorce requires that a lawsuit, called a Complaint, be filed in the Superior Court in the county in which the defendant resides: (i.e., if you have moved to a different county, and you are the one filing for divorce, you must file in the county in which your spouse resides.) The Complaint must set forth certain factual and legal contentions, such as whether there are children, with whom you want the children to live, who should get which assets, etc. The spouse has 30 days to file an Answer, and then the depositions, court hearings, etc., begin.

In divorces where the spouses are fighting over various issues, there can be a long period of time when the parties are in legal limbo. During this time, a spouse can ask the judge to hold a temporary hearing and ask for a resolution of issues such as child custody, child support, alimony, possession of property and other issues, on a temporary basis until the final trial.

The courts strongly encourage

settlement of issues between husband and wife. Mediation is almost always required, and often the matters in dispute can be resolved during an all-day session in which a “neutral” tries to find common ground among the parties. Compromise is encouraged, and hopefully a resolution is reached. In the circumstances in which the parties simply cannot agree, a trial will be held. At the final trial, all of the pending issues will be resolved, including division of marital property (and debts), child support, custody, alimony, and parenting time (often called “visitation”). A judge will decide issues regarding child custody and parenting time. The judge (or a jury, if one party has demanded a jury) will resolve all of the other issues.

The welfare of the children is an important concern of the court and is often the most bitter aspect of the divorce battle. The judge will look at the best interests of the and consider many factors when deciding custody, including those set forth by statute: the love, affection, bonding and emotional ties existing between each parent and the child; the willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, consistent with the best interest of the child; each parent's knowledge and familiarity of the child and the child's needs; the home environment of each parent consid-

ering the promotion of nurturance and safety of the child rather than superficial or material factors; each parent's involvement, or lack thereof, in the child's educational, social and extracurricular activities; and each parent's past performance and relative abilities for future performance of parenting responsibilities.

Under Georgia law, when a child has reached the age of 14 years, the child has the right to select the parent with whom he or she desires to live. The child's selection shall be binding on the court, unless the parent who was selected is determined not to be a fit and proper person to have the custody of the child. In circumstances in which a child is between the ages of 11 and 14 years, then the court will consider the desires of the child in determining which parent shall have custody. However, for children of that age, the judge has complete discretion in making this determination, and the child's desires are not controlling. The best interests of the child are always the most important issue.

There are two types of custody. Legal custody is the right to make major decisions regarding the child. The judge has the discretion to award joint custody or sole custody. Joint legal custody means that both parents have equal rights and responsibilities for major decisions concerning the child, with one parent having final decision-making authority for each of the major decision areas: medical, educational, extracurricular and religion. Physical custody means the actual physical custody of the child by each parent. Joint physical custody is shared by the parents in such a way to assure the child substantially equal

time and contact with both parents. In awarding joint custody, the court may order joint legal custody, joint physical custody or both.

The current child support law in Georgia has been in effect since January 1, 2007. The law is based on a model that requires consideration of both parties' gross income. Gross income has a very broad definition and encompasses salary, commissions, income from self-employment, bonuses, overtime payments, severance pay, recurring income from pensions, interest and dividend income, trust income, capital gains, gifts, prizes, lottery winnings and income from any other source. Once the monthly gross income of each party is determined, the two incomes are added together to get the combined adjusted income amount. A Child Support Obligation Table is then used to get the basic child support obligation. As you can see, this is a complicated issue, and you should hire a lawyer who you can trust to assist you with these child support matters. The same is true for alimony, which is payment by one spouse to the other for support and maintenance. Anecdotally, it seems as if alimony is not granted for as long a period of time as it used to be. If you are non-wage earner in your marriage, you probably should not expect a judge to award you alimony for a lengthy period of time.

One of the most difficult and complicated areas of divorce is the division of marital property. Marital property is all property acquired during the marriage, except for property received by gift from a third party or by inheritance. Each spouse is entitled to an equitable share of all marital property acquired during the

marriage. The judge or jury will decide on the division of marital property, which will be divided equitably (not necessarily equally) between the parties regardless of how the title to the property is held. There is no set formula or percentage amount used to divide marital property.

Whether your divorce is complicated or simple, you need a lawyer to represent your interests. If all of the issues have been resolved between you and your spouse, you can hire an inexpensive lawyer who will simply guide you through the court process. If, on the other hand, you expect your divorce to be contentious and complicated, be sure to hire an excellent attorney who has a firm understanding of the law and the ability to fight for your rights.



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