

# Thinking D-I-V-O-R-C-E? Consider This...

By Kathleen Aderhold

**D**ivorce. There have been so many songs recorded about the subject that I sometimes wonder what is left to say. One of my favorites is the Patsy Cline song "A Church, A Courthouse and Then Goodbye." Unfortunately in today's world, the "goodbye" may linger for years.

First the easy part: a divorce is essentially the breakup of a business unit. This unit is created when two parties enter into a contract to marry. (Yes, marriage is a contract) When one party decides to withdraw from that contract, then the marital unit must be dissolved. In order to dissolve this unit the assets and liabilities must be determined and divided pursuant to the terms of the governing law.

Remember that you are divorcing your former best friend/lover/partner who is no longer that person and no longer has your best interests at heart. It is very important to have your own attorney to help you through this process. An attorney can only represent and advocate for one party so you NEED your own advocate to first discover your assets and liabilities and to then explain the best way to divide those assets and liabilities.

Everyone's situation is different, so don't compare your divorce to your friends' stories of their divorces; you do not know the specific facts of their financial or personal situation. Depending on your the situation you may need to consider taxes, bankruptcy, credit, mortgage re-financing, health care, retirement/future income and more. The list can be extensive.

If you have children who are still dependents, an additional set of issues arises. The law is concerned with legal/physical custody, visitation, medical insurance, child support and, if you are unable to reach an agreement prior to trial, these are the issues that the judge will decide. If you are able to negotiate or mediate an agreement there are a myriad of other issues that many families choose to include in the separation agreement: specific visitation/holiday patterns the family has established, college, private school, extracurricular activities of the child, counseling, tutoring, funding of education accounts, etc.



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Again, it is extremely important to have an attorney advocating for you when children are involved. The new child support calculations integrate many of the above considerations and are very complex. An attorney can explain the difference between legal and physical custody and tie breaker determinations. In Georgia, the courts can-

not approve a separation agreement that involves children unless certain elements are contained in the agreement; likewise, a court will reject an agreement that contains certain elements that have been determined to be unenforceable or against public policy.

Once you decide to file for a divorce there are several methods by which to reach a final resolution.

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#### METHOD #1:

The attorneys for both parties can negotiate a settlement agreement that is formalized and presented to the court to be made a final order of the court at an uncontested final hearing. This is often referred to as an uncontested divorce because all the issues are worked out between the parties without the need of any court participation.

#### METHOD #2:

The parties can choose to attend mediation. The mediation is usually court-ordered and occurs when the parties are unable to reach an agreement. The mediation involves each of the parties, their attorneys and a mediator. The mediator is a trained neutral individual who has no interest in the outcome in the case and who will assist the parties in arriving at a resolution that fits their specific needs and wants. If a resolution is reached that comports with the laws of the state, it is drafted in a formal document, executed by the parties and presented to the court at an uncontested final hearing.

#### METHOD #3:

Sometimes, when the mediation and negotiation fail, the divorce goes to trial. For a contested divorce in Georgia there are two options: bench trial (trial before the judge) or jury trial (trial before a jury). In either case, each side will present its evidence to the judge or jury and a ruling will follow.

As you work through your divorce, be sure to assist your attorney in the gathering of pertinent information. Try to think through the process rationally. In the end, it will make the "goodbye" more final. Alternatively, you might find yourself in court for years to come arguing over issues that were not formalized, clauses that are vague or other items that, at the time of the divorce, you thought "we can work out without an attorney."

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