

## INSTRUCTIONS FOR FILING YOUR UNCONTESTED DIVORCE WITH CHILDREN

Free to download; \$10.00 if purchased at the Law Library

In Georgia, if you want to end your marriage, you must file a complaint for divorce in the Superior Court. You can either hire an attorney who will prepare your case and represent you in court, or you can use the sample forms included in this packet and represent yourself in court. After a court issues a final judgment and decree, you can remarry.

An uncontested divorce is one in which the parties work out an agreement regarding issues such as child support, alimony, child custody, property division, and the like. The parties do not ask the judge to settle arguments between them, but rather work things out by themselves. In an uncontested divorce, the judge is only asked to approve the decisions which you have made together with your spouse.

### YOU MAY NEED AN ATTORNEY IF:

- The case becomes contested and your spouse has a lawyer.
- You cannot find your spouse to serve him or her with your papers.
- You might lose custody of your children.
- You think you will have difficulty getting information and documents from your spouse regarding income, retirement funds, etc.

**Even if it is a friendly divorce, you should talk to a lawyer before you sign any settlement papers or file anything in court.**

STEP 1: Complete the Domestic Relations Filing Information and Final Disposition Forms.

STEP 2: Complete the Complaint for Divorce.

STEP 3: Complete the Verification form.

STEP 4: Complete the Settlement Agreement.

STEP 5: Attach other necessary documents (see details later).

STEP 6: Produce the required financial documents.

STEP 7: Pay the Filing Fee.

STEP 8: File the forms.

STEP 9: Attend the required seminar.

STEP 10: Receive the Final Judgment.

### DETAILED INSTRUCTIONS:

**STEP 1:** Complete the Domestic Relations Filing Information and Final Disposition Forms.

#### The Filing Information form

- a. In the top line, fill in the county where you are filing and the date filed.
- b. In the second line, fill in the names of the Plaintiff and Defendant.
- c. Where it says "Plaintiff/Petitioner's Attorney," check the box which says  Pro Se. This indicates that you are representing yourself without an attorney.
- d. In the left-hand box, check off what kind of case this is. Since this is a divorce, you will check " Divorce (includes annulment)."

- e. In the right hand box, indicate whether or not you are asking for relief from family violence by checking yes or no in the appropriate boxes.

#### The Final Disposition form

The purpose of this form is to tell how your case ends. Since your case is far from over, you should NOT fill in the information in the three big boxes at the bottom of the page. At this point, we do not know how the case will end.

- a. In the top line, fill in only the county where you are filing. We do not yet know the date disposed, since you have not yet received a final order from the judge.
- b. Leave the second line, "Docket #," blank. The clerk will assign this number.
- c. Write your name where it says "Reporting party."
- d. Write down the full names of the Plaintiff and Defendant.
- e. Where it says Plaintiff/Petitioner's Attorney, you will check the box which says  Pro Se. This shows that you are representing yourself. Since you are not a licensed attorney, you do not have a Bar #, so leave those blanks empty.

#### **STEP 2: Complete the Complaint for Divorce.**

Fill in your full name as the Plaintiff and your spouse's full name as Defendant. **Do not fill in where it says Civil Action File No. The clerk will assign a number to your case when you file your complaint.** Then insert your name in the space provided just before paragraph one (1).

#### Paragraph 1: Subject Matter Jurisdiction

Check box a) if you have lived in the state of Georgia for at least six months prior to filing your complaint for divorce.

Check box b) if you are not a resident of the state of Georgia, but your spouse has lived in Georgia and in the county where you are filing for at least six months prior to your filing the complaint for divorce. If neither a) or b) applies to you, you cannot file for divorce in this county.

#### Paragraph 2: Venue and Service

The word **venue** originally meant neighborhood. Today, venue means the proper place to hold a trial based on issues such as fairness and convenience to the parties, as well as the county's connection to the events in dispute.

In Georgia, the general rule is that the proper venue (place) to sue a Defendant for divorce is in the Defendant's county of residence. This rule can be found in the 1983 Georgia Constitution, Article 6, Section 2, Paragraph 1. You can read this online at <http://www.cviog.uga.edu/Projects/gainfo/conart6.htm>.

When the Defendant in a divorce case is incarcerated, Georgia courts have held that venue is proper in the county where the Defendant resided with his or her spouse before the incarceration. See Scott v. Scott, 192 Ga. 370, 15 S.E.2d 416 (1941); McLeod v. McLeod, 144 Ga. 359, 87 S.E. 286 (1915); Barton v. Barton, 74 Ga. 761 (1885).

Venue in a Georgia divorce is proper in:

1. The county where the Defendant resides, if s/he is a resident of Georgia;
2. The county where the Plaintiff resides, if the Defendant is not a Georgia resident;
3. Any county adjacent to a military post or reservation (for a divorce where a party has resided on that military post or reservation for a year before the divorce was filed)
4. Venue can be waived, either by signing a waiver form or by failing to object to improper venue
5. The county where the Plaintiff resides, IF
  - the Defendant moved from that county within 6 months of the date of filing; AND
  - That county was the marital domicile at the time the parties separated.

Acknowledgement of Service

Check box a) if your spouse will sign an Acknowledgement of Service. You will need to give your spouse of copy of your completed Complaint for Divorce and have him/her sign the Acknowledgement of Service. By signing this form, your spouse is letting the court know that he/she has received a copy of your petition and, therefore, will not need to be served with a copy of your petition by the sheriff.

Waiver of Venue and Jurisdiction and Acknowledgement of Service

Check box b) if:

- your spouse lives in Georgia but does not live in the county where you are filing; or
- your spouse lives in another state and will consent (agree) to let you file for divorce in Georgia.

Paragraph 3: Date of Marriage

Check box a) if you and your spouse have a marriage certificate. Insert the date you were married in the space provided.

Check box b if you and your spouse are common law married. Insert the date you and your spouse entered into your marriage in the space provided. You were common law married if the following statements are true:

1. You and your spouse were able to enter into a contract at the time you established a common law marriage. You were over age sixteen and mentally competent.
2. You and your spouse actually entered into a contract of marriage meaning that you and your spouse agreed that you were married.
3. You and your spouse have had sexual intercourse.
4. All of the above were done before January 1, 1997.

Paragraph 4: Date of Separation

Insert in the space provided the date you and your spouse separated. It is not essential that the husband or wife leave the marital homeplace; separation can occur when one spouse moves into another room with the intent and purpose of suspending conjugal rights. The suspended conjugal rights include the company, cooperation, assistance, aid and intimacy of the other spouse in every conjugal way. See Hosford v. Hosford, 58 Ga.App 188, 199, 198 S.E. 289 (1938); Blasingame v. Blasingame, 249 Ga. 791, 294 S.E. 34 (1982).

Paragraph 5: Children

Check the box underneath paragraph 5. List all children born to you and your spouse together, even if the children were born before your marriage. List the child (ren)'s name(s), date(s) of birth(s), and sex(es). If the wife is pregnant, indicate how many babies she is carrying and the expected due date.

#### Paragraph 6: Custody

Check box a) if you want one party to have sole legal and physical custody, while the other party retains only the right to visitation.

Check box b) if you intend for the parties to share legal custody, but for one party to have primary physical custody (in other words, the children will live with one party most of the time).

Check box c) if you intend for the parties to share both legal and physical custody. In the blanks provided, explain how the custody will be divided up. Possible options include: six months with each party, every other week with each party; half of each week with each party, etc.

#### Paragraph 7: Children's Place of Residence

Insert in the space provided the addresses of where the children lived, the dates they lived at each place, and the names of who they lived with.

#### Paragraph 8: Other Actions Concerning the Children

Check box a) if there has never been any other actions concerning your child(ren). The court wants to know about the following types of actions: custody, visitation, family violence, protective orders, termination of parental rights, and adoption.

Check box b) if there has ever been or is presently another action concerning your child(ren). The court wants to know about the following types of actions: custody, visitation, family violence, protective orders, termination of parental rights, and adoption. Insert in the space provided the location of the action, the type of action, when it began, and what happened at that action.

#### Paragraph 9: Other Persons with Custody Claims

Check box a) if no one other than you or your spouse has a court order stating what legal rights they have to your child(ren). This means that there is no court order granting anyone else custody or guardianship of your child.

Check box b) if someone other than you or your spouse has any legal rights to your child(ren). Insert in the space provided the name of the person or agency, and what legal rights that person or agency has to your children.

#### Paragraph 10: Grounds for Divorce

This uncontested divorce packet uses the most common ground for divorce, that the marriage is “irretrievably broken.” This means that you and your spouse are unable to live together, and there is no hope that the two of you will get back together again. This is what is commonly called a “no fault” divorce.

#### Paragraph 11: Settlement Agreement

Check the box beside paragraph 11 to indicate that you have signed a settlement agreement with your spouse.

### **STEP 3: Verification**

Complete the Verification form. Insert your name as Plaintiff and your spouse’s name as Defendant. Do not fill in where it says Civil Action File No. The clerk will assign a number to your case when you file your complaint. You will need to sign this Verification in the presence of a Notary Public. Most banks and many libraries have a notary on staff and will notarize your documents for a small fee.

### **STEP 4: Settlement Agreement**

The Caption: Fill in the name of the county in which you are filing. Fill in the names of the Plaintiff and the Defendant. Leave the Civil Action No. blank empty; the Clerk of Court will assign a number to the case.

Introductory paragraph: insert the names of the husband and wife.

#### Paragraph 1: Separation

Check the box beside paragraph one to show that you want to live apart from one another.

#### Paragraph 2: Non-interference with parental relationships

Check the box beside paragraph two to show that you intend to encourage a positive relationship between the child(ren) and the other party.

#### Paragraph 3: Legal and Physical Custody

Legal custody means the authority to make decisions about the children. Physical custody means the physical care of the children—who are the children living with. There are three ways to divide up custody:

Sole legal and physical custody. In this arrangement, one parent assumes the decision-making responsibility, and the children spend most of their time with that parent.

Shared legal custody and sole physical custody. Parents share decision-making authority, but the children spend most of their time with only one parent. There is often a provision that in the event of a disagreement about a decision, one parent will be the “tie-breaker.”

Shared legal custody and shared physical custody. Parents share decision-making authority, and the children divide their time equally between their parents.

Check box a) if you intend for one parent to have sole legal and physical custody.

Check box b) if you intend for the parents to share legal custody, but for one parent to have sole physical custody. In the blanks provided, explain any details of your arrangement for primary physical custody. If you want for one party to have secondary physical custody, check the box and explain the details of your arrangement.

Check box c) if you intend for the parents to share both legal and physical custody. In the blanks provided, explain the details of your arrangement for sharing physical custody. If you want to have a tie-breaker in the event of a disagreement, check the boxes to indicate who the tie-breaker will be. If you want to limit the tie-breaker provision only to certain issues, write down what those issues are.

#### Paragraph 4: Visitation

Choose a) if you want to draft your own visitation schedule. Write the schedule down in the blanks provided. You may attach additional pages if necessary.  
Choose b) if you want to use the visitation schedule included in this packet.

#### Paragraph 5: Child Support Amount

The first step in calculating child support is to complete the required Child Support Worksheets. You can find the Excel worksheet at <http://www.georgiacourts.org/csc/>. You can find training materials for further help at <http://www.georgiacourts.org/csc/training.html>. Additionally, there is a tutorial on how to fill out the Worksheet at [http://www.albany.ga.us/filestorage/1800/2889/3011/3518/4781/Using\\_the\\_Excel\\_data\\_entry\\_to\\_calculate\\_child\\_support--pdf.pdf](http://www.albany.ga.us/filestorage/1800/2889/3011/3518/4781/Using_the_Excel_data_entry_to_calculate_child_support--pdf.pdf). You must include your print copy of the Worksheet with the papers you file. If you fail to include this Worksheet, the Clerk's Office will refuse to file your papers.

If the wife is pregnant, on the child support worksheet you will list the child's name as "First Name--Unborn; Middle Name--Child; Last Name--[Put your last name]." The child support calculator will not accept zeroes or a future date for the date of birth. Put the date that you filled out the worksheet as the child's date of birth.

Now that you have completed the required Child Support Worksheet, you can fill out Paragraph 5 of the Settlement Agreement. Check the boxes to indicate which parent is making the payments and which parent is receiving the payments. In the blank provided, insert the amount of child support **which you came up with after filling out the Child Support Worksheet**. . In the blank provided, insert the date on which the first child support payment should be received. Check the boxes to show how often the payments should be made. In the blank provided, explain how the child support will be reduced as each child reaches the age of majority. For example, if the non-custodial parent must pay \$400 per month for two children, for a total of \$800 per month, you might say, "When Susie is no longer eligible for child support, the amount will be reduced to \$400 per month for the support of Johnny as long as Johnny is still eligible for child support."

#### Paragraph 6: Child Support Method of Payment

Check the box beside a) if you intend to have the non-custodial parent send payments directly to the custodial parent. This provision allows for an income deduction order in the event that payments are late three or more times in any twelve month period.

Check the box beside b) if you intend for child support to be paid through Georgia Child Support Enforcement via an income deduction order.

Paragraph 7: Health Insurance

Check the box beside this paragraph. Check the box beside the party who will be responsible for maintaining health insurance for the benefit of the minor child(ren). In the blanks provided, specify how the costs not covered by the insurance policy will be divided up. Check the boxes to indicate both who should provide health insurance cards and who should cooperate in submitting claims under the policy.

Paragraph 8: Alimony

Check a) if you agree to have alimony payments for the support of one of the parties. Check the boxes to show who is making payments to whom. In the blank provided, indicate the amount. Check the box beside week/month to indicate how often the payments should be made. In the blank provided, indicate the date on which the first payment should be made.

Paragraph 9: Division of Property

Choose box a) if you have no marital property to divide.  
Choose paragraph b) if you have already divided up your marital property to your mutual satisfaction.  
Choose box c) if you have items of property to be divided. In the blanks provided, list what those items are.

Paragraph 10: Division of Debts

Check box a) if you have no joint debts which should be divided.  
Check box b) if you have joint debts which need to be divided. In the chart provided, list the name of the creditor, the amount owed, and who will be responsible for the debt.

Paragraph 11: Name Restoration

Check the box beside this paragraph if a party wishes to be restored to a former surname or to a maiden name.

Paragraph 12: Binding Agreement

Check the box beside this paragraph to show that this agreement was entered voluntarily without any external pressure.

Paragraph 13: Entire Understanding

Check the box beside this paragraph to show that there are no agreements other than those listed in this document.

Paragraph 14: Enforceability

Check the box beside this paragraph to show that you agree to be bound by this agreement whether you maintain a separate maintenance or go on to get a divorce.

## Signatures

Each party must sign the Agreement **in the presence** of a notary public. The parties do not have to sign at the same time, and they do not have to use the same notary public.

## **STEP 5: Other Court Documents**

In addition to the complaint for Divorce and the Verification, you will need to attach the following forms to your complaint (they are in the packet):

1. Completed financial affidavits
2. Consent to Try within 31 Days
3. Acknowledgement of Service [OR] Acknowledgement of Service, Affidavit of Waiver of Venue and Personal Jurisdiction
4. Final Order

a. **Caption:** Fill in your full name as the Plaintiff and your spouse's full name as Defendant. **Do not fill in where it says Civil Action File No. The clerk will assign a number to your case when you file your complaint.**

b. **Contents of Order:** (You will use the numbers from your Child Support Worksheet)

- (1) Change of Name—In the first blank, fill in the current name of the spouse whose name will be changed. In the second blank, fill in the name of that spouse as it will be after the change of name.
- (2) Date of Settlement Agreement—Fill in the date on which the settlement agreement was reached. If the husband and wife signed on different days, use the later date.
- (3) Names of Children (Paragraph 1)—Fill in the names of the children and their dates of birth.
- (4) Name of Custodial Parent (Paragraph 2 a)—Fill in the name of the Custodial Parent.
- (5) Name of Non-custodial parent (Paragraph 2 b)—Fill in the name of the Non-custodial parent.
- (6) Parenting Time (Paragraph 2 c)—Fill in the number of days which the non-custodial parent will visit with the child(ren).
- (7) Gross income of Husband (Paragraph 3 a)—Fill in the gross income of the Husband.
- (8) Gross income of Wife (Paragraph 3 b)—Fill in the gross income of the Wife.
- (9) Non-custodial parent's adjusted income (Paragraph 4 a)—Fill in the adjusted income of the non-custodial parent.
- (10) Custodial Parent's adjusted income (Paragraph 4 b)—Fill in the adjusted income of the custodial parent.
- (11) Combined adjusted income (Paragraph 4 c)—Fill in the amount of the parties' combined adjusted income.
- (12) Basic Support Obligation (Paragraph 5)—Fill in the amount of the Basic Child Support Obligation which is listed on the "Child Support Obligation Schedule Table" based on the parties' Combined Adjusted Income. This table can be found at <http://www.georgiacourts.org/aoc/publications/sb382.htm>. Move the bar on the far right-hand side of the screen about one-third of the way down the document in order to see this table.

- (13) Basic Child Support Obligation/Custodial Parent (Paragraph 6 a)  
Fill in the amount of the Basic Child Support Obligation for the Custodial parent.
- (14) Basic Child Support Obligation/Non-custodial parent (Paragraph 6 b)—Fill in the amount for the Basic Child Support Obligation for the Non-custodial parent.
- (15) Health Insurance (Paragraph 7)—Check the box to show whether health insurance is available at a reasonable cost. Fill in the name of the parent who is responsible for maintaining health insurance for the children.
- (16) Presumptive Amount of Child Support/Custodial Parent (Paragraph 8 a)—Fill in the Presumptive Amount of Child Support for the Custodial parent.
- (17) Presumptive Amount of Child Support/Non-custodial Parent (Paragraph 8 b)—Fill in the Presumptive Amount of Child Support due to the Non-custodial Parent.
- (18) Presumptive Amount of Child Support/Custodial Parent—Fill in the Presumptive Amount of Child Support due to the Custodial Parent.
- (19) Title II Social Security Benefits (Paragraph 9)—Fill in the amount of benefits which the child receives each month under Title II of the Federal Social Security Act on the Obligor's account.
- (20) **Special Circumstances (Paragraph 10)—Leave this area blank because the Judge has discretion on whether and how to use deviations from the Presumptive Amount of Child Support. The Judge will fill in this part of the Order.**
- (21) **Final Amounts (Paragraphs 11 and 12)—Leave these areas blank. If the Judge alters the Presumptive Amount of Child Support based on Special Circumstances, the final amounts may be different from the numbers on your Child Support Worksheets and Schedules.**
- (22) Name of the Non-custodial Parent—Fill in the name of the Non-Custodial Parent.

**STEP 6: Produce the required financial documents.**

Along with the divorce packet, you must simultaneously file the following listed documents, as well as a certificate of service showing that the documents were properly served on the other party, and indicating the date on which the documents were served:

1. Complete the required Child Support Worksheets and Schedules by going to <http://www.georgiacourts.org/csc/>. If you need help with data entry on the Excel spreadsheet, you might want to find a bookkeeper to help you.
2. Domestic Relations Financial Affidavit (included in this packet)
3. All federal and state income tax returns, gift tax returns and intangible and personal property tax returns filed by the party or on the party's behalf for the past three (3) years.
4. IRS forms, W-2, 1099 and K-1 forms for the past year, if the income tax return for that year has not been prepared. Also, if such income tax return has not been prepared, a year-ending pay stub received from the party's employer should be provided.
5. Pay stubs or other evidence of earned income for the twelve (12) months prior to the filing of the action.

6. A statement by the producing party identifying the amount and source of all income received from all sources during the twelve (12) months preceding the filing of this action if same is not reflected on the pay stubs produced.
7. All loan applications and financial statements prepared or used within the three (3) years preceding the filing date of this action, whether used for the purpose of obtaining or attempting to obtain credit for any other purpose.
8. The most recent statement for any liquid fund assets, including, but not limited to, profit-sharing, 401-K, money market, stock and securities, bonds, accounts, retirement and pension plan.
9. Corporate, partnership and trust tax returns for the last three (3) years, if the producing party has an interest in a corporation, partnership, or trust greater than or equal to thirty (30%) percent.
10. All written pre-marital or marital agreements entered into at any time between the parties to this marriage, whether before or during the marriage.
11. Any court orders directing a party to pay or receive spousal or child support, even if received from a third party.

ANY MATERIALLY FALSE STATEMENT KNOWINGLY MADE IN THESE DOCUMENTS WITH THE INTENT TO DEFRAUD OR MISLEAD SHALL SUBJECT ME TO THE PENALTY FOR PERJURY AND MAY BE CONSIDERED A FRAUD UPON THE COURT.

**STEP 7: Pay the filing fee.**

Unless you are able to have your filing fee waived, there is an \$80.00 filing fee in Dougherty County. You must pay this fee when you file your Complaint for Divorce unless you also file a Poverty Affidavit.

**STEP 8: File your forms.**

You should make two copies of all of your documents. Give the clerk your original and the two copies. The clerk will assign a number to your case and will write in the number on your documents. The clerk will then stamp the documents to show that your complaint has been filed and will give you your copy for your records. The original will remain with the court. The other copy will be given to your spouse.

**STEP 9: Attend the required seminar.**

Each of you must attend the you are required to attend and successfully complete a program entitled "Seminar for Divorcing Parents" within thirty-one (31) days after the filing of this action and BEFORE you ask the Court to grant the divorce. A list of approved seminar providers, together with fee requirements and locations, can be found in the Clerk of the Superior Court's office. Seminar attendance by both parties is mandatory. Failure to complete this seminar in a successful manner will result in appropriate action against you by the Court, including denial of the grant of divorce until the class is completed, or the dismissal of your case.

**STEP 10: Receive the Final Judgment.**

If the judge approves your settlement agreement, you should receive a copy of your final judgment in the mail. If the judge has questions about matters contained in your documents, you may have a hearing. Your divorce is not final until the judge signs the final order in the case.