

INSTRUCTIONS FOR FILING YOUR CONTESTED DIVORCE WITH NO MINOR CHILDREN

Free to download; \$8.00 for a paper copy

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.

A contested divorce is one in which the parties cannot work out an agreement regarding issues such as alimony, property division, division of debts and the like. The parties ask the judge to settle arguments between them, and each will have to present evidence at a trial. This process can be quite complicated. You will probably need additional documents in order to conduct discovery, which is a formal process of gathering evidence for use at trial. Discovery can include depositions, interrogatories, requests for production of documents, and other procedures. The law library has form books which contain discovery documents you might need. Because discovery is a highly individualized process, it is not possible to include those documents in this packet.

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 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.

<p>STEP 1: Complete the Domestic Relations Filing Information and Final Disposition Forms.</p> <p>STEP 2: Complete the Complaint for Divorce.</p> <p>STEP 3: Complete the Verification form.</p> <p>STEP 4: Attach other necessary documents (see details later).</p> <p>STEP 5: Financial documents to be produced.</p> <p>STEP 6: Pay the filing fee.</p> <p>STEP 7: File the forms.</p> <p>STEP 8: Prepare your case for trial.</p> <p>STEP 9: Receive the Final Judgment.</p>

DETAILED INSTRUCTIONS:

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

These forms are required by Georgia Law, at O.C.G.A. § 9-11-133. They help the Clerk of Court keep statistical information about the number and types of cases decided in our local courts. The clerks use this information to prepare case management reports for the chief judge of each circuit and for the Chief Justice of the Georgia Supreme Court. In short, having this information helps us to run the court system more efficiently for you.

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 your 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

About Venue

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).

About Service of Process

Serving the Defendant with the complaint and other papers filed against him or her is *essential*. Without proper service, the court has no jurisdiction (authority) to decide the case. In our legal system, a Defendant has a Constitutional right to receive notice that he or she has been sued. For this reason, the preferred method of Service is that someone physically put the legal papers into the Defendant's hand. Because this is not always possible, there are exceptions.

Choose one of the following provisions

a) ***Acknowledgement of Service (p. 11, forms)***

Check box a) if your spouse will sign an Acknowledgement of Service. You will need to give your spouse a 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.

b) ***Waiver of Venue and Jurisdiction and Acknowledgement of Service (p. 12, forms)***

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.

c) ***Service by the Sheriff—filing in Defendant's county***

Use paragraph c if your spouse lives in the county where you are filing.

d) ***Service by the Sheriff—filing in Plaintiff's county***

Use this paragraph if the following statements are true:

1. You are filing in the county of your marital residence (where you last lived together).
2. The Plaintiff still lives in the county of the marital residence.
3. The Defendant moved to another Georgia county within the previous six months.

- e) ***Service on a Georgia spouse who cannot be found***
Use this paragraph if your spouse lives in Georgia, but his or her exact whereabouts are unknown.
- f) ***Service on a non-Georgia spouse***
Use this paragraph if your spouse is NOT a Georgia resident, then choose one of the following:
1. ***You know where the non-Georgia spouse lives.*** Use this paragraph if your spouse is subject to Georgia's long arm statute. The long arm statute gives a Georgia court personal jurisdiction over a non-resident defendant if he or she had enough contacts with the state. You will probably need to do additional research at the law library in order to determine whether your spouse is subject to the long arm statute. Please see: McConaughy, Dan. 2006. Chapter Six-- Jurisdiction and Venue in *Georgia Divorce, Alimony and Child Custody*. Eagan, Minnesota: Thomson West
 2. ***You do not know where the non-Georgia spouse lives.*** Use this paragraph if your spouse lives outside of Georgia, but his or her exact whereabouts are unknown. You will also need to complete an affidavit of due diligence to include with your packet.

Paragraph 3: Date of Marriage

Check box a) if you and your spouse have a marriage certificate and if you had a ceremonial marriage. 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 took place before January 1, 1997.

Note: Common Law Marriage was abolished in Georgia on 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 home place; 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: Grounds for Divorce

Check the reason(s) you are requesting a divorce. You can check more than one. The most common ground for divorce is 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. However, if you check one of the other twelve grounds for divorce, you must be able to prove your grounds for divorce.

Paragraph 6: Alimony

Check box a if you are seeking temporary alimony which will last until the divorce is final. Check box b if you are seeking alimony which is both temporary (will last until the final decree) and permanent (will last until one of you dies or until the spouse receiving alimony remarries). If you engaged in adultery, desertion, cruel treatment, or other fault grounds for divorce, you will not be able to get alimony.

Paragraph 7: Marital Property

Check box a if you and your spouse do not have any marital property.
Check box b if you and your spouse have already divided your marital property to your mutual satisfaction.
Check box c if you and your spouse have marital property which needs to be divided up by the Court. Check off the various items of property which you own, and give additional information if necessary.

Paragraph 8: Joint Debts

Check box a if you and your spouse do not have any joint debts.
Check box b if you and your spouse have joint debts. Insert in the spaces provided information about these debts. Indicate which person should pay for each debt.

Paragraph 9: Name Restoration

Check this box if you want your former name restored to you. Insert in the space provided the name you want restored. You cannot change your name to a different name if it was not your former name. For example, you can return to your maiden name or to the surname of a former spouse if you had that name in the past.

STEP 3: Verification (p. 10, forms)

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: Other Court Documents

In addition to the complaint for Divorce and the Verification, you may need to attach the following forms to your complaint:

1. **Service/Venue Forms** (Choose one of the following letters):
 - a. *Acknowledgment of Service* (page 11 of the forms packet) and *Rule Nisi with Temporary Restraining Order* (page 14 of the forms packet). Use these forms 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.

Defendant's Acknowledgment of Service Affidavit of Waiver of Venue and Personal Jurisdiction (page 12 of the forms packet) AND *Rule Nisi with Temporary Restraining Order* (page 14 of the forms packet). Use these documents 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.
 - b. *Certificate of Service AND Rule Nisi with Temporary Restraining Order* (pages 13-14 of the forms packet). Use these documents if your spouse is not signing any papers with you, and you are having him or her served with the papers by the sheriff.
 - c. *Motion for Service by Publication AND Affidavit of Due Diligence AND Order for Service by Publication AND Notice of Summons—Service by Publication* (Pages 20-24 of the forms packet). Use these documents if you do not know where your spouse lives despite trying hard to find him or her.

See the instructions on pages three to four (3-4) of this document to help you decide which ones apply to you.

2. ***Lis Pendens Notice*** (page 20 of the forms packet). Use this form if you and your spouse own a house or land together.
3. ***Final Order*** (pages 22-23 of the forms packet). Everyone needs to fill out a copy of this form.

See the instructions on pages 3-4 of this document to help you decide which ones apply to you.

STEP 5: Financial Documents to be Produced (if you seek Alimony)

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. 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.
2. 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.
3. Pay stubs or other evidence of earned income for the twelve (12) months prior to the filing of the action.
4. 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.
5. 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.
6. 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.
7. 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.

8. All written pre-marital or marital agreements entered into at any time between the parties to this marriage, whether before or during the marriage.
9. Any court orders directing a party to pay or receive spousal 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 6: Fees

Unless you are able to have your filing fee waived, there is a \$205.00 filing fee in Dougherty County. You must pay this fee when you file your Complaint for Divorce unless you also file a Poverty Affidavit. Additionally, there is a \$50 fee to the Sheriff's Department for serving your papers. If you are serving your spouse by publishing an ad in the newspaper, you are responsible for paying the cost of the newspaper ads.

STEP 7: File your forms

Make two copies of all of your completed 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. If you need more information about how to have the other party served, please see the excellent article at <http://www.fultoncourt.org/family/service.php>.

STEP 8: Prepare your case for trial

In most civil cases, **pretrial discovery** is conducted. **Discovery** refers to the formal procedures and laws which enable each party to find out more about the other side's case. Discovery serves several important purposes. It preserves evidence of witnesses who may not be available at trial. It reveals facts which might have been previously unknown. It helps refine the issues. It "freezes" testimony in order to prevent later perjury. It promotes settlements because it allows each party to test the strength of his or her opponent's case. Even if the case does not settle, discovery increases the fairness and justice of the trial outcome. There are several methods of discovery which a party can use.

Interrogatories are written questions which one party sends to another. The answering party must write down answers under oath and file them with the clerk of court within 30 days. Georgia law usually limits the number of interrogatories to 50. Failure to respond can result in sanctions and penalties by the court.

Depositions are like a mini-trial. A plaintiff, defendant, or other witness is asked oral questions which must be answered orally while under oath. Depositions are recorded by a court reporter who types everything up into one long document. Each party who is questioned may be cross examined. At trial, a witness who has either changed or forgotten his or her previous testimony can be "impeached," or discredited by referring back to the deposition testimony.

Requests for Production of Documents are used by a party to gain access to a document which is not in his or her possession. For example, a request for production of documents may be used to get a copies of the other party's tax returns, bank statements, or other important documents.

Physical and Mental Examinations may be used only with the court's permission, when a party's physical or mental condition is an issue in the trial, and when the requesting party can show "good cause," i.e., the information is extremely important and cannot be otherwise obtained.

Requests for Admissions are used to determine which issues are actually in controversy. A party is asked to admit or deny the truth of a series of statements.

Forms for all of the above discovery tools are available at the law library upon request.

For more information about trial preparation, see the following informative websites:

<http://www.fultoncourt.org/family/trialprep.php>

<http://www.fultoncourt.org/family/self-representation.php>

<http://www.georgiacourts.org/aoc/selfhelp/>

STEP 8: Receive the final judgment

Your divorce is not final until the judge signs the final order in the case. Each party will receive a copy of the signed final order. Once you have the signed order granting your divorce, you are free to remarry.

If your spouse does not answer your complaint, the divorce may be granted any time 46 days after he or she was served, unless the time for response has been extended by court order.

If you have served your spouse by publishing a notice in the newspaper, the divorce may be granted any time suitable to the judge 61 days or more after date of the first publication.

If your divorce goes to trial, the entire process can take anywhere from several months to several years, depending on how hard you two fight. Even though you have filed a contested divorce, you can still sign a settlement agreement at any time before the judge issues a final order. Settling out of court greatly speeds up the process of getting a divorce.

Good luck!