

INSTRUCTIONS FOR FILING A PETITION FOR DIVORCE WITHOUT MINOR CHILDREN

GENERAL COMMENTS

This is the form packet for people who want to file their own divorce, and who do not have any minor children together with their spouse. If you and your spouse have minor children together, you must not use this form packet. Instead, you must use the version called Petition for Divorce With Minor Children.

Please read these instructions and each form very carefully. Missing or misreading a word could cause you to make serious errors in your case, placing your rights and the direction of your divorce case in jeopardy.

INTRODUCTION

In the State of Georgia, if you want to end your marriage, you must file a Petition for divorce in the Superior Court. After a court grants your divorce and issues a Final Judgment and Decree of Divorce, you will be legally able to remarry.

It is advisable to speak with an attorney before filing any action with the court. There are often more issues involved in a divorce than you might realize if you fail to get legal advice. However, you may want to review the forms and instructions in this packet before you talk to an attorney, so that you will be able to make the best use of your time with the attorney.

Divorce can be a very complicated process. If documents are not completed, signed, notarized and filed as required by law, a judge may dismiss your case.

State law, OCGA § 15-19-51 prohibits court personnel (including staff attorneys or law clerks, calendar clerks, clerk's office staff, and sheriff's department staff) from giving legal advice or answering legal questions. Free consultations with an attorney are available through the Family Law Information Center by appointment only.

YOU MAY ESPECIALLY NEED AN ATTORNEY IF:

- The case is contested OR an attorney represents your spouse.
- Your spouse has been violent to you
- You are unable to locate your spouse to have him/her served with this action.
- You and your spouse have a house, pension or retirement account, or large amount of property or income to be divided.
- You think you may have difficulty getting financial information from your spouse.

Whether your case is contested or uncontested, you should speak with an attorney before signing a settlement agreement or filing any other documents with the court.

FORMS YOU WILL NEED TO START YOUR DIVORCE:

If this divorce action may be contested (that is, you do not have a signed Settlement Agreement), you should file the following documents with the Petition. All of these forms are included in this packet or are available from the Family Law Information Center, except the Sheriff's Entry of Service. You can get the Sheriff's Entry of Service from the Sheriff's office where you will be filing your case.

- (a) Domestic Relations Case Filing Information Form
- (b) Petition for Divorce
- (c) Verification
- (d) Summons (*available from Fulton County Clerk's Office or downloadable at <http://www.fultonclerk.org/285/Civil-Forms>*)
- (e) Domestic Relations Financial Affidavit
- (f) Domestic Relations Standing Order
- (g) Service Forms: Sheriff's Entry of Service (3-part carbon form) OR Acknowledgment of Service OR Publication paperwork, as follows: (1) Affidavit of Diligent Search (2) Notice of Publication (3) Order of Publication, Return of Service, Order Perfecting Service
- (h) Notice of Lis Pendens (only if applicable)
- (i) Rule Nisi (only if you want a special hearing on temporary issues)
- (j) Poverty Affidavit, also known as an Affidavit of Indigence (only if you are indigent and cannot afford to pay the filing & service fees — see list of fees from the Clerk's office)

If this action is uncontested (that is, you have a signed Settlement Agreement), you should file the following documents with the Petition. All of these forms are included in this packet or are available from the Family Law Information Center.

- (a) Domestic Relations Case Filing Information Form
- (b) Petition for Divorce
- (c) Verification
- (d) Summons
- (e) Domestic Relations Financial Affidavit
- (f) Automatic Domestic Standing Order
- (g) Acknowledgment of Service OR Acknowledgment of Service, Consent to Jurisdiction and Venue, and Consent to Present Case
- (h) Poverty Affidavit, also known as an Affidavit of Indigence (only if you are indigent and cannot afford to pay the filing & service fees)
- (i) Settlement Agreement (signed before notaries by both parties)

FORMS YOU WILL NEED AT THE FINAL HEARING TO FINISH YOUR DIVORCE:

If you do not have a signed Settlement Agreement, you will need the following forms when you go to the final hearing in your divorce. All of these forms are included in this packet, or are available from the Family Law Information Center.

- (a) Final Judgment and Decree of Divorce Without Minor Children
- (b) Domestic Relations Case Final Disposition Information Form
- (c) Georgia DHS Report of Divorce, Annulment or Dissolution of Marriage and Child Enforcement State Case Registry Form

If you have a signed Settlement Agreement, you will need the following forms when you go to the final hearing in your divorce. All of these forms are included in this packet, or are available from the Family Law Information Center.

- (a) Final Judgment and Decree of Divorce Incorporating Settlement Agreement
- (b) Domestic Relations Case Final Disposition Information Form (c) Georgia DHR Report of Divorce, Annulment or Dissolution of Marriage and Child Enforcement State Case Registry Form

THE FOLLOWING ARE DETAILED INSTRUCTIONS ON HOW TO COMPLETE AND FILE THIS PETITION FOR DIVORCE WITHOUT MINOR CHILDREN, AS WELL AS SOME OF THE RELATED DOCUMENTS. (Read these instructions carefully.)

Completing the Petition for Divorce

Caption (Heading):

Fill in your full name as the Petitioner, and your spouse's full name as the Respondent. Do not fill in the Civil Action Case Number. The clerk will assign a number to your case when you file your Petition in the Clerk's office. After completing the heading, write your full name again in the space provided just before

Paragraph 1.

Paragraph 1: Subject Matter Jurisdiction

- a) Check box "a" if you have been a resident of the State of Georgia for at least six (6) months immediately before filing your Petition for divorce. (It is not good enough if you used to live in Georgia in the past, moved away, and have returned more recently than six months ago.)
- (b) Check box "b" if you are not a resident of the State of Georgia, but your spouse has been living in Georgia for at least the past six (6) months. (It is not good enough if your spouse used to live in Georgia in the past, moved away, and has returned more recently than six months ago.)

Note: *If you live in Georgia, but have not lived here for a full six months, but your spouse has been living here for at least the past six months, you may still use this Petition and file in Georgia. Just check box "b" and cross out the words "I am not a resident of the State of Georgia, but", so that the sentence is accurate.*

Paragraph 2: Venue

Note: *The issue of venue in a divorce action can be very complicated. Read these instructions very carefully. If your situation does not seem to fit any of the choices exactly, you should talk to an attorney. You may not be able to file your case in this County or you may need to make special changes to this form.*

(a) Check box “a” if the Respondent currently resides in Fulton County.

(b) Check box “b” if all of the following are true: (1) the Respondent is not a resident of Fulton County but resides in Georgia; (2) the two of you lived together in Fulton County at the time you separated; (3) you still live in Fulton County; and (4) the Respondent has moved out of Fulton County only within the past six (6) months prior to you filing this Petition for Divorce.

(c) Check box “c” if the Respondent is not a resident of Fulton County but resides in Georgia and has acknowledged service of process and consented to the jurisdiction and venue of this Court. (You will also need to file the original signed and notarized Acknowledgment of Service when you file this Petition.) You must currently live in Fulton County to check this box.

(d) Check box “d” if you live in Fulton County and the Respondent does not live in Georgia. Then, check number (1), (2) or (3) in the same paragraph. (If both 1 & 3 or 2 & 3 apply, check both.)

(1) Check box “1” if the Respondent was previously a resident of Fulton County but currently resides in another state (enter the name of the state in the space provided). (See OCGA § 9-10-91[5].)

(2) Check box “2” if the Respondent has never resided in the State of Georgia and currently resides in another state. Add the name of the state in the space provided.

(3) Check box “3” if the Respondent does not live in Georgia, but has acknowledged service of process and has consented to the jurisdiction of the Court. If you check this box, you must file the original signed and notarized form entitled Acknowledgment of Service, Consent to Jurisdiction & Venue, and Consent to Present Case (one form) with this Petition.

(e) Check box “e” if you reside in Fulton County, but you do not know where the Respondent lives. You must prove to the Court that you have tried to locate the Respondent and cannot find him or her. You must also file the original signed and notarized “Affidavit of Due Diligence” with this Petition. In that Affidavit, you will explain to the Court about the steps you took to try to find the Respondent.

Note: *In this situation, you will have to serve the Respondent by publication. (See Paragraph 3-c, below.) That means you will not be able to get certain kinds of relief as part of the divorce, such as alimony, division of debts and division of some property. However, if the Respondent later acknowledges service, gets served by the sheriff, or*

files an Answer to the divorce, then your case will not be limited by the restrictions that apply to publication cases.

Paragraph 3: Service of Process

(a) Check box “a” if the Respondent has acknowledged service of process. If you check this box, you must also file the original signed and notarized Acknowledgment of Service.

(b) Check box “b” if you want the Sheriff’s Department to serve the Respondent with this Petition and the other court papers. Fill in the address where the Respondent should be served and circle whether this is a home or work address.

(1) Check box “b-1” if the Respondent lives outside of Fulton County and you want the Sheriff’s Department to serve him or her. If you check box “b-1,” you must inform the Clerk’s office (when you file the case) that the other party must be served by “second original.” The clerk will then stamp the service copy of your papers as a “second original.”

(c) Check box “c” if you do not know where the Respondent lives and you are serving him or her by publication. Write the Respondent’s last known address on the lines provided. You must also file the original signed and notarized “Affidavit of Diligent Search” with this Petition. In that Affidavit, you will explain to the Court about the steps you took to try to find the Respondent.

Paragraph 4: Date of Marriage

(a) Check box “a” if you and the Respondent were married with a license and a ceremony, such as one by a pastor or by a judge at the courthouse. Write the date of the marriage in the space provided.

(b) Check box “b” if you and the Respondent did not have a marriage license and a ceremony, but you believe you have established a common law marriage. Under Georgia law, this generally means that you and the Respondent lived together in the State of Georgia and held yourselves out as husband and wife before January 1, 1997. Write the date you began your common law marriage on the space provided.

Paragraph 5: Date of Separation

In the space provided, write the last date that you and the Respondent separated and remained separated up to the present time. Provide only one date. If you and the Respondent have separated, gotten back together, and then separated again, use the date of the most recent separation.

Paragraph 6: Settlement Agreement

Check this box only if you and the Respondent have signed a Settlement Agreement telling the Court the arrangements concerning how you will divide your joint and marital property and debts, and how you will resolve any other issues between the two of you.

The parties must agree voluntarily and this document must be signed by both parties in front of a notary public.

Paragraph 7: Minor Children

If you and the Respondent have minor children together, you must use a different Petition form, entitled "Petition for Divorce With Minor Children."

Paragraph 8: Alimony

***Note:** If you want alimony, but do not have proof of the Respondent's income, you should see an attorney. There are procedures called "discovery" that may be used to try to find out about the other person's income. The income of the parties is an important issue in deciding alimony.*

(a) Check box "a" if you are financially dependent on the Respondent and want the Court to order the Respondent to pay alimony for your support.

(b) Check box "b" if you are not asking the court to order alimony payments for your support.

(c) Check box "c" if this issue cannot be decided by the Court in this divorce action because the Court cannot get personal jurisdiction over the Respondent

Paragraph 9: Marital Property

Notes About Marital Property:

All property obtained by either party during the marriage is considered marital property (no matter whose name is on the title), except for gifts and inherited property.

If the marital home or other real estate is titled in the Respondent's name alone (or you are not sure whose name is on the property deed), you may need to file a separate document called a Notice of Lis Pendens. See an attorney if this may apply to your case.

If the marital home belonged to one of the parties before the marriage, it still may be claimed as marital property if its value has increased (or the mortgage has decreased) during the marriage. See an attorney if this may apply to your case.

If you or the Respondent have rights to a pension that has built up during the marriage, the pension may be considered marital property. Figuring out the value of a pension or retirement account (and writing the proper QDRO order if it is distributed in the divorce) may be complicated. See an attorney if this may apply to your case.

If you think the Respondent may have obtained assets or property during the marriage that are unknown to you, the law has procedures to use (called "discovery") to try to find out about them. If it is important to you to try to learn more about the Respondent's assets, you should see an attorney.

CHECK ONLY ONE BOX in Paragraph 9

(a) Check box “a” if you and the Respondent have already divided your marital property and you are both satisfied with the division.

(b) Check box “b” if you and the Respondent did not obtain any property during your marriage to each other (or if the property is already all gone).

(c) Check box “c” if you and the Respondent have obtained property during your marriage to each other and you are asking for a fair division of that property. If you check box “c,” you must provide the Court with information about the property that you and the Respondent have obtained at any time during the marriage. Use the spaces provided under box “c” to describe the property and check each box that applies. Use additional paper if necessary, and attach the paper to this Petition. Carefully read the “Notes about Marital Property” at the beginning of the instructions for Paragraph 9.

(d) Check box “d” if this issue cannot be decided by the Court in this divorce action because none of the marital property is located in Georgia and the Court cannot get personal jurisdiction over the Respondent.

Paragraph 10: Joint or Marital Debts

***Note:** The creditors are not parties in your divorce case. Therefore, the Court cannot take away the creditors’ rights in the divorce. This means that the Court cannot prevent creditors from trying to collect from any person who is responsible for a particular debt. However, the Court can enter an order in the divorce case that says one party or the other must pay a particular marital debt. If the responsible party does not pay as ordered, she or he may be held in contempt.*

(a) Check box “a” if you and the Respondent do not have any joint or marital debts.

(b) Check box “b” if you and the Respondent have joint or marital debts. In the spaces provided, list each creditor (for example, Visa, MasterCard, etc.), the balance owed, and who you believe should pay each debt. Use additional paper if necessary, and attach it to the Petition.

(c) Check box “c” if this issue cannot be decided by the Court in this divorce action because the Court cannot get personal jurisdiction over the Respondent.

Paragraph 11: Restraining Order Where Violence Has Occurred

Check this box only if there has been a history of violence by the Respondent toward you, and you are afraid that the Respondent will continue the violent acts or harassment against you. Do not check this box if there has not been any history of violent acts against you by the Respondent.

Note: If there has been recent violence (or past violence plus a threat of future violence), you may want to also consider filing for a Temporary Protective Order (TPO) immediately. A TPO may provide stronger and faster protection than a restraining order in a divorce case. There is no charge for filing a TPO petition and free help is available for filing one. You can contact the One Stop for Protective Orders office at 404-612-0505 for more information. (If you apply for a TPO, you can still check the restraining order option for the divorce.)

Paragraph 12: Restore Former or Maiden Name

Check this only if you want the Court to restore your former or maiden name. On the space provided, write the name you want to have restored. This is not a name change action and cannot be used for anyone except the wife or husband in this divorce action.

Paragraph 13: Grounds for Divorce (Your reason(s) for wanting the divorce)

Check all that apply.

(a) Check box “a” if there is no hope that you and the Respondent can save this marriage. This is the language for grounds in most cases, and may be the only grounds you choose. It is the basis for granting a divorce when fault is not proven. It can be used even if you choose other grounds.

(b) Check box “b” if the Respondent has committed acts of cruelty against you. On the spaces provided, you must tell the Court what cruel acts the Respondent did to you.

(c) Check box “c” if the Respondent has had sexual relations with someone else while you have been married to each other.

(d) Check box “d” if the Respondent left you intentionally and has not come back for at least a year.

(e) Check box “e” if you can prove and want to state other grounds for divorce. Other grounds for divorce are listed in the Georgia Code at OCGA § 19-5-3. You must tell the Court what other grounds for divorce you are stating. Use the space provided or and attach additional paper.

Final Paragraph: Request for Relief * CHECK ONLY THE BOXES THAT APPLY *

(a) Check box “a”.

(b) Check box “b” if you want the Respondent to be served with your court papers.

(c) Check box “c” to confirm that you want a divorce.

(d) Check box “d” if you want the Settlement Agreement signed by you and the Respondent to be incorporated in the Final Judgment and Decree of Divorce. Make sure you have also completed Paragraph 6 and that both parties have signed the Settlement Agreement in front of a notary public.

(e) Check box “e” if you want the Court to order the Respondent to pay alimony for your support.

(f) Check box “f” if you want the Court to divide the marital property as described in Paragraph 9. Make sure you have correctly and completely filled out Paragraph 9, after carefully reading the notes at the beginning of the instructions for that paragraph.

(g) Check box “g” if you want the Court to assign responsibility for payments of joint or marital debts as described in Paragraph 10. Make sure you have correctly and completely filled out Paragraph 10, after carefully reading the notes at the beginning of the instructions for that paragraph.

(h) Check box “h” if you want the Court to temporarily and permanently restrain the Respondent from harassing you or committing any further acts of violence toward you. Make sure you have also completed Paragraph 11.

(i) Check box “i” if you want the Court to restore your former or maiden name according to Paragraph 12. Make sure you have also completed that paragraph.

(j) Check box “j” if you want the Court to schedule a Rule Nisi (hearing on temporary issues). Complete a Rule Nisi form for the Court to complete and sign.

To finish filling out this Petition form, add the date on which you are signing it, sign your name in the space provided on the last page, write your address, email, and telephone number. If the Respondent does not know your address and it should be kept confidential because of family violence, do not write that address here. Instead, you should write another address here, where you can be sure that you will receive any information that is mailed to you by the Court or the Respondent.

Complete the Verification Form

The Verification form must be filed with the Petition for Divorce. In the caption, insert your name as the Petitioner and your spouse’s name as the Respondent. Do not fill in the Civil Action Case Number. The clerk will assign a number to your case when you file your case in the Clerk’s office. Insert your name in the space underneath the word “Verification,” which is the title of this document. Before you sign this Verification, remember that you will be swearing under oath that the information you have provided in the Petition for Divorce is true. Therefore, you should re-read the Petition one more time, from start to finish, to make sure it is all true. Then, take the Petition and this Verification to a notary public. Sign your name in front of the notary public in the space provided, and check the box to indicate that you are the Petitioner. The notary must complete the rest of the Verification form after you sign it under oath.

Complete Other Court Documents & Copying Your Papers

In addition to the Petition and the Verification, you must complete and file several other forms together with the Petition to start your divorce case. Like the Verification, some of these forms must also be signed by you in front of a notary public. (The ones you need are listed on pages 2-3 of these instructions.)

After you have finished filling out all the papers you need to start your case, and all have been signed (in front of a notary when required), follow the Superior Court Clerk's instructions for e-filing.

Fees

There is a fee for filing your case. In addition, there is a fee for the Sheriff's Department to serve this action. Check with the Clerk's office to confirm all fees associated with your case.

If you have a very low income, and feel that you cannot afford to pay these fees, you can ask the Court to waive the fees. To do this, you should file a Poverty Affidavit, also known as an Affidavit of Indigence, with the other papers when you file your divorce action at the Clerk's office. A judge must sign the Order approving your Affidavit, before the filing of your case will be completed by the Clerk's office staff. If the judge signs the order approving the poverty affidavit, both the filing fee and the service fee are waived. If the judge does not approve your Affidavit, you must pay the fees before your case will proceed.

If you are serving the Respondent by publication (because you do not know where she or he can be found for service), there is a publication fee charged by the newspaper that publishes the notice. If the judge approves your Affidavit of Indigence, the newspaper may waive the publication fee.

Filing Your Case in Court

After you have completed, signed (in front of a notary, where applicable) and sorted all your paperwork (and you have your filing and service fees ready, unless you are filing a Poverty Affidavit (Affidavit of Indigence), you are ready to file your case.

Follow the Superior Court Clerk's instructions for e-filing your case.

Arranging for Service

Service is the required formal process of notifying the Respondent that the divorce action has been filed. There are basically three ways for service to be completed: (1) the Respondent signs an Acknowledgment of Service, (2) service by the sheriff's department or other approved process server, or (3) publication.

Acknowledgment of Service

This is the easiest and least expensive method, but only if the Respondent is cooperative and willing to sign an acknowledgment form in front of a notary public. You cannot sign the form for the Respondent and you cannot sign as the notary witnessing the Respondent's signature. Also, it is not good enough for the Respondent to sign without the signature being witnessed by a notary public.

To use this method of service, you need to complete the appropriate form and have the Respondent sign it in front of a notary public. Then, you file it with your other papers.

Service by the Sheriff (“Personal Service”)

This is the usual way for service to be completed. It is sometimes called “Personal Service,” which means that the deputy sheriff or other court-approved process server hands the papers to the Respondent in person. Therefore, if the Respondent will not sign an acknowledgment, and you know an address where the Respondent can be served, then you should make arrangements for the Sheriff's Department to serve the papers.

If the Respondent can be served in Fulton County, then the Fulton County Sheriff's Department can serve the papers. You may pay the service fee at the Sheriff's office when you file the case, and leave the service copy of the papers with the Sheriff's office.

➤ Make sure the service copy includes the Sheriff's Entry of Service form. After the Fulton sheriff's department completes service you should receive a copy of the proof of service. If the Respondent must be served in another county or state, then the Fulton County Sheriff's Department cannot serve the papers. You must arrange for service directly with the sheriff's department of the proper county. You must find out the amount of the fee, and take or send it to the proper sheriff's department, along with the service copy of the papers.

Service by Publication

This is the method of last resort. If you can find the Respondent, you must use one of the other two methods of service. Publication is a choice if you do not know where the Respondent lives or works, and you cannot find out that information. You must prove to the Court that you have tried to locate the Respondent and cannot find him or her.

If you have to serve the Respondent by publication, there are special limitations on your divorce case, because the Court will not have “personal jurisdiction” over the Respondent. You will not be able to get certain kinds of relief as part of the divorce, such as child support and alimony. However, if the Respondent later acknowledges service, gets served by the sheriff, or files an Answer to the divorce, then your case may not be limited by the restrictions that apply to publications cases.

To serve by publication, you must prepare and file three forms:

(1) Affidavit of Diligent Search (2) Notice of Publication and (3) Order of Publication, Return of Service, Order Perfecting Service

In the Affidavit of Due Diligence, you will explain to the Court about the steps you took to try to find the Respondent. You must make reasonable efforts to find the Respondent before you fill out the Affidavit form. The Affidavit of Diligent Search form is available through the Family Law Information Center, and has its own set of instructions. The other two forms are available through the Clerk's office.

If you know you must use service by publication when you prepare your Petition for Divorce, then you should prepare the three listed forms at that time. However, if you have already filed your divorce case, and have tried to complete service by a different method, you can still request the Court's permission to serve by publication.

After you file the forms, if the Court grants permission, the Judge will sign the Order of Publication. You must pay the cost of publication. Then, the Notice of Publication will be published in the county's official legal newspaper (In Fulton it is the Fulton County Daily Report) four times (usually four weeks in a row). The Notice gives the Respondent 60 days to file an Answer, if she or he wants to contest the case.

Meanwhile, the Court Clerk is required to mail the Notice of Publication to the Respondent's last known address (which you have provided in the Affidavit of Diligent Search), and then to complete the Return of Service part of the 3-part form listed as (3) above.

However, to be on the safe side, in addition to the above, you may also want to mail a set of all the papers to the last known address.

After it has been published all four times, you should receive an Affidavit of Publication from the newspaper, stating that publication is complete. You must bring this Affidavit of Publication with you to your hearing, to prove that service by publication has been completed. Usually, the Judge will then sign the Order Perfecting Service (part of the 3-part form listed above) at the hearing, showing that the Court has reviewed the service and finds it was done properly.

You may later find out where the Respondent lives or works (before the case is over). If this happens, then you can arrange for the Sheriff's Department to serve the Respondent, or for the Respondent to acknowledge service.