

# Instructions for Petition for Divorce With Minor Children

## GENERAL COMMENTS

This is the form packet for people who want to file their own divorce, and who do have minor children (under 18 years old) together with their spouse. If you and your spouse do not have minor children together you should use the version called Petition for Divorce Without Minor Children. That form is much shorter.

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. Please read and complete the seven (7) steps listed below in order to complete, file and serve your Petition for divorce.

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 or your children
- 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 in the courthouse where you will be filing your case.

- (a) Domestic Relations Case Filing Information Form
- (b) Petition for Divorce
- (c) Verification
- (d) Parenting Plan
- (e) Child Support Worksheet
- (f) Summons
- (g) Domestic Relations Financial Affidavit
- (h) Domestic Relations Standing Order
- (i) 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
- (j) Notice of Lis Pendens (only if applicable)
- (k) Rule Nisi (only if you want a special hearing on temporary issues)
- (l) Poverty Affidavit/Affidavit of Indigency (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, unless otherwise noted.

- (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) 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 (only if you are indigent and cannot afford to pay the filing & service fees)
- (i) Settlement Agreement (signed before notaries by both parties) – including Parenting Plan and Child Support Worksheet and Child Support Addendum.

## 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

### **Case Heading:**

Enter your name on the line labeled "Petitioner"

Enter your spouse's name on the line labeled "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.

### **Petition**

After completing the heading, write your full name again in the space provided just before Paragraph 1.

### **Paragraph 1: Subject Matter Jurisdiction \* CHECK ONLY ONE BOX \***

(a) Check box "a" if you have been a resident of the State of Georgia for at least six 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. 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 \* CHECK ONLY ONE BOX \***

**Note:** The issue of venue in a divorce action is very complicated. The divorce may be dismissed if the form is not filled out correctly. 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 particular changes to this form.

Write your spouse’s full name in the blank space provided.

(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 signed an Acknowledgement of 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 a resident of Fulton County but currently resides in another state (enter the name of the state in the space provided), and the Respondent is subject to the personal jurisdiction of the Court under Georgia’s Long Arm Statute. (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* 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 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.

**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 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 will not be limited by the restrictions that apply to publication cases.*

**Paragraph 3: Service of Process \* CHECK ONLY ONE BOX \***

*Note: To find out more information about Service of Process, read Step 6 of these instructions.*

(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. You must 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 of that county 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 \* CHECK ONLY ONE BOX \***

(a) Check box “a” if you and the Respondent were married with a license and a ceremony, such as one by a clergy person or by a judge at the courthouse. Write the date of the marriage ceremony 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 prior to January 1, 1997. 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 more than once, use the date of the most recent separation.

**Paragraph 6: Settlement Agreement**

Check this only if you and the Respondent have signed a Settlement Agreement, Permanent Parenting Plan, and Child Support Addendum telling the Court the agreements concerning your minor children (such as custody, visitation, child support, medical expenses, insurance), 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 these documents must be signed by both parties.

**Paragraph 7: Minor Children**

On the space provided, write the number of minor children (under age 18) that you have together with your spouse. In the additional spaces, list the name of each child, the gender, year of birth and the parent (or other adult) with whom the child lives now. If you have more than four (4) minor children together, you should list the information for the additional children on a separate piece of paper and attach that paper to this Petition (between pages 3 & 4).

**Paragraph 8: Children’s Current Residence**

In the spaces provided, you must give the Court the address and county where the children live now, and the names of the adults living with them. On the last space, tell the court how long they have been at that address. However, if the children live in a shelter for victims of family violence, DO NOT LIST THE ADDRESS OF THE SHELTER. Instead, on the space for the address, list only the name of the shelter and the state where it is located. Do not even fill in the name of the county.

**Paragraph 9: Children’s Past Residences**

You must tell the Court where the children have lived within the past five (5) years. In the spaces provided, tell the Court the dates the children lived at each address, and then list the address next to the date. However, if the children lived in a shelter for victims of family violence, DO NOT LIST THE ADDRESS OF THE SHELTER. Instead, on the space for the address, list only the name of the shelter and the state where it is located.

**Paragraph 10: Adults With Whom the Children Have Lived**

In the spaces provided, list the name of each adult with whom the children have lived during the past 5 years, and then list that person's current address.

**Paragraph 11: Other Court Cases About Children \*CHECK ONLY ONE BOX \***

(a) Check box "a" if you have never participated in any other court case or litigation (such as filing a case, being served with court papers, testifying as a witness), concerning the custody of or visitation with the children, in this state or any other state.

(b) Check box "b" if you have participated in litigation other than this case (such as filing a case, being served with court papers, testifying as a witness), concerning the custody of or visitation with these children, in this state or another state. In the spaces provided, list the court, the case number and the date of any order concerning custody or visitation.

**Paragraph 12: Other Cases That Could Affect Custody or Visitation in This Case \*CHECK ONLY ONE BOX \***

(a) Check box "a" if you do not have any information about any other case (past or present, in Georgia or another state) that could affect custody or visitation in this case. Examples include other divorces, contempt actions, family violence cases, termination of parental rights, legitimations, and adoptions.

(b) Check box "b" if you do have information about any other case (past or present, in Georgia or another state) that could affect custody or visitation in this case. Examples include other divorces, contempt actions, family violence cases, termination of parental rights, legitimations, and adoptions. In the spaces provided, you must write the name of the court involved, the case number and the type of case. If you need more space for this answer, use additional paper and attach it to this Petition between pages 5 and 6.

**Paragraph 13: Others Claiming Custody or Visitation \* CHECK ONLY ONE BOX \***

(a) Check box "a" if you do not know of any person (other than you or the Respondent) who has physical custody of the children or who claims to have custody or visitation rights to the children.

(b) Check box "b" if you do know of someone (other than you or the Respondent) who has physical custody of the children or claims to have custody or visitation rights to the children. In the spaces provided, list the name and present address of each person involved.

**Paragraph 14: Child Custody \* CHECK ALL THAT APPLY \***

*Note: There are many ways to arrange custody of children. This form Petition does not try to deal with all of them, but only the most common ones. If you want the Court to order a different custody arrangement, you should talk to an attorney. If you want more information about what it means to have sole custody or joint legal custody, you may*

want to read OCGA § 19-9-6 and also talk to an attorney. Under the law, the Court must order custody in the “best interests of the children.”

(a) Check box “a” to show that you are seeking custody. On the first line, check the box to show whether you want sole or joint legal custody. On the second line, check the box to show whether you want sole or joint physical custody. On the third line, check the box if you are seeking visitation for yourself. If you want some other or additional arrangement, check the box on line four and write out the arrangement that you want.

(b) Check box “b” if you have completed and attached a Parenting Plan.

### **Paragraph 15: Child Support**

**Note:** There are specific guidelines that the Court must follow when setting child support. The guidelines are found in OCGA § 19-6-15. More information about the child support guidelines can be found on the Internet at:

<https://services.georgia.gov/dhr/cspp/do/public/SupportCalc>

(a) Check box “a” if the Respondent has income or is capable of earning income. In the first space provided, list the Respondent’s gross monthly income (before taxes or other deductions. If you do not know the amount of the Respondent’s income, write the word “unknown.”

(b) Check box “b” if you have income or are capable of earning income. In the space provided, list your gross monthly income (before taxes or other deductions.

(c) Check box “c” if you believe that the Respondent should pay child support to you.

(d) Check box “d” if you believe that you should pay child support to the Respondent.

(e) Check box “e” if you have submitted a Child Support Worksheet.

(f) Check box “f” if the Court cannot decide this issue in this divorce action, because the Court cannot get personal jurisdiction over the Respondent. Generally, this will be because you are serving by publication, or because the Respondent has never lived in the State of Georgia. (For more information on this, see the note about service by publication in the instructions above.)

### **Paragraph 16: Health Insurance for Children**

(a) Check box “a” if you want the court to order the Respondent to maintain medical, dental and hospitalization insurance for the children.

(b) Check box “b” if you already provide health insurance for the children and will continue to do so.

(c) Check box “c” if you are not asking the Court to decide this issue.

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

### **Paragraph 17: Other Medical Expenses for Children**

(a) Check box “a” if you want the Respondent to be responsible for all expenses incurred for the children’s medical, dental and hospital care, that are not covered by insurance.

(b) Check box “b” if you believe that you and the Respondent should share the expenses incurred for the children’s medical, dental and hospital care, that are not covered by insurance.

(c) Check box “c” if you are not asking the Court to decide this issue.

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

### **Paragraph 18: Life Insurance to Support Children**

(a) Check box “a” if the children depend on the Respondent for support, and you believe the Respondent should maintain a life insurance policy on himself/herself for the support of the minor children. In the space provided, write the amount of insurance you believe the Respondent should maintain for the children’s benefit.

(b) Check box “b” if you are not asking the Court to decide this issue.

(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 19: 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 income. The income of the two 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 20: Marital Property**

#### ***Notes About Marital Property:***

*(a) 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.*

*(b) 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.*

*(c) 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.*

*(d) If you or the Respondent have rights to a pension or retirement account that has built up during the marriage, the pension or retirement 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 very complicated. See an attorney if this may apply to your case.*

**\*Note:** *If you think the Respondent may have obtained assets 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 one option in Paragraph 20**

(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 "c" to describe the property and check each box that applies. Use additional paper if necessary, and attach the paper to this Petition, between pages 8 and 9. Carefully read the "Notes about Marital Property" at the beginning of the instructions for Paragraph 20.

(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 21: 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 22: 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 call the One Stop for Protective Orders office at 404-613-4579 for more information. (You should still check the restraining order option for the divorce.)

**Paragraph 23: Restore Former or Maiden Name**

Check this box 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.

**Paragraph 24: 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 may be the only grounds you choose. It is the basis for granting a divorce even when no fault is proven. It can be used even if you check 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 from that code section you are stating. Use the space provided or use and attach additional paper between pages 10 and 11.

**Request for Relief**

This is a summary of everything you have asked for above. Check all of the items that apply. Items without check boxes are automatically included in your request for relief.

**Signing the Form**

Sign the form on the top signature line and then enter the date, your name, address, telephone number and email where indicated.

**Verification**

Locate the Verification Page.

Enter your name on the line labeled "Petitioner"

Enter your spouse's name on the line labeled "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.

Enter your name on the first blank line after the title VERIFICATION.

This form must be notarized. You will need to provide a photo ID for the notary. Have a notary watch you sign the form and then have the notary stamp the form with a notary seal. Enter your printed name, address, telephone number and email where indicated.

Submit the Verification with your Petition for Divorce.