

Georgia Uncontested Divorce

This information is an overview of the uncontested Georgia divorce filing process and a summary of the divorce papers that are typically filed with the family law or domestic relations clerk. This overview is not intended to be an exact step-by-step guide for those "do it yourself divorce" filers, due to the fact that many cases are unique and the overview presented here is often not the only method of obtaining an uncontested divorce in Georgia.

In Georgia, the filing spouse must be a resident for at least six months and file for the action in the county of residence. A nonresident may file against a spouse who has been a resident of Georgia for six months, but the action must be filed in the county of residence of Respondent.

In Georgia, the person who files for divorce is called the Petitioner, and the person who responds is called the Respondent. Divorce actions are filed in the Superior Court of one of Georgia's more than 150 counties.

Legal grounds for divorce include No-fault, which means an "irretrievable breakdown of the marriage," and 13 fault grounds, including 1) impotence, 2) adultery, 3) conviction and imprisonment for more than two years for an offense involving moral turpitude, 4) alcoholism and/or drug addiction, 5) confinement for incurable insanity, 6) separation caused by mental illness, 7) willful desertion, 8) cruel and inhuman treatment which endangers the life of the other spouse, 9) habitual intemperance (drunkenness), 10) consent to marriage obtained by fraud, duress or force, 11) spouse lacked mental capacity (including temporary incapacity as a result of alcohol or drugs), 12) wife pregnant by another man at the time of the marriage, unknown to the husband, and 13) incest.

All divorces begin with the filing of the Petition for Divorce, when the clerk of the court assigns a docket number to case. Unlike many states, Georgia does not have a simplified or summary divorce; however, if both parties agree to the terms and conditions of the divorce, they can sign and file an Agreement. This form stipulates the terms and conditions of spousal and child support and visitation as well as the division and distribution of the marital estate. In this routine, the respondent normally signs Acknowledgment of Service and Consent to Jurisdiction, by which the Respondent waives further notice. These forms are then joined with the Petition and the divorce proceeds to a Final Judgment and Decree. This can happen 31 days after the filing. In this routine, the Agreement becomes a court order, and neither spouse needs

appear in court. Some additional forms listed below for an uncontested divorce may be required.

When the parties have not reached an agreement, the Respondent must be given notice of service. In these cases, where an agreement is not reached when the Petition is filed, the Respondent must be sent a Summons, which informs him or her that the Petition has been filed and gives the party 30 days to respond. The Summons is accompanied by a Sheriff's Entry of Service, which certifies delivery of the Petition and the Summons. In Georgia, service is done by the Sheriff's Department.

If a hearing in the action is required, the Petitioner must inform the Respondent with a Rule Nisi, a form which informs him or her of the hearing. If the party has already completed an Acknowledgment of Service and Consent to Jurisdiction, or if he or she has answered the Petition, the Rule Nisi form can simply be mailed to the Respondent with an attached Certificate of Service, which he or she returns. If he or she has not signed an Acknowledgment or answered, then the Rule Nisi must be served in the same manner as the Service of Process.

At the time of the filing, almost every Superior court in Georgia also issues a Domestic Standing Order, which requires that the parties behave civilly toward one another, not remove children from the state or dissipate assets.

A divorce is uncontested in one of two ways: one, when the Respondent does not respond and defaults, and the other is when the parties reach an agreement on every issue, including asset and liability division and distribution, child custody and visitation, child support and alimony (how much and how long).

To begin an uncontested divorce, a Petitioner files the following forms at the time he or she files the Petition for Divorce:

- A Disclosure Statement, which is a kind of cover sheet identifying the parties and stipulates the court action -- divorce or annulment.
- A Domestic Relations Case Filing Information Form, which identifies the parties, identifies the type of court case, including modification and contempt proceedings.
- Report of Divorce, Annulment, or Dissolution of Marriage, which is a state form for statistical purposes, reports the particulars of the marriage.
- Acknowledgment of Service and Consent to Jurisdiction or Sheriff's Entry of Service.

By the final hearing, which is scheduled when the divorce papers have been served, the following forms are prepared:

- A Final Judgment and Decree, which is a court order, ends the marriage.
- Domestic Relations Case Final Disposition Form, which is similar to the Domestic Relations Case Filing Information Form, reports the outcome of the action.
- Agreement, which is negotiated, spells out the terms and conditions of custody and visitation, support and the division and distribution of marital property.

When the couple have minor children, they must complete an Affidavit Regarding Custody, by which the Plaintiff identifies them, their addresses and reports any custody issues involving them.

In an uncontested divorce, the Defendant may file an Answer and Counterclaim if

- The wife is the Defendant;
- Both she and her husband agree on everything;
- Both sign and file an agreement;
- She wants her maiden name restored.

This form is not used in a contested divorce. When the wife is the Plaintiff in an uncontested divorce, she normally asks for a restoration of her maiden name in the petition.

The route of a contested divorce is difficult to predict because very often both the Petitioner and Respondent continue to negotiate after the action begins. In an uncontested divorce, the court approves what the parties have agreed to provided it is fair and reasonable; in a contested divorce, the parties must prove what they are asking for that is fair and reasonable and the court divides the property under the laws of Georgia, which provide for an equitable division.

A contested divorce begins when the Respondent files an Answer to the Petition that may include a Counterclaim. He or she has 30 days to do this upon receipt of the Petition.

A contested divorce begins with the Petition, Summons, Sheriff's Entry of Service or Acknowledgment of Service and Consent to Jurisdiction, and it includes all of the forms used in an uncontested divorce, including a Domestic Relations Case Filing Information Form, Disclosure Statement, Report of Divorce, Annulment, or Dissolution of Marriage. In addition both the Petitioner and the Respondent must file a Domestic Relations Financial Affidavit, which profiles the income and expenses of the party as well as his or her assets and liabilities.

The purpose of the Domestic Relations Financial Affidavit is to give the court an understanding of the financial position of each spouse, and together the forms and affidavits give the court an idea of what the Petitioner seeks.

When the Respondent fails to file a Domestic Relations Financial Affidavit, the Petitioner must first try to obtain the information by filing a Request for Production of Documents, which gives the party 30 days to comply and produce the requested information. If this does not produce results, it may be necessary to subpoena the spouse's employer, bank, or accountant.

In a contested divorce, a temporary hearing may be held prior to the final judgment at which the judge may issue a Temporary Order regarding spousal and child support, house and living expenses.

When the Respondent cannot or will not be found to receive divorce papers, the Petitioner must conduct what is term a "diligent search" followed by service by publication. Courts require a good faith effort by the Petitioner to prove that he or she has searched for his or her missing spouse. This search entails

- Checking the telephone book and directory assistance in the area where the Petitioner lives;
- Checking the telephone book and directory assistance in the area where the Respondent is last known to have lived;
- Asking friends and relatives who might know the location of the missing spouse;
- Checking with the post office for any forwarding address of the missing party;
- Checking records of the tax collector and property assessor to see if the missing spouse owns property.
- Contacting the department of motor vehicles for registrations in the name of the missing spouse;
- Checking with any other possible sources that might lead to a current address, such as landlords and/or prior employers.

If a good faith search is barren, the Petitioner may file an Affidavit of Publication and Diligent Search. This form gives the affiant (the Petitioner) permission to publish the Summons in a newspaper after the court issues an Order of Publication and a Notice of Publication. The order and notice are prepared by the Petitioner. Publication must be done four times over a 60-day period, with publications at least seven day intervals in a newspaper in the county where the divorce is filed.

If the missing spouse still fails to appear, the divorce action continues as an uncontested default divorce.