

## INSTRUCTIONS FOR FILING A PETITION FOR DIVORCE

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 judgement and decree, you can remarry.

### YOU MAY NEED AN ATTORNEY IF:

- ⇒ The case is contested and your spouse has a lawyer.
- ⇒ You cannot locate your spouse to serve him or her with your papers.
- ⇒ You or your spouse have a house, pension, or large amount of property or income. Even if it is a friendly divorce, you should talk to a lawyer before you sign any settlement papers or file anything in court.
- ⇒ You might lose custody of your children.
- ⇒ You think you will have difficulty getting documents from your spouse about retirement funds, income, etc.

- STEP 1:** Complete the Petition for Divorce
- STEP 2:** Complete the Verification form to go with the Petition
- STEP 3:** Attach other documents to your Petition
- STEP 4:** Filing Fee
- STEP 5:** File the forms
- STEP 6:** Serve the original forms on the other party
- STEP 7:** Attend Children of Divorce Seminar
- STEP 8:** Request and appear at the scheduling conference or hearing.

HERE ARE DETAILED INSTRUCTIONS HOW TO FILL OUT THE FORMS:

### STEP 1- Complete the attached sample form for divorce

Fill in your full name as Petitioner, and your spouse's full name as Respondent. **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 before paragraph (1).

#### Paragraph 1: Subject Matter Jurisdiction

Check box (a) if you have been a resident of 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 Fulton County for at least six months prior to your filing your complaint for divorce. **If neither (a) nor (b) applies to you, you cannot file for divorce in Fulton County.**

#### Paragraph 2: Venue and Service

**The general rule is that you file for divorce in the county where your spouse resides. If your spouse is not a resident of Fulton County, go to the section titled *EXCEPTIONS*. If none of the exceptions apply to your situation, you cannot file for divorce in Fulton County.**

Insert your spouse's name in the space provided.

If you require materials in alternate format, please notify the Family Law Information Center as soon as possible.

Check box (a) if your spouse is a resident of Fulton County. If you check box (a) then review your options under box (a) to see which applies to you.

#### **ACKNOWLEDGMENT OF SERVICE**

Check box (1) under box (a), if your spouse will sign an **Acknowledgment of Service**. You will need to give your spouse a copy of your completed Petition for Divorce and have him/her sign the Acknowledgment 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. If you and your spouse have a separation agreement which you have signed please check the box under box (l) and attach your signed separation agreement to this complaint.

#### **PERSONAL SERVICE**

Check box (2) if your spouse will not sign an **Acknowledgment of Service**, and you know where your spouse lives in Fulton County. You will need a sheriff to personally serve your spouse with a copy of your Petition for Divorce at his/her home.

#### **PERSONAL SERVICE BY SECOND ORIGINAL**

Check box (3) if your spouse will not sign an Acknowledgment of Service, and if your spouse lives in Fulton County but you either do not know where in Fulton County, or he/she is avoiding service at his/her home. You can then have the sheriff serve your spouse at his/her place of employment. Insert the full address of your spouse's place of employment. If your spouse works in another county other than Fulton, you must also check the box below and insert the name of the county where he/she works. You will then have to have your spouse served by the sheriff in the county where your spouse works. **Please note that you will have to inform the Clerk of Court that you are serving your spouse by "Second Original". The clerk will then stamp a copy of your petition "Second Original".**

#### **PUBLICATION**

Check box (4) if you do not know where your spouse is living. You must have searched thoroughly for his/her address. You must attach an **Affidavit of Diligent Search** stating what efforts you have made to locate your spouse. See "How to Serve" for complete instructions. Your divorce will be a divorce by publication and will be limited to the issues of the ending of the divorce, custody of the children, and a restraining order. The court cannot address any other issues (such as child support) because your spouse will not be personally served with a copy of the complaint. Insert in the space provided the last known address of your spouse.

#### **EXCEPTIONS**

#### **PERSONAL SERVICE BY SECOND ORIGINAL**

Check box (b) if your spouse does not live in Fulton County at the present time but did reside in Fulton County within the past six months **and** Fulton County was the county where you and your spouse were living at the time you separated. Insert in the space provided the name of the county in Georgia where your spouse is presently. Next, circle either "his" or "her" and either "home" or "work". Then insert your spouse's present home or work address in the space provided. You will then have to have your spouse served by the sheriff in the county where your spouse works/lives. **Please note that you will have to inform the Clerk of Court that you are serving your spouse by "Second Original". The clerk will then stamp a copy of your petition "Second Original".**

#### **WAIVER OF VENUE AND ACKNOWLEDGMENT OF SERVICE**

Check box (c) if your spouse lives in Georgia but does not live in Fulton County, and he/she has signed a **Waiver of Venue** form and an **Acknowledgment of Service** form consenting to the case being heard in Fulton County. ***(If the Waiver of Venue form and the Acknowledgment of Service form have not been signed by your spouse, you cannot file in Fulton County. You will have to file your petition in the county where your spouse lives.)*** Check the box below if you and your spouse have a signed agreement.

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Check box ( d) if you are a resident of the State of Georgia, but your spouse is not.

**PERSONAL SERVICE BY SECOND ORIGINAL ON FORMER RESIDENT WITH DOMESTIC LONG ARM STATUTE**

Check box (1) if your spouse was formerly a resident of the State of Georgia. Insert in the space provided the state where he/she is presently living. Then insert your spouse's address in the space provided. If you check box (1) you will need to have your spouse served by the sheriff in the county where he/she lives. **Please note that you will have to inform the Clerk of Court that you are serving your spouse by "Second Original". The clerk will then stamp a copy of your petition "Second Original".**

**PUBLICATION WHERE SPOUSE HAS NEVER LIVED IN GEORGIA**

Check box (2) if your spouse has never lived in Georgia, but you know where he/she lives. Insert in the space provided the state where your spouse is currently living. You must have your spouse personally served by publication. Insert in the space provided your spouse's address.

**PUBLICATION**

Check box (3) if you do not know where your spouse is living. You must have searched thoroughly for his/her address. You must attach an **Affidavit of Diligent Search** stating what efforts you have made to locate your spouse. See "How to Serve" for complete instructions. Your divorce will be a divorce by publication and will be limited to the issues of the ending of the divorce, custody of the children, and a restraining order. The court cannot address any other issues (such as child support) because your spouse will not be personally served with a copy of the complaint. Insert in the space provided, your spouse's last known address.

**WAIVER OF JURISDICTION AND ACKNOWLEDGMENT OF SERVICE**

Check box (4) if your spouse does not live in Georgia and will consent (agree) to you filing for divorce in Georgia. Your spouse will need to sign a **Waiver of Jurisdiction** and an **Acknowledgment of Service** form consenting to the case being heard in Georgia. If you and your spouse have a separation agreement which you have signed, please check the box and attach your signed separation agreement to this complaint.

Check box (e) if you are a resident of Fulton County and you do not know where your spouse is living. You must have searched thoroughly for his/her address. You must attach an Affidavit of Diligent Search stating what efforts you have made to locate your spouse. See "How to Serve" for complete instructions. Your divorce will be a divorce by publication and will be limited to the issues of the ending of the divorce, custody of the children, and a restraining order. The court cannot address any other issues (such as child support) because your spouse will not be personally served with a copy of the complaint. Insert in the space provided, your spouse's last known address.

**Paragraph 3: Date of Marriage**

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

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 are common law married if the following requirements are satisfied:

1. You and your spouse were able to enter into a contract at the time you established a common law marriage. You were over the age of 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.

If all of the above are true then you and your spouse are common law married, and you will need to get divorced to end your marriage. (If you and your spouse have joint accounts, have signed documents as

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husband and wife, or filed joint tax returns, you may want to use these documents as proof to the court that you are common law married if you think your spouse will tell the court that you are not common law married).

#### **Paragraph 4: Date of Separation**

Insert in the space provided the date you and your spouse separated.

#### **Paragraph 5: Children**

Check box (a) if there were no minor children born to you and your spouse.

Check box (b) if you and your spouse have minor children together, even if the child was born before your marriage. Insert the number of children in the space provided. Then list your children by name, gender, date of birth, and state with whom the child lives in the space provided.

#### **Paragraph 6: Custody**

Check box 6 if there are minor children. If there are none, skip this paragraph.

Check box (a) if you want sole legal custody of your minor child(ren). This means that you want physical and legal custody of your child(ren) so that you would be able to make all decisions about the child(ren).

Check box (b) if you want joint legal and physical custody of your child(ren). This means that you and your spouse would share physical custody of the child(ren), and would both make decisions about your child(ren).

Check box (c) if you want your spouse to have custody of the child(ren), but you want visitation rights to the child(ren).

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

Check box 7 if there are minor children. If there are none, skip this paragraph.

Insert in the space provided the address of where the child(ren) currently live and the person with whom they are living. Then list each address where the child(ren) has/have lived for the past five years and state with whom the child(ren) were living for each address.

#### **Paragraph 8: Other Custody Actions**

Check box 8 if there are minor children. If there are none, skip this paragraph.

Check box (a) if there has never been any other custody action concerning your child(ren).

Check box (b) if there has ever been or is presently another custody action concerning your child(ren). Insert in the space provided the location of the custody action, the type of action, and what happened at that custody action.

#### **Paragraph 9: Other Persons with Claims to Child(ren)**

Check box 9 if there are minor children. If there are none, skip this paragraph.

Check box (a) if no one other than you or 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.

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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 entity, and what legal rights that person or entity has to your child(ren).

#### **Paragraph 10: Child Support/Alimony**

Check box 10 if there are minor children. If there are none, skip this paragraph.

Check box (a) if you are seeking child support or alimony from your spouse. Insert in the first blank the name of the company you where work. In the second blank, insert the gross amount (*income before taxes*) of what you earn each month. Then circle whether you are requesting support of the child(ren), the child(ren) and you, or just you. In the third blank, insert the name of the company where your spouse works. In the last blank, insert the gross amount of what your spouse earns each month. Then check the box indicating whether you want support for the child(ren), the child(ren) and you, or just you.

Check box (b) if this is a divorce by publication.

Please note that the court will use the following guidelines to decide the amount of child support:

<u>No. of children</u>	<u>Percentage Range of Gross Income</u>
1	17 percent to 23 percent
2	23 percent to 28 percent
3	25 percent to 32 percent
4	29 percent to 35 percent
5 or more	31 percent to 37 percent

#### **Paragraph 11: Health Insurance for the Minor Children**

Check box 12 if there are minor children. If there are none, skip this paragraph.

Check box (a) if you want your spouse to provide health insurance for the minor child(ren).

Check box (b) if you want to share health costs of the minor child(ren) with your spouse.

Check box (c) if this is a divorce by publication.

#### **Paragraph 12: Life Insurance for the Minor Children**

Check box 13 if there are minor children. If there are none, skip this paragraph.

Check box (a) if you want your spouse to provide life insurance for the minor child(ren).

Check box (b) if this is a divorce by publication.

#### **Paragraph 13: Alimony**

Circle whether you are seeking alimony and state why.

Check the box if this is a divorce by publication.

#### **Paragraph 14: Marital Property**

Check box (a) if you and your spouse do not have any marital property.

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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 that needs to be divided by the Court. In the space provided write the requested information and check the items that are marital property.

Check box (d) if this is a divorce by publication.

#### **Paragraph 15: 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 space provided information about these debts. Circle whether you want your spouse to be solely liable, jointly liable, or to pay for specific debts that you have checked.

Check box (c) if this is a divorce by publication.

#### **Paragraph 16: Restore Former Name**

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 last name to a different name if it was not your former name. For example you can return to your maiden name or the surname of a former spouse if you had that name.

#### **Paragraph 17: Grounds for Divorce**

Check the reason(s) you are requesting this divorce. You can check more than one. The most common ground for a 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. If this is the ground for divorce, you are requesting a "No Fault" divorce. However, if you check one of the other twelve grounds for divorce, then you must be able to prove your grounds for divorce.

#### **Summary of Requests in Divorce Action:**

Check everything that you want the court to grant you.

You may want to request a **RULE NISI** hearing if you think that your spouse is going to contest this divorce. A Rule Nisi hearing is a temporary hearing in which the judge can make a temporary order of custody, child support, alimony, property and debts prior to any final determination.

Check (a) if you want a Rule Nisi hearing. See "How To Request a Rule Nisi" for further information.

If your divorce is a divorce by publication, you must check (k). The court cannot make a decision concerning child support, alimony, division of property, or division of debts until your spouse has been personally served.

After you have checked everything that you have requested, then print your name and address in the space provided. Then sign and date in the space provided.

#### **STEP 2- VERIFICATION**

Complete the Verification Form. Insert your name as Petitioner, and your spouse's name as Respondent. **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 next to the number [1]. Fill in the date where indicated. Then insert your name, address and telephone number in the spaces provided next to the number [2]. You will need to sign this Verification in the presence of a Notary Public. Most libraries and banks have a notary on staff and will notarize your document for a fee.

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### STEP 3- OTHER COURT DOCUMENTS

In addition to the Complaint for Divorce Form and Verification Form, you will need to attach the following forms to your Complaint:

You **must** have these forms attached to your complaint for divorce if the divorce will be **contested**.

1. 2 original summons
2. A completed financial affidavit \*
3. Automatic Domestic Standing Order
4. Sheriffs Entry of Service
5. Domestic Intake Worksheet

\* There are two kinds of financial affidavits. Use Form A if your yearly income and your yearly expenses are less than \$50,000. If your yearly income or yearly expenses are more than \$50,000 you will have to file Form B.

You **may** also have these documents attached if the divorce will be **uncontested**.

1. Separation Agreement if you and your spouse enter into an agreement, with a Consent to Try within thirty-one days
2. Consent to Try
3. Poverty Affidavit and order if you are eligible to have your filing fee waived
4. Acknowledgment of Service
5. Domestic Intake Worksheet
6. Automatic Domestic Standing Order
7. Affidavit of Diligent Search or Affidavit Where Respondent Is a Non-Resident if your divorce must be served by publication
8. Notice of Publication if your divorce must be served by publication
9. Waiver of Venue

### STEP 4- FEES

Unless you are able to have your filing fee waived, there is a **\$70.00** filing fee. You must pay this fee when you file your Complaint for Divorce unless you file with a poverty affidavit. See "How to File a Poverty Affidavit". If the sheriff is going to serve your complaint for divorce, the cost is **\$25.00** for each address the sheriff has to go. If you are filing for divorce in Georgia, are out of state, and want the sheriff to serve the opposing party in Georgia, the cost is **\$28.00**.

If you have to do service by publication because you do not know where the opposing party is, the cost for publication is **\$80.00**.

### STEP 5- FILING YOUR FORMS

You should make two copies of all of your documents. Attach one original summons to your original documents. Attach one original summons and Sheriff's Entry of Service to one of your copies. Give the clerk your original document and copies. The clerk will assign a number to your case and will write in the number on your documents. The clerk will then stamp your 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 the sheriff to have served on your spouse unless he/she signed an Acknowledgment or it is being served by publication.

### STEP 6- SERVICE

Personal Service is generally required. See paragraph 2 "**Venue and Service**" for instructions on the proper method of serving your spouse with a copy of your complaint for divorce.

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## **STEP 7- SEMINAR**

If you and your spouse have minor children, each of you must attend a seminar about children coping with divorce. The court will not grant a divorce until both parents have gone to the seminar. Call the Office of Domestic Mediation at (404) 730-4618 to find out when the seminars are scheduled and the cost.

## **STEP 8-HEARING**

You will be notified of the date of your hearing. You may request a Rule Nisi hearing which is a temporary hearing to have the judge make decisions about your divorce on a temporary basis before your case is set for a final hearing. You will need to prepare to present your case before the judge before you attend any hearing.

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