



Divorce

Consumer Pamphlet Series



State Bar
of Georgia

Foreword

Divorce affects, directly or indirectly, virtually every family in the country. The following information is designed to briefly summarize Georgia's divorce laws.

Marriage is a civil contract that the state has an interest in preserving. Accordingly, the marriage relationship may be dissolved only as provided by law through (1) a divorce or (2) an annulment; or altered by (3) a decree of separate maintenance granted by our courts. In any case, there must be a proceeding in the superior court of the county in which the defendant resides (or the county where the parties resided during the marriage if the defendant left the county within six months before filing) and the person seeking the divorce must prove grounds for divorce (valid reasons prescribed by law).

What are the grounds for divorce in Georgia?

In Georgia there are 13 grounds for divorce. One ground is irretrievably broken (sometimes referred to as the no-fault ground). The other 12 grounds for divorce in Georgia are fault grounds.

What is a no-fault divorce?

To obtain a divorce on this basis (irretrievably broken), one party must establish that he or she refuses to live with the other spouse and that there is no hope of reconciliation. It is not necessary for both parties to agree the marriage is irretrievably broken. Also, it is not necessary to show that there was any fault or wrongdoing by either party.

What are the fault grounds?

To obtain a divorce on one of the 12 fault grounds, one must prove that there was some wrongdoing by one of the parties to the marriage.

As an example, one fault ground is adultery. Adultery in Georgia includes heterosexual and homosexual relations between one spouse and another individual.

Another fault ground for divorce in Georgia is desertion. A divorce may be granted on the grounds that a person has deserted his or her spouse willfully for at least one year. Other fault grounds include mental or physical abuse, marriage between persons who are too closely related, mental incapacity at the time of marriage, impotency at the time of marriage, force or fraud in obtaining the marriage, pregnancy of the wife unknown to the husband at the time of the marriage, conviction and imprisonment for certain crimes, habitual intoxication or drug addiction and mental illness.

Is there a residence requirement for getting a divorce in Georgia?

Yes, one spouse must have lived in the state of Georgia for 6 months or Georgia must have been the last domicile of the marriage.

Must the husband and wife live apart when a divorce complaint is filed?

No, but the spouses must be considered separated in a legal sense before one can file for a divorce. Spouses may be considered separated even if they are living in the same house if they are not sharing the same room and/or not having a sexual relationship.

How does one file for a divorce?

The person seeking the divorce (the plaintiff) will file a document called a complaint with the appropriate superior court. This complaint includes information on the marriage including present living arrangements, children of the marriage, assets, debts and the specific grounds on which he or she is seeking the divorce. A copy of the complaint will be served on the other spouse (the defendant) by the sheriff, unless the defendant chooses to acknowledge service by law.

Where does one file for a divorce?

A complaint for divorce should be filed in the superior court of the defendant's county of residence or, if the defendant has recently moved from the state of Georgia, in the county of the plaintiff's residence. This would be considered the domicile of the marriage. Upon the defendant's consent, the complaint may be filed in the plaintiff's county of residence regardless of whether or not the defendant has moved from the state of Georgia.

What should I do if I receive a complaint for divorce that my spouse has filed?

The spouse who receives the complaint should promptly consult an attorney. The spouse may contest the reasons claimed for the divorce or contest the claims for child custody, child support, alimony or property division by filing an answer with the court.

Is there a way to live apart without divorcing?

A party who wishes to live apart permanently, but who does not want to get a divorce, may file a separate maintenance action. The spouses will remain legally married although living apart. The court may order that alimony be paid by one spouse to the other and the court may divide property between the parties.

What is an annulment?

Unlike a divorce, which dissolves a valid marriage, an annulment is a legal decree that the marriage is now void and was invalid from its inception due to one or both parties being unable, unwilling or fraudulently induced into contracting marriage. If there are children born of the marriage, an annulment may not be granted and the marriage may only be dissolved by divorce.

Must I go to court to get a divorce?

Not necessarily. Spouses may be able to reach an agreement resolving all issues arising from the marriage, including finances, division of property and custody and visitation of children. The agreement is presented to the court as a settlement agreement and, upon approval, made an order of the court. The court's order, called a final judgment and decree, concludes the lawsuit. If the parties cannot reach an agreement, a judge or jury will resolve the issues. However, a judge always decides matters of child custody and parenting time.

How long does it take to get a divorce?

If there is agreement between the parties, the divorce is considered uncontested. An uncontested divorce may be granted 31 days after the defendant has been served with the complaint for divorce. If there is disagreement as to any matter, the divorce will be obtained when the case reaches the court, which can take many months.

What happens while I wait to go to court?

Either of the spouses may request a temporary hearing. This hearing is not a final trial. A temporary hearing resolves the issues of child custody, parenting time, child support, alimony, debts and possession of property on a temporary basis until the final trial. The judge will issue a temporary order that applies only until the time of the final trial. The temporary order may also prohibit one party from interfering with the other party or the children and prevent the transfer and selling of assets.

What is decided at final trial?

Child custody, parenting time, child support, division of marital property and debts, and alimony are decided at final trial. Questions of child custody and parenting time are decided by the judge. The judge alone or a 12-person jury (if one of the parties has requested) will resolve all of the financial issues of the marriage, such as division of property, division of debts, alimony and certain findings concerning child support (gross income of both parties and whether any deviations from the presumptive amount of child support are in the best interests

of the child, and if so, what those deviations should be). At the final trial, both spouses present evidence by his or her own testimony and may call other witnesses. The decision rendered by a judge or jury is written into a court order that is binding upon both parties. The wife's maiden or former name can be re-established if she so desires.

What about the children?

The welfare of children is of major concern to the court. Neither parent is automatically entitled to custody. The judge looks at the best interests of the child when determining custody and what will best promote the child's welfare and happiness. The judge considers many factors when deciding custody, including but not limited to: the love, affection, bonding and emotional ties existing between each parent and the child, the child and his or her siblings, half siblings and step siblings and the residence of such other children; the willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, consistent with the best interest of the child; each parent's knowledge and familiarity of the child and the child's needs; the home environment of each parent considering the promotion of nurturance and safety of the child rather than superficial or material factors; each parent's involvement, or lack thereof, in the child's educational, social and extracurricular activities; and each parent's past performance and relative abilities for future performance of parenting responsibilities.

May a child choose where he or she wants to live?

A child more than 14 years of age may choose which parent will have custody upon consent of the court. The child's choice shall be presumptive unless the parent so selected is determined not to be in the best interests of the child. The court considers it important for a child to maintain relationships with both parents; therefore, parenting time rights are awarded to the parent who does not have legal custody of the child.

May the parents share custody?

Pursuant to Georgia law, both parents come before the court equally. The court, in its discretion, may award joint custody or sole custody. There are two types of custody. Legal custody is the right to make major decisions regarding the child. Joint legal custody means that both parents have equal rights and responsibilities for major decisions concerning the child with one parent having final decision-making authority for each of the major decision

areas: medical, educational, extracurricular and religion. Physical custody means the actual physical custody of the child by each parent. Joint physical custody is shared by the parents in such a way to assure the child substantially equal time and contact with both parents. In awarding joint custody, the court may order joint legal custody, joint physical custody or both.

How does the court determine parenting time?

Effective Jan. 1, 2008, the law in Georgia requires all persons divorcing with children to have a parenting plan. Every parenting plan must include that it is important for both parents to continue a close relationship with the child; that both parents recognize that the child's needs will change and grow as the child matures and take the child's changes and growth into account; that a parent with physical custody will make day-to-day decisions and emergency decisions while the child is residing with such parent; and that both parents will have access to all of the child's records and information, including, but not limited to, education, health, extracurricular activities and religious communications.

Additionally, a parenting plan must include where and when a child will be in each parent's physical care, designating where the child will spend each day of the year, including holidays, birthdays, vacations, school breaks and other special occasions and when each will begin and end; transportation arrangements and exchange locations and times and costs associated with transportation, and whether supervision will be needed for any parenting time and, if so, the particulars of the supervision.

Finally, a parenting plan must include decision-making authority to one or both of the parents with regard to the child's education, health, extracurricular activities and religious upbringing, and if the parents agree the matters should be jointly decided, how to resolve a situation in which the parents disagree on resolution; and what, if any, limitations will exist while one parent has physical custody of the child in terms of the other parent contacting the child and the other parent's right to access education, health, extracurricular activity and religious information regarding the child.

What are child support obligations?

The child support law in Georgia changed effective Jan. 1, 2007. The new law is based on an income shares model that requires consideration of both parties' gross income. Gross income has a very broad definition and encompasses sal-

ary, commissions, income from self-employment, bonuses, overtime payments, severance pay, recurring income from pensions, interest and dividend income, trust income, capital gains, gifts, prizes, lottery winnings and income from any other source. Once the monthly gross income of each party is determined, the two incomes are added together to get the combined adjusted income amount. A Child Support Obligation Table is then used to get the basic child support obligation. To use the table, locate the line corresponding with the combined adjusted income amount and then apply the amount in the column that corresponds with the number of children for whom support is being determined. That basic child support obligation is then applied to each parent's proportionate share of the combined adjusted income.

(For example, if the father's monthly gross income is \$3,000 and the mother's monthly gross income is \$2,000, their combined adjusted income is \$5,000, of which the mother's income represents 40 percent and the father's income represents 60 percent. The child support obligation for a family with combined adjusted income of \$5,000 per month for two children is \$1,297. Thus, if the father is the non custodial parent, he will pay 60 percent of the child support obligation, \$778.20, or if the mother is the non custodial parent, she will pay \$518.80, which is 40 percent of the child support obligation.)

The cost of medical insurance on the child and the cost of work-related childcare will result in the amount of the child support payment being modified with credit being given to the parent who is actually paying these expenses. In addition, the amount of child support may be modified by certain deviations provided it is in the best interest of the child to deviate from the presumptive amount of child support. Examples of deviations may be extraordinary education expenses like private school tuition or tutoring; extraordinary medical expenses; or special expenses, which must exceed 7 percent of the basic child support obligation, such as extracurricular expenses, summer camps, dental insurance, parenting time adjustment or any other appropriate deviation. You can access the guided electronic worksheet used in calculating child support at www.georgiacourts.org/csc. You may also download an Excel® version of the worksheet through this same website.

In addition to the child support payment, the court (or parties by agreement) will also designate what percentage each parent will pay of the child's uncovered medical and dental expenses.

In Georgia, both parents have a duty to financially support the child until that child turns 18, marries, dies or

becomes emancipated, whichever occurs first. However, if the child has not graduated from high school prior to reaching age 18, then the obligation to support that child continues until the child graduates from high school provided the child remains a full-time student, but not beyond the age of 20.

May I receive money for the children's college?

The court cannot order parents to pay for college. However, parents may agree to pay child support beyond the age of 18 or to pay for college expenses.

What is alimony?

Alimony is payment by one spouse to the other for support and maintenance. The court may grant alimony to either the husband or wife. Alimony may be for a limited period or until the spouse receiving alimony dies or remarries. It may be paid in one payment of money or property, or it may be paid over a period of time.

What happens to "our" possessions in a divorce?

One of the most difficult and complex areas of divorce is the division of marital property. Marital property is all property acquired during the marriage, except for property received by gift from a third party or by inheritance. Each spouse is entitled to an equitable share of all marital property acquired during the marriage. The judge or jury will decide on the division of marital property. Marital property will be divided equitably (not necessarily equally) between the parties regardless of how the title to the property is held. There is no set formula or percentage amount used to divide marital property.

How will the court order be enforced?

The court order may be enforced by garnishment or a contempt action. A contempt action is filed in the same court that issued the divorce. In addition, support orders can be enforced through the district attorney's office if the non-paying spouse resides out of town.

If my spouse and I agree on matters pertaining to getting a divorce, do we still need an attorney?

An attorney will ensure that all matters that should be resolved in a divorce are resolved. Acting without an attorney could end up being a costly mistake both to the parties and to their children.

What do I do if I am the victim of family violence?

Georgia has a law protecting victims of family violence. The parties do not have to be married in order for a victim to ask the court for relief. However, the parties have to reside in the same household. A victim of family violence can file a petition with the superior court that family violence has occurred in the past and may occur in the future. The court can issue a temporary order granting a variety of remedies, including eviction of the offending party from the residence or providing suitable alternate housing for the victim and children, as well as financial relief.

The victim does not need an attorney to file a family violence petition. The clerk of the superior court in the victim's residing county may provide forms for the petition or be able to direct a victim to a family violence shelter or social service agency for direction.

This pamphlet has been prepared by the Family Law Section of the State Bar of Georgia as a public service. It is not intended to be a comprehensive statement of law. Its purpose is to inform, not to advise on any specific legal problem. If you have specific questions regarding any matter contained in this pamphlet, you are encouraged to consult an attorney.