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THE DIVORCE CASE PROCESS

The following is a brief overview of the procedures involved in the filing of a divorce case. Of course, every case is unique and may have special considerations.

CONFIRM YOU NEED A DIVORCE

Was a marriage certificate filed? Georgia has historically recognized common law marriages, however it was outlawed in Georgia in 2010. Currently if you entered into a common law marriage before January 1, 1997, it is recognized by the State and you will need to get a divorce. If you started living together without going through a marriage ceremony after January 1, 1997, even if you represented yourself as being married, you do not have to get a divorce.

If you are part of a same sex couple legally married in another state, even if it was during a time when same sex was not recognized in Georgia, and subsequently you moved to Georgia, you will have to file for divorce.

CONFIRM YOU ARE ELIGIBLE TO FILE IN GEORGIA

In order to be divorced in Georgia, you must establish you or your spouse live in Georgia. Under Georgia law there are three ways to establish residency in Georgia:

- You must have been a bona fide resident of the state for at least 6 months before you file for divorce.
- If you live in another state you can file in Georgia if your spouse has been a resident of Georgia for at least six months prior to the filing of the Divorce.
- If you have been a resident on any United States army post or military reservation within the State of Georgia for at least one year.

FILING THE COMPLAINT FOR DIVORCE

First you file a Complaint for Divorce and tell the court why you want a divorce. There are specific reasons that the law will allow you to get a divorce. You must say which of the reasons you are asking the court to grant a divorce. In the Complaint you must also tell the court what you want the court to do. Do you want custody of any children you and your spouse have? Do you want the court to award you child support so that you can have money to take care of the children? How do you want the court to divide the property that you and your spouse have? There is a fee to file for a divorce and this fee varies depending on which county in Georgia you are filing in.

You generally file the Complaint for Divorce in the Superior Court of the county where your spouse lives. You may file in the county where you both lived if your spouse moved to another county within six months of the date you are filing. If your spouse has moved out of state, within 6 months of the date of your filing, you can file in your county.

SERVICE OF COMPLAINT ON YOUR SPOUSE (SERVICE OF PROCESS)

You must have a copy of the Complaint for Divorce "served" on your spouse. This means that the sheriff or another "process server" will give the divorce papers to your spouse in the way that the law requires. This is called "service of process". There is also a fee to have the Complaint served. Your spouse may also acknowledge service of your complaint for divorce for which there is no charge.

30 DAY WAITING PERIOD

After your spouse is served with the complaint for divorce, he/she has 30 days to file an answer. During this 30 days nothing can be done on the divorce. If your spouse does not file an answer and once the case is released from mediation, you may notice the case for a final hearing to be awarded the relief you requested. If an answer is filed or there are issues to decide the case will be considered contested and further steps are needed.

ANSWER

Upon being served with a complaint for divorce, an individual must file an answer. The answer is the defensive pleading in a divorce action containing the defendant's response to the plaintiff's complaint for divorce. The purpose of the answer is to respond to the plaintiff's allegations and to assert any defenses or counterclaims the defendant may have against the plaintiff.

DISCOVERY

Discovery begins with the filing of an answer. Discovery is especially useful in highly contested divorce cases because the opposing party will be required by law to disclose information to their spouse's attorney. There are four types of discovery.

1. Interrogatories: Questions that one spouse may ask to the other spouse requesting certain information. Each side is limited to only fifty interrogatories.
2. Requests for Production of Documents: Requests asking the other party provide documents such as pay stubs, tax returns, etc. These usually coincide with the interrogatories and are usually asking for documents which were the subject of questions posed in the interrogatories.
3. Requests for Admission: In addition to requesting a party produce certain documents or other pieces of evidence, a party may also request the opposing party make certain factual admissions regarding the pending litigation. IT IS IMPORTANT FOR PARTIES WHO

HAVE BEEN SERVED WITH REQUESTS FOR ADMISSION TO REPLY WITHIN 30 DAYS OR IT IS DEEMED ADMITTED.

4. Depositions: Unlike the previous three “written” discovery tools a deposition is oral. A deposition allows one party’s attorney to examine and confront the opposing party in person and on the record.

Should either party fail to comply with discovery requests in a timely manner the other party may file a motion to compel. If such a motion is granted, the party whose conduct necessitated the motion, or his/her attorney, may be ordered by the court to pay the attorney’s fees of the moving party for having to incur expenses in filing the motion to compel.

MEDIATION

Mediation is a form of alternative dispute resolution where a neutral or impartial person, a/k/a a mediator, facilitates settlement discussions between the parties. This is a required step in most Georgia counties before a hearing will be scheduled in front of a Judge. Mediation can be successful in resolving issues in divorce, custody and child support matters partially or completely. Any agreement reached at mediation between the parties is binding whether it be to every issue in the divorce or only some of the issues in the divorce.

FINAL HEARING

If an agreement is not reached at mediation, or only a partial agreement is reached, the case will be released for a hearing in Superior Court on any remaining issues. Parties can come to an agreement on remaining issues at any time prior to a Judge signing the final order.

If a hearing is necessary you, more than likely, will be required to testify. Evidence will be presented on your behalf on any remaining issues in the divorce. At the conclusion of the hearing the Judge will make the final ruling based on what he/she heard at the hearing from both parties. This ruling is binding on the parties and can only be modified for good cause shown.