

## WHICH DIVORCE PACKET DO I NEED?

You may use the uncontested divorce packet if both of the following two statements are true:

1. I know where my spouse lives.
2. My spouse and I are willing to sign a settlement agreement which resolves all of the issues involved in ending a marriage.

You will need the contested divorce packet if either of the following two statements is true:

1. I do not know where my spouse lives.
2. Either my spouse or I is unwilling or unable to sign a settlement agreement which resolves all of the issues involved in ending a marriage.

## FREQUENTLY ASKED QUESTIONS

**Question:** There's nothing to settle; I just want a divorce. Why do I need a settlement agreement in an uncontested divorce?

**Answer:** In our legal system, the only way to avoid going to trial is to settle out of court. If you have no marital property, the settlement agreement is a way to tell this to the Court. If you do not want alimony, you may use the settlement agreement to let the Court know of your decision. If you have no debts with your spouse, the settlement agreement notifies the Court of this fact.

**Question:** I already have an order for child support. Do I still need to fill out the financial affidavit and the child support worksheets?

**Answer:** Yes, you must fill out the financial affidavit and child support worksheets. The Court will not accept your papers for filing without the completed affidavit and worksheets. Divorce laws frequently change, and the Court must make sure that the child support amount complies with the current laws. Also, the Court must make sure that the child support amount is fair given the current income of the parents.

**Question:** How long does it take to get a divorce?

**Answer:** The answer to this question depends on whether you and your spouse are cooperating or fighting about the divorce. If you and your spouse sign a settlement agreement and fully cooperate in the court process, your divorce may be final as soon as 31 days after you file. If your spouse refuses to sign a settlement agreement but otherwise does not fight (i.e., does not file an answer), it can take between 46 and 60 days to finalize the divorce, or longer if the court schedule is busy. If you and your spouse are fighting about property or children, your divorce can take many months or even years to finalize.

**Question:** I have not seen my spouse for years and I do not know where my spouse is. How do I get a divorce?

**Answer:** You will need to tell the Court that you tried to find the defendant. You will sign a sworn statement (affidavit) where you:

1. swear that to the best of your knowledge the whereabouts of your spouse are unknown;
2. swear that you have used reasonable diligence in trying to find out where the defendant is (i.e., you tried hard to find him or her); and
3. state what the last residence of the defendant was.

Next, you will file a motion (along with the affidavit) asking for permission to serve/notify the defendant by running an ad in the newspaper (service by publication). Once the Judge gives permission for service by publication, you will publish the notice in the newspaper for four (4) consecutive weeks. If your

spouse does not file an answer, the Court can grant your divorce as early as 60 days after the first notice ran in the paper. You will have to attend a hearing before the judge can grant your divorce. NOTE: In a divorce by publication, the Court cannot award alimony, child support, or property located outside of Georgia. If you lie to the Court about your knowledge of your spouse's whereabouts, the divorce can be overturned later, and you can be prosecuted for perjury.

**Question:** My spouse does not live in Georgia. Can I still get a divorce in Georgia?

**Answer:** You can get a divorce in Georgia if your spouse lived in Georgia at one time. You will need to do additional reading about Georgia's "Domestic Relations Long Arm Statute" to make sure you meet the special requirements in this situation.

**Question:** My spouse has never lived in Georgia. Can I still get a divorce in Georgia?

**Answer:** You may get a divorce in Georgia if you have lived here for six or more months. However, if the Court is unable to get personal jurisdiction over your spouse, the Court cannot award alimony, child support, or property in another state. Personal jurisdiction means that there are enough connections between your spouse and the State of Georgia that the Georgia Courts have the power to make decisions that will affect your spouse. It is very hard for a court to get personal jurisdiction over someone who has never lived in the state. This is a complicated situation in which you will need a lawyer.

**Question:** Is there a waiting period for a divorce in Georgia?

**Answer:** You must have lived in Georgia for at least six months before you can file for divorce in Georgia. If you live on a military base, you must have lived in Georgia for at least a year.

**Question:** Can I get a legal separation?

**Answer:** In Georgia, you become legally separated from your spouse once you intend to be separated and stop having sexual relations with your spouse. You do not need to have a formal, court-ordered separation before you can obtain a divorce. You may not want a divorce, but believe you need a Court Order to handle certain parts of the separation. In this case, you can file a "separate maintenance action". A separate maintenance action can deal with things like: custody, alimony, and child support. Sometimes it can handle property and debts. If you file a separate maintenance action, your spouse can respond by filing for a divorce.

**Question:** Can I get part of my spouse's military retirement or civilian pension?

**Answer:** You may be able to get part of your spouse's military retirement or civilian pension. This can be true even if your spouse is not retired yet. Sometimes you cannot begin to receive these benefits until your spouse retires. There are two reasons for a court to give a part of a spouse's military retirement or civilian pension. Sometimes courts call it dividing the "property" obtained during the marriage. Sometimes courts call it alimony. You should tell your lawyer if you think your spouse has a military or civilian pension or any other benefit. You have to ask for these benefits during the divorce. You can't ask for these benefits later after the divorce is final.

**Question:** Can I represent myself in a divorce?

**Answer:** Yes, you have the right to represent yourself. When you represent yourself, you are acting as your own lawyer. Most judges will expect you to behave like a lawyer and expect you to know all the court's rules. If your spouse has hired a lawyer, it is especially easy to get confused or frustrated by court

rules. Judges and court staff are not allowed to give you advice. Even if your spouse does not have a lawyer, you may be unable to finalize your divorce without some legal advice. Some people end up going to court over and over again because they are unaware of certain rules. So, if possible, you should hire a lawyer.

**Question:** What is no-fault divorce?

**Answer:** In a no-fault divorce, you need not prove that your spouse did something wrong to get the divorce. No one has to be "at fault". It's enough that you don't want to be married anymore. You can get a divorce even if your spouse does not want a divorce. You may have heard the term irreconcilable differences. In Georgia, the phrase is: "the marriage is irretrievably broken." To get the divorce, you need to claim that there is "no hope of reconciliation" – that there is no hope that you and your spouse will get back together. Also, you need to be separated from your spouse.

**Question:** Does Georgia recognize common law marriage?

**Answer:** A common law marriage is a marriage that is created without a marriage license. As of January 1, 1997, new common law marriages cannot be created in Georgia. However, if you created a common law marriage in Georgia before January 1, 1997, your marriage is still valid. If (before January 1, 1997) you and your partner 1) had the ability to marry 2) intended to marry and 3) behaved as if you were married, then you could have a common law marriage. If you have a valid common law marriage, you must get a divorce in order to end the marriage.

**Question:** Can I continue to receive health insurance for myself and my children?

**Answer:** You can ask the Court to order your spouse to provide health insurance for the children. If you want health insurance coverage for yourself, some laws let you continue receiving health insurance coverage (COBRA). You must give the insurance company certain notices. The premium payments must be made. You can ask the Court to order your spouse to pay these. Tell your lawyer if you need health insurance coverage from your spouse. If the insurance coverage is cut off, you may not be able to get it back.

**Question:** What if my spouse is abusive?

**Answer:** Tell your lawyer or the Court if there is family violence in your home. You can ask the court to order the abuser to stay away from you (a protective order). If your spouse is violent and you have children, the Judge can issue special orders to keep you safe during visitation. The Court should consider your safety and the child's safety when it decides custody and visitation.

**Question:** Can I get alimony?

**Answer:** Alimony is money for support paid to a spouse by the other spouse. Alimony can last for a short time or a long time. The Court usually awards alimony only when a long-term marriage ends. One person must show a need for support, while the other person must have the ability to pay.

**Question:** Can my spouse and I agree to have no child support?

**Answer:** No. Child support belongs to the children; not the parents. For that reason, parents may not give up child support.