



## DIVORCE AND SEPARATION FACT SHEET



### **Divorce and Separation**

Each has a different legal status and may also differ in terms of custody of children. A divorce is a court judgment that ends a marriage. A separation is a condition where a couple live apart without getting a divorce. At the time of a divorce and separation, various issues, such as custody of children, financial burden, asset control etc. have to be settled between a couple. In a divorce, the court decides these issues while in a separation, the couple themselves have to agree upon them.

#### **1. What is a Separation Agreement?**

Separation simply means living apart. You do not need to file court papers to separate. The law does not require you to live with your spouse. However, separating from your spouse may affect your legal rights. The best way is to talk to a lawyer before separating. If you do separate, you will need to work out arrangements for the care of the children, support, and payment of bills. A lawyer can advise you on your legal options if an informal agreement is not possible

#### **2. What is a Legal Separation?**

Legal Separation is a major change in the status of your marriage. To get a legal separation, you must file a petition in your Superior or Family Division Court. It is a distinct legal product rather than being a first step to getting a divorce. In fact, legal separation takes as long as a divorce and costs just as much. In many ways, a legal separation is the same as a divorce. Both include final custody, visitation, child support, and, if appropriate, alimony orders. All the family assets and debts are permanently divided. In both types of cases, it is possible to get temporary orders regarding support and custody early in the case, if you need them. The major difference is that if you have a legal separation, you are still married. The wife may not resume her former name.

#### **3. Do I need to live in Georgia to get a divorce here?**

Yes, one spouse must be living in Georgia and must have lived there for at least six months consecutively immediately prior to filing.

#### **4. My spouse and I agree on all matters concerning the divorce. Do we still need a lawyer?**

You can represent yourself, which is known as proceeding "pro se." To navigate the legal system and file the appropriate documents, you'll need to know your court's rules. You can probably get help from your local court's website and from the court clerk's office.

## **5. Where do I file for divorce?**

Generally, you file a complaint for divorce in the Superior Court in the county where your spouse resides or, if your spouse no longer resides in Georgia, in the county of your own residence. If your spouse consents, or if your spouse previously lived with you and has been gone for less than six months, you can file in your county of residence.

## **6. Can I file for divorce even if we're still living together?**

You and your spouse must be "legally separated" to file for divorce, but that doesn't mean you must be living apart. In Georgia, you are legally separated if you are no longer engaging in marital relations and you consider yourself to be in an actual state of separation.

## **7. What is separate maintenance?**

Separate maintenance is a court document that puts the terms of your legal separation in writing. If you request an order for separate maintenance instead of for divorce, the judge will address all issues that could be addressed in a divorce case. Some people request separate maintenance because of religious beliefs, to keep a legal benefit (insurance or Social Security, for example) or other reasons.

## **8. Does Georgia have "no-fault" divorce?**

Yes. To obtain a "no-fault" divorce, one spouse must simply state a belief that the marriage is over, or "irretrievably broken." Most divorces in Georgia are no-fault divorces.

## **9. Does Georgia have "fault" divorce?**

Yes, one spouse can allege that the other spouse caused the breakdown of the marriage. Some fault grounds for divorce include adultery, desertion, mental incapacity at the time of marriage, marriage between people too closely related, impotency at the time of marriage, force or fraud in obtaining the marriage, conviction and imprisonment for certain crimes, mental or physical cruel treatment, habitual intoxication or drug addiction, and mental illness.

## **10. How do I actually file for a divorce?**

The person seeking the divorce (the "plaintiff" or "petitioner") must file a document in the appropriate Superior Court. This document is called the "complaint" or "petition." It contains information such as current living arrangements, children, marital assets and debts, and the specific reason for seeking divorce. A copy of the complaint will be served on (personally delivered to) the other spouse (the "defendant" or "respondent") by a sheriff of the appropriate county, or the respondent spouse may acknowledge service by signing a document in the presence of a notary public. The defendant/respondent has 30 days to file a written answer to the complaint.

## **11. How long will the whole process take?**

It depends on whether your divorce is complicated or simple, based in large part on how you and your spouse interact. The more the two of you can agree on, the easier and less costly it will be. If you reach an agreement on all issues, the divorce is "uncontested," and may be granted 31 days after everything is filed. If you take your disagreements to trial, the divorce won't be final for months or even years.

## **12. Can I get the court to help me immediately?**

If you need the court to quickly resolve questions of child custody, visitation, child support, alimony, debts, or possession of property, you can request a temporary court order. The court will schedule a short hearing, you and the other spouse will make your arguments, and the judge will issue an order that applies only until the time of the final trial. The temporary order may also prohibit you and your spouse from giving away or selling assets, or taking the children out of state.

## **13. Who will get custody of the children?**

Typically, until a court ruling or agreement, married parents share custody. The judge will try to fashion a custody plan that is in the "best interests of the child." The judge will consider many factors, including the age and sex of the child, and the ability of each parent to care for and nurture the child. A child who has reached 14 years of age may generally choose which parent will have custody. A judge may take into account the wishes of children aged 11 to 13.

## **14. Can the other parent and I share custody?**

Yes. The court can award joint custody instead of sole custody. There are two types of joint custody: legal and physical. Joint legal custody means both parents have equal rights and responsibilities for major decisions concerning the child. Joint physical custody means the child has substantially equal time and contact with both parents. The court may order joint legal custody, joint physical custody, or both.

## **15. What are our child support obligations?**

In Georgia, parents must support their children generally until a child reaches 18. Typically, the non-custodial parent is required to pay a reasonable amount to the custodial parent to assist with living expenses. Child support may also include payment for health insurance, medical and dental expenses, and life insurance. Courts rely on child support guidelines (Georgia Code section 19-6-15) to calculate the appropriate amount of child support. The amount is based on factors including time the non-custodial parent spends with the children, the ages of the children, daycare costs, medical costs, education costs, significant income or debt of either parent, and obligations to another household. The guidelines are revised frequently. Each parent is required to prepare a Domestic Relations Financial Affidavit, setting out his or her financial circumstances.

## **16. What about alimony?**

Alimony is a support payment by one spouse to another. Alimony is generally not available to a spouse who caused the dissolution of the marriage by adultery or desertion. Alimony may be for a limited time period or until the spouse receiving alimony dies or remarries, or may be paid in one lump sum. The court will consider the length of the marriage, health of each spouse, each spouse's assets and expenses, and the contributions of each spouse to homemaking, raising children, and the other's career.

## **17. What happens to "our" property?**

Marital property is generally 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" (which means fair, but not necessarily equal) share of the marital property. There is no set formula for splitting up marital property; however, credit may be given to a party who contributed "separate" or "premarital" property to the marriage. Georgia case law sets forth a complicated formula to determine how the contribution of "separate" property to the marriage is to be handled.

If you wish to schedule an appointment to discuss your divorce or separation, contact the Fort Benning Legal Assistance Office at (706) 545-3282/3281 to schedule an individual appointment with an attorney.



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