

INSTRUCTIONS FOR FILING UNCONTESTED DIVORCE WITH MINOR CHILDREN

This is the form packet for people who want to file their own divorce in the Lookout Mountain Judicial Circuit, and who do have any minor children together with their spouse, or children are expected.

In Georgia, if you want a divorce you must file a Complaint for Divorce in the Superior Court of the county in which you and/or your spouse are a resident. 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.

Neither the Clerk of Superior Court, nor any Deputy Clerk, nor the judges or any other Court personnel, are allowed to answer any questions for you concerning the preparation of these forms. In fact under Georgia law, specifically O.C.G.A section 15-19-51 forbids court personnel (including staff attorneys or law clerks, clerk's office staff or sheriff's department staff) to give legal advice or answer legal questions. The only person allowed to help you in the preparation of these forms is a licensed attorney hired to represent you. Please consult an attorney if you have questions about the procedure or what action is best for you to take.

Please keep in mind that these forms are presented as a guide to assist you in the preparation of your divorce papers. It is advisable to speak with a lawyer before filing any action with the Court. A divorce is no exception this rule. There are often more issues involved in a divorce than one might realize if you fail to get legal advice. It is always good to talk to a lawyer if possible. You may need an attorney if:

1. The case becomes contested and your spouse has a lawyer.
2. You cannot find your spouse to serve him or her with your papers.
3. You think you will have difficulty getting information and documents from your spouse regarding income, retirement funds, etc
4. You find the court papers hard to understand.
5. Your spouse will not sign the agreement.
6. You have questions about your divorce.

Please read these instructions and each form carefully. Missing or misreading a word could cause you to make serious errors in your case, placing your rights and the direction of you divorce case in jeopardy. You must fully complete the forms before the Judge will be able to grant you a decree of divorce. Incomplete forms, as well as forms that are improperly filled out, may delay the granting of your divorce. Make sure that you take time to read over all the forms, and understand what is being asked of you in each situation.

Please read and complete the steps listed below in order to complete, file and serve your Complaint for Divorce.

A. Forms that you will need to file:

1. Complete the Domestic Relations Filing Information and Final Disposition form. This form is required. It is used to help the Clerk of Court keep statistical information about the number and types of cases decided in our local court.

The filing information form:

- a. In the top line fill in the court where you are filing and date filed.
- b. In the second line fill in the names of the Plaintiff and Defendant.
- c. Check the box which says Pro Se which will indicate that you are representing yourself without an attorney.
- d. In the left hand box check the box which indicates that this is a divorce action.

The final disposition form.

The purpose of this part of the form is to show how the case ended. Do not fill this part out until matter has been concluded.

- a. In the top line fill in only the County where the case was disposed of.
- b. Write your name as the Reporting Party.
- c. Write down the Plaintiff and Defendant's full names.
- d. Check box which states Pro Se since you are representing yourself.

2. Complete the Complaint for Divorce with Children

3. Summons

Complete the Summons form. You are swearing that everything you said in your Complaint for divorce with Children is true. The Summons notifies the Defendant that if an answer is not filed with the Court within thirty (30) days of service, then a judgment by default can be entered against the Defendant.

4. Complete the Verification form

The Verification form must be filed with the Complaint for Divorce with Children. Note that by signing the Verification, you are swearing under oath that the information you have provided in the Complaint for Divorce with Children is true. You will need to sign this Verification in the presence of a Notary Public.

5. There are three (3) forms that can be used to indicate that the Defendant has been served with the Complaint for Divorce with Children:

1. Sheriff's Entry of Service
2. Acknowledgment of Service, or

3. Publication paperwork which includes the Affidavit of Diligent Search, Notice of Publication and Order of Publication, Return of Service, and Order Perfecting Service.

Acknowledgment of Service is the easiest and least expensive method, but only if the Defendant is cooperate and willing to sign an acknowledgment form in front of a notary public.

Service by the Sheriff is the usual way for service to be completed. If the Defendant will not sign an Acknowledgment of Service, and you know an address where the Defendant can be served, then you should make arrangements for the Sheriff's Department to serve the papers.

Service by Publication is the method of last resort. If you can find the Defendant, you must use one of the other two methods of service. If you have to serve the Defendant by publication, there are limitations on your divorce case because the Court will not have personal jurisdiction over the Defendant. You will not be able to get certain kinds of relief as part of the divorce, such as child support and alimony. To serve by publication you must prepare and file three (3) forms:

- a. Affidavit of Diligent Search
 - b. Notice of Publication, and
 - c. Order of Publication, Return of Service, Order Perfecting Service
6. Affidavit of Poverty and Order on Affidavit of Poverty. This form is used only if you are indigent and cannot afford to pay the filing and service fees.
 7. Consent to trial thirty (31) days after service and waiver of right to trial by jury.
 8. Domestic Relations Financial Affidavit. This document lists the party's income, assets and debts.
 9. Child Support Worksheet. Please go to <http://www.georgiacourt.org/csc/> and complete the Child Support Worksheet. Then print it out and include in your divorce papers. Your papers will not be accepted for filing without these documents.
 10. Child Support Addendum. This shall provide for the amount of child support owed.
 11. Settlement Agreement. This document is used if both parties have reached an agreement on all issues except divorce.
 12. Certificate of Completion for the Trans-parenting class.
 13. Final Judgment and Decree of Divorce.
 14. Georgia DHR Report of Divorce, Annulment or Dissolution of Marriage and Child Enforcement State Case Registry Form.

B. Fees.

If you are unable to afford the fees you will need to submit an Affidavit of Poverty and Order on Affidavit of Poverty. This form is used only if you are indigent and cannot afford to pay the filing and service fees.

Unless you are able to have your filing fee waived, there is a filing fee in the Lookout Mountain Judicial Circuit. You must pay this fee when you file your Complaint for Divorce with Children. Additionally there is a fee to the Sheriff's Department for serving you papers. If you are serving your spouse by publishing an ad in the newspaper, you are responsible for paying the cost of the newspaper ads.

C. Fill your forms.

After you have completed, signed, copied and sorted all your paperwork you are ready to file your case. You should make two (2) copies of all of your documents. Give the clerk your original and the two (2) copies. The clerk will assign a number to your case and will write in the number on you documents. The original will remain with the Clerk and one (1) copy will be given to your spouse and the other one used for your records.

D. Arranging for Service.

Service is the required formal process of notifying the Defendant that the divorce action has been filed. There is basically three (3) ways for service to be completed:

1. The Defendant signs an Acknowledgment of Service
2. Service by the Sheriff's department or other approved process server
3. Publication.

E. Go to Court on the appointed date.

After you have filed your case, and the Defendant has been properly served, you are ready for the next step - the final hearing.

If you have a signed Settlement Agreement, then you may arrange to have the final hearing take place any time at least thirty-one (31) days after the Defendant was personally served (or the Acknowledgment of Service was filed with the Clerk). You must also have signed and filed a consent to trial thirty (31) days after service.

If you do not have a signed Settlement Agreement, then your final hearing may take place any time at least forty-six (46) days after the Defendant was personal served (or Acknowledgment of Service was filed with the Clerk). If service was by publication, the hearing may take place any time after Sixty-one (61) days from the date of the first publication.

To determine the appropriate court date go to the official website for the Lookout

Mountain Judicial Circuit at www.lmjc.net and check the calendar to determine the next circuit date in the appropriate county after said period.

On the appropriate date go to the Clerk's Office and inform them that you are there for a final hearing on an uncontested divorce. The Clerk will then pull your file and give to the Court.

F. Dialogue for An Untested Divorce Decree:

When the Judge calls the name of your case, come forward to the place designed and when told by the Court to proceed, use essentially the following dialogue:

You will be asked to raise your right hand and take an oath to tell the truth.

1. My name is _____ and my spouse's name is _____ .
2. I have lived in _____ County for at least the past six (6) months and/or my spouse has lived in _____ County for the past six (6) months._____.
3. My spouse and I were married on or about _____ and we separated on or about _____.
4. Our marriage is irretrievably broken, there are no hopes for reconciliation, and we cannot and will not live together in the future.
5. There are minor children born of this marriage and/or expected.
6. My spouse and I have entered into a Settlement Agreement settling all issues except that of divorce.
7. I am asking that the Judge adopt the Settlement Agreement made between me and my spouse and I am asking the Judge to grant a divorce decree.
8. If applicable: I am asking the Judge to restore my maiden (or my spouse's) or prior name, which is:_____.
9. When the Judge has signed the decree, it is appropriate to say, "Thank you, your Honor, may I be excused?" If the Judge replies, "yes", you may leave.

G. Receive the final judgment.

Your case is not final until the Judge signs the final order in the case and it is filed with the Clerk. Once approved, the judge will sign the Final Judgment and Decree.