

SIMPLE DIVORCE

This packet may be used **ONLY** if the parties (husband and wife):

- (1) Have no minor children together and none are expected; AND
- (2) Have no marital property to divide; AND
- (3) Have no joint or marital debt to divide; AND
- (4) Are willing to execute (sign in front of a notary public) a written agreement and waive the right to formal service in writing.

DO NOT use this packet if you need your spouse to be served by a deputy.

- You must visit FLIC on the fourth floor before getting a Court date, but **READ THESE INSTRUCTIONS CAREFULLY AND FILL OUT THE FORMS BEFORE GOING TO THE FOURTH FLOOR.** It can take several hours to read the instructions and complete the forms.
- FLIC (Room 459 on the Fourth Floor of the Hall County Courthouse) is open to walk-ins on a first come, first served, basis from **10:00 a.m. to 2:00 p.m., Monday through Thursday.**
- Appointments are available at other times for persons unable to visit FLIC during regular walk-in hours.
- One time legal consultations are also available for individuals who have general legal questions about divorce. All appointments with the FLIC attorney are subject to a conflict check and financial qualification. Call (770) 531-2463 or stop in for more information or to schedule an appointment.
- At FLIC, your forms will be checked for completeness and notarized free of charge. You will also receive a folder, instructions for filing and obtaining a Court date, and a procedural checklist.
- FLIC on the web: www.hallcounty.org/judicial/jud_FLIC&GAL.asp

NO AUTHORITY TO GIVE LEGAL ADVICE

State law, O.C.G.A. § 15-19-51, prohibits court personnel (including staff attorneys or law clerks, calendar clerks, clerk's office staff, and sheriff's department staff) from giving legal advice or answering legal questions. This rule also applies to staff persons in the Northeastern Judicial Circuit Family Law Information Center (FLIC), except for the FLIC attorney who can answer general legal questions pertaining to divorce (by appointment only), during one-time consultations provided free of charge to Hall County residents or individuals filing in Hall County (subject to conflict check and income qualification).

USE THESE FORMS AT YOUR OWN RISK

In no event will the Court Administrator, Clerk of Court or anyone contributing to the development of these forms or instructions be liable for any damages resulting from the use of this packet. These forms may not be appropriate for your particular case. In addition, due to the changing nature of the law, the information in these instructions and forms may be or become outdated. You should review any statutes (laws) mentioned in this packet to make sure the forms are current. **It is strongly recommended that you obtain the services of an attorney.**

INSTRUCTIONS

Please read these instructions and each form very carefully. Missing or misreading a word could cause you to make serious errors in your case, placing your rights and the direction of your divorce case in jeopardy. **Please also note this packet does not cover every legal issue that may come up in a divorce.** Whether your case is contested or uncontested, **to protect your legal rights, it is always recommended that you speak with an attorney experienced in domestic relations (family) law before signing or filing any documents.** Even if you have no marital property or marital or joint debt, you may especially need to hire an attorney to represent you if:

- An attorney represents your spouse.
- You are a victim of family violence against you by your spouse.

I. INTRODUCTION

In the State of Georgia, if you want to end your marriage, you must file a petition for divorce in the Superior Court. There are two options available to you for filing a divorce case: (1) you can hire a lawyer who will prepare your paperwork and represent you in court; or (2) you can use the forms included in this packet and represent yourself in court. After a court grants your divorce and issues a final judgment and decree of divorce, you will be legally able to remarry.

It is advisable to speak with a lawyer before filing any action with the court. This divorce is no exception to that rule. There are often more issues involved in a divorce than you might realize if you fail to get legal advice. However, you may want to review the forms and instructions in this packet before you talk to a lawyer, so that you will be able to make the best use of your time with the lawyer.

Dissolution of a marriage can be a very complicated process. If documents are not completed, signed, notarized and filed in compliance with the law, then a judge cannot grant your request for divorce and may dismiss your case.

If you want a court to grant your divorce, you must follow the law and you must complete each and every paragraph that applies to your case (but not any paragraphs that do not apply to your case).

Finding basic legal information:

“O.C.G.A.,” followed by a symbol (“§”) and number, refers to a specific section (“§”) in the Official Code of Georgia Annotated (O.C.G.A.). You can find the annotated Georgia Code in print at some libraries (including the Hall County Law Library at 117 Bradford St., SE, Gainesville, GA). The unannotated Georgia Code is available on the Georgia General Assembly’s website at: www.legis.state.ga.us.

“USCR,” followed by a number, refers to a specific rule in the Uniform Superior Court Rules (USCR). USCR 24.1 through 24.9 include several rules that apply in domestic relations cases (a divorce is considered a domestic relations case). The Uniform Superior Court Rules are available on the Georgia Judicial Branch website at www.georgiacourts.org (under “Courts” and then under “Court Rules”). A hard copy of the rules is also available in FLIC.

The Internal Operating Procedures for Domestic Relations Cases also has local procedures that apply to divorce cases in Hall County. A copy of these procedures is available online at www.hallcounty.org/judicial/jud_superiorcourt.asp. Some other helpful websites are www.legalaid-ga.org or www.findlaw.com.

II. BASIC STEPS FOR OBTAINING A DIVORCE IN HALL COUNTY

Your case may require different or additional steps, so please read through the entire instructions carefully.

1. **Carefully read all of these instructions at least once before filling out the forms.**
2. **Complete the legal forms, using these instructions to guide you.** NOTE: it is not necessary to notarize your forms before visiting FLIC. You can have them notarized at FLIC free of charge.
3. **Visit FLIC on the 4th floor of the Hall County Courthouse (Room 459).** It is a requirement that you visit FLIC before obtaining a court date from any of the Superior Court Judges in this Circuit (therefore, consider visiting FLIC before you file any documents). A FLIC staff person will review your documents for completeness, notarize any necessary documents, and give you a folder and procedural checklist for obtaining your divorce. FLIC is open to walk-ins from 10:00 a.m. to 2:00 p.m., Monday through Thursday. Persons who are unable to come during those hours may contact (770) 531-2463 to inquire about setting up an appointment.
4. **Make two sets of copies of all of your paperwork.**
5. **Give one set of complete copies to your spouse.**
6. **File your divorce papers with the Clerk of Courts.**
7. **Using a *Rule Nisi*, obtain a Court date for your hearing from the assigned Judge’s office** (bring one set of copies of your divorce papers with you to the Judge’s office).
8. **Make copies of your *Rule Nisi*, file the original with the Clerk of Courts, and send or hand deliver the Respondent a copy.**
9. **Go to your hearing on the scheduled Court date and time.**
10. **Take your Final Judgment and Decree of Divorce (given to you by the Judge) and *Domestic Relations Case Final Disposition Information Form* to the Clerk of Courts for filing after your hearing.**

III. FORMS YOU WILL NEED TO START YOUR DIVORCE

You will need to file the following documents with the *Petition for Divorce*. All of these forms are included in this packet or are available from FLIC.

- Affidavit of Poverty and Order on Affidavit of Poverty* (only if you are indigent – see **Step 7** on page 9)
- Petition for Divorce*
- Verification* form
- Domestic Relations Action Standing Order and Certificate of Service*
- Domestic Relations Case Filing Information Form*
- State of Georgia Report of Divorce, Annulment or Dissolution of Marriage*
- Two-part form: *Acknowledgment of Service and Consent to Personal Jurisdiction and Venue*
- Settlement Agreement*

IV. DETAILED INSTRUCTIONS FOR COMPLETING THE FORMS AND FILING THEM

On the following pages are DETAILED instructions for how to complete and file the *Petition for Divorce* and some of the related documents. **Read these instructions carefully, and more than once, if necessary.**

Step 1: Completing the *Petition for Divorce*

➤ **Caption (Heading)**

Fill in your full name as the Petitioner, and your spouse’s full name as the Respondent. Do not fill in the “Civil Action File No.” The clerk will assign a number to your case when you file your *Petition* in the Clerk’s office. After completing the heading, write your full name again in the space provided just before Paragraph 1.

➤ **Paragraph 1: Subject Matter Jurisdiction**

CHECK ONLY ONE BOX

Check box “(a)” if you have been a resident of the State of Georgia for at least six (6) months immediately before filing your *Petition*. (It is not good enough if you used to live in Georgia in the past, moved away, and have returned more recently than six months ago.)

Check box “(b)” if you are not a resident of the State of Georgia, but your spouse has been living in Georgia for at least the past six (6) months. (It is not good enough if your spouse used to live in Georgia in the past, moved away, and has returned more recently than six months ago.)

Note: If you live in Georgia, but have not lived here for a full six months, but your spouse has been living here for at least the past six months, you may still use the *Petition for Divorce* and file in Georgia. Just check box “(b)” and cross out the first eleven words (“I am not a resident of the State of Georgia, but”), so that the sentence is accurate.

➤ **Paragraph 2: Venue**

Note: The issue of venue in a divorce action is very complicated, and can result in your case being defective if it is not addressed properly. **Read these instructions very carefully.** If your situation does not

seem to fit any of the choices exactly, you should talk to a lawyer. You may not be able to file your case in Hall County, or you may need to make very specific changes to this form. You should also talk to a lawyer if the Respondent is currently incarcerated (where a person is currently *living* does not always mean he/she *resides* there under the law).

On the first line, write your spouse’s name in the space provided. Then ***CHECK ONLY ONE BOX***

Check box “(a)” if the Respondent currently resides in Hall County.

Check box “(b)” only if **all** of the following are true:

- the Respondent is not a resident of Hall County but resides in Georgia;
- the two of you lived together in Hall County at the time you separated;
- you still live in Hall County; and
- the Respondent has moved out of Hall County only within the past six (6) months prior to you filing this *Petition for Divorce*.

Check box “(c)” if the Respondent is not a resident of Hall County but resides in Georgia and has acknowledged service of process and consented to the jurisdiction and venue of this Court, by completing **both** parts of the form that contains the *Acknowledgment of Service and Consent to Personal Jurisdiction and Venue*. (You must file the original signed and notarized form with the *Petition for Divorce*.) You must currently live in Hall County to check this box.

Check box “(d)” if you live in Hall County and the Respondent is not a resident of the State of Georgia, but he/she has acknowledged service of process and has consented to the jurisdiction of the Court, by completing **both** parts of the form that contains the *Acknowledgment of Service and Consent to Personal Jurisdiction and Venue*. (You must file the original signed and notarized form with the *Petition for Divorce*.)

➤ **Paragraph 3: Service of Process**

This paragraph indicates that you think the Respondent will acknowledge service by signing (in front of a notary public) the *Acknowledgment of Service* portion of the two-part form included with this packet. You must include the signed and notarized original form with the *Petition for Divorce* when you file. **If you do not think your spouse will sign this form, do not use this packet.** You will have to make arrangements to have him/her served.

➤ **Paragraph 4: Date of Marriage**

CHECK ONLY ONE BOX

Check box “(a)” if you and the Respondent were married with a license and a ceremony, such as one by a clergyman or by a judge at the courthouse. Write the date of the marriage in the space provided.

Check box “(b)” if you and the Respondent did not have a marriage license and a ceremony, but you believe you have established a common law marriage. Under Georgia law, this generally means that you and the Respondent lived together and held yourselves out as husband and wife before January 1, 1997. Write the date you began your common law marriage on the space provided.

➤ **Paragraph 5: Date of Separation**

In the space provided, write the last date that you and the Respondent separated and remained separated up to the present time. Provide only one date. If you and the Respondent have separated, gotten back together, and then separated again, use the date of the most recent separation.

➤ **Paragraph 6: Settlement Agreement**

You are explaining that you expect that the Respondent will sign a written settlement agreement acknowledging that you have no children, marital property or joint debt together. A *Settlement Agreement* is included with this packet. You must file the *Settlement Agreement* with your *Petition* when you file, or you will be ordered to go to mediation. The parties must agree voluntarily and this document must be signed by both parties in front of a notary public. See important notes about settlement agreements in **Step 4** below.

➤ **Paragraph 7: Child(ren)**

You are explaining to the Court that you have no minor children with your spouse and do not expect to have children with your spouse. **If you have minor children with your spouse, STOP! You should use a different packet, available in the Clerk’s office.**

➤ **Paragraph 8: Other Child(ren)**

Notes if the Wife has had children during the marriage or is pregnant with a child(ren) not the Husband’s child(ren): Under Georgia law, there is a presumption that children born in wedlock or within the usual period of gestation thereafter are legitimate, making the husband the “legal” father (unless otherwise disproved). If this situation applies to you, it is strongly recommended that you consult with an attorney to discuss the legal implications of addressing or *not* addressing this issue.

This paragraph is optional: Check and complete the box if the **wife** in this case is pregnant with a child (or children) and/or has had children during the marriage who are not the husband’s biological or adoptive children and you have decided you want the Court to acknowledge they are not the husband’s biological or “legal” children and he should have no legal relationship or potential rights or obligations arising from that relationship, to the children. Write facts you believe support the Court determining the husband is not the father (examples: the parties were separated for several years prior to the child’s birth and did not see each other at any point during that time; or the husband was incarcerated for the years immediately prior to the child’s birth).

You may also select the optional box (i) if you are the wife in this case and are pregnant. You may be required to list your husband as the father on the birth records even if he is not the biological father and you are divorced by the time of birth. By asking the Court to enter an order that directs the persons to not list your current husband as the father, you *might* be able to avoid this scenario.

➤ **Paragraph 9: Restore Former Name**

Optional: Check this box only if you want the Court to restore your former or maiden name. On the space provided, write the name you want to have restored. This case is not a name change action and cannot be used for anyone except the wife or husband in this divorce action. If your spouse wishes to have his/her former name restored, he/she will need to file an affidavit in this case asking the Court to restore his/her name or appear at the final hearing. You cannot request your spouse’s name be restored.

➤ **Paragraph 10: Grounds for Divorce**

This paragraph explains to the Court that the basis for your divorce is that there is no hope that you and the Respondent can save this marriage. This option is the language for grounds in most cases. It is the basis for granting a divorce when fault is not proven.

➤ **Final Paragraph: Request for Relief**

Strike through any provisions that do not apply to your situation.

- **To finish filling out this *Petition for Divorce***, sign your name in the space provided on the last page, write your address and a daytime telephone number where the Court staff could reach you if necessary. However, if you are living in a shelter for victims of family violence, **DO NOT LIST THE ADDRESS OF THE SHELTER**. To do so would violate O.C.G.A. § 19-13-23. Instead, on the space for the address, list only the name of the shelter and the state where it is located. Also, if the Respondent does not know your address or phone number and it should be kept confidential because of family violence, do not write that address or phone number here. Instead, you should write another address here, where you can be sure that you will receive any information that is mailed to you by the Court or the Respondent.

Step 2: Completing the *Verification Form*

The *Verification* form must be filed with the *Petition for Divorce*. In the caption (heading), insert your name as the Petitioner and your spouse's name as the Respondent. Do not fill in the Civil Action Case Number. The clerk will assign a number to your case when you file your case in the Clerk's office. Insert your name in the space underneath the word "Verification," which is the title of this document. In the next space, insert the title of the document you are verifying as true, which is the "Petition for Divorce".

Before you sign this *Verification*, remember that you will be swearing under oath that the information you have provided in the *Petition for Divorce* is true and correct to the best of your knowledge and belief. Therefore, you should re-read your *Petition for Divorce* one more time, from start to finish, to make sure it is all true. When your forms are ready, sign your name on the *Verification* in front of the notary public in the space provided, and check the box to indicate that you are the Petitioner. The notary must complete the rest of the *Verification* form after you sign it under oath. The staff persons at the Family Law Information Center can notarize this document free of charge, but you must have proper photo identification.

Step 3: *Domestic Relations Action Standing Order (DRASO) and Certificate of Service*

Complete only the header on the first page of this Order (your name as Plaintiff and your spouse's name as Defendant). You are required to serve a copy of the Order on the Defendant/Respondent and file proof of service with the Clerk. You may use the *Certificate of Service* following the DRASO in your packet for this purpose.

Step 4: *Settlement Agreement and two-part Acknowledgment of Service and Consent to Personal Jurisdiction and Venue form*

You are not *required* to complete this step before filing your divorce papers, but if you do not have a complete, written agreement when you file, you will be required to attend mediation. If you do not think your spouse will sign the papers with this packet, do not use this packet. If you and your spouse have reached or can reach an agreement about all issues arising out of the marital

relationship, you may use the *Settlement Agreement* with this packet to formalize your agreement in writing. The two-part *Acknowledgment of Service and Consent to Personal Jurisdiction and Venue* form is a form your spouse may complete and sign in front of a notary (and return to you for filing with the Court). Filing this form with your *Petition* satisfies the requirement that the Respondent be personally served with the divorce papers (which is done by a deputy or special process server).

Important notes about settlement agreements: Generally, if two parties execute an agreement because they want to settle all of the issues in their divorce, and it is not executed under fraud, duress, accident, or mistake, the agreement is a contract which is binding on both parties. If the agreement is considered by the Court to be a valid agreement, it may be incorporated into the Final Judgment and Decree of Divorce. The Court is not bound to accept your agreement (particularly when it comes to terms that deal with any children), but if the judge is satisfied with your agreement, he or she will likely incorporate it into the final decree, binding both of you to the agreement. Therefore, once you and your spouse have executed the agreement, if you want to make any changes to it, you will both have to agree to those changes in writing, unless you can prove it is not a valid agreement.

In short, **DO NOT** execute the *Settlement Agreement* with this packet if it is incomplete, or you and your spouse have agreed to something orally that is not included in the agreement. **DO** contact an attorney if you have any questions at all about an agreement proposed to you by your spouse or if you are unclear about any of the terms included in it. It is **STRONGLY** recommended that you talk with an attorney before signing any agreement.

Additionally, the *Settlement Agreement* included with this packet is just one sample of an agreement you might reach with your spouse. It does not cover every possible scenario that might come up in the future between you and your spouse. If you can hire an attorney to represent you, he or she will be able to help craft an agreement that is tailored to your precise needs.

If you execute an agreement with your spouse, and later believe the agreement is not valid, you will need to contact an attorney to find out what options might be available to you.

Step 5: Completing the other forms with your packet

- *Domestic Relations Case Filing Information Form* – Fill in your complete name as the Petitioner (including your maiden name, if applicable) and your spouse’s complete name as the Respondent. Check the box for “Pro se.” Check the box for “Divorce.”
- *STATE OF GEORGIA Report of Divorce, Annulment or Dissolution of Marriage* – Complete items 4 through 15. On item 14, you will need to write the Code section that applies to your divorce. Since you are filing because the marriage is “irretrievably broken,” write “19-5-3(13).”
- *Domestic Relations Case Final Disposition Information Form* (included with this packet) – You will not need this form until the day of your final hearing (so keep it with your folder). Fill in the spaces for County, Docket # (after you get a case number from the Clerk of Courts), your name, the name of the Respondent, and check the box for “Pro Se.”

Step 6: Getting your papers together

After you have finished filling out all the papers you need to start your case, you may either sign all of them (in front of a notary public when required) before coming to FLIC, or wait until you meet with a FLIC staff person and have them notarized free of charge. If you decide to have your papers notarized before coming to the Courthouse, you may want to sort the papers and making copies as described in **Step 9** below.

Step 7: Getting your fees ready

The Court filing fee for a divorce action is \$82.50 (cash or money order only). Since the Respondent will have signed the *Acknowledgment of Service*, you do not need to bring additional money for the service fee. You should bring cash or a money order for \$82.50 when you bring your papers to the Clerk’s office to file your case.

Note: If you have a very low income, and feel that you cannot afford to pay the fee, you can ask the Court to waive the fee. FLIC has *Poverty Affidavits* available and can explain the process for applying.

IMPORTANT: if you live in a shelter for victims of family violence, **DO NOT LIST THE ADDRESS OF THE SHELTER** on the *Poverty Affidavit*. Instead, on the space for the address, list only the name of the shelter and the state where it is located. Do not even fill in the name of the county.

If the Court approves your request, you will file the *Poverty Affidavit* and *Order on Poverty Affidavit* (signed by a judge) with the other papers when you file your divorce action at the Clerk’s office. A judge must sign the Order approving your *Poverty Affidavit*, before the filing of your case will be completed by the Clerk’s office staff. If the judge signs the order of approval, the fee will be waived. If the judge does not approve your *Poverty Affidavit*, you must pay the fee before your case will proceed.

Step 8: Visiting FLIC on the fourth floor of the Courthouse in Room 459

Visiting FLIC is a requirement for all people representing themselves in divorce cases in this Circuit. Before you obtain a Court date from any judge’s office, **you must visit FLIC**. The Center is open to walk-ins on a first come, first serve, basis from 10:00 a.m. to 2:00 p.m., Monday through Thursday. The FLIC staff person available during these hours will check your forms for completeness, notarize documents free of charge, and provide you with a folder and procedural checklist.

One-time consultations with the FLIC attorney are available if you are unable to visit FLIC during regular walk-in hours or if you have general legal questions regarding your divorce. Consultations are subject to a conflict check and income qualification. You may call (770) 531-2463 for more information and to schedule an appointment.

Step 9: Making copies

After you visit FLIC (you will now have a folder and procedural checklist), if your forms are complete and signed, sort them into the following order:

- *Poverty Affidavit* and *Order on Poverty Affidavit* (if applicable)
- *Petition*
- *Verification*
- *Domestic Relations Action Standing Order* and *Certificate of Service*
- Two-part form: *Acknowledgment of Service* and *Consent to Personal Jurisdiction and Venue*
- *Settlement Agreement*

If you have not already done so, make two complete sets of copies of all the above papers you are going to file (there is a copier in Room 468 on the fourth floor of the Courthouse). Then, separate them into three packets: (1) all of the originals (to be filed in the Clerk of Court’s office for the Court) – **do not staple this set together**, (2) one set of copies for your spouse (called the “service copy”), and (3) one set of copies for you to keep for your records (and to show the Judge’s office when you ask for a Court date).

Place the remaining forms on top of your set of originals for the Clerk's office:

- *Domestic Relations Case Filing Information Form*
- *STATE OF GEORGIA Report of Divorce, Annulment or Dissolution of Marriage*

The *Domestic Relations Case Final Disposition Information Form* may be kept in your folder.

Step 10: Filing your divorce in the Clerk's office

Take all 3 sets of forms (with the originals set on top), along with your cash or money order, to the Hall County Superior Court Clerk's office (Civil Division window) on the ground floor of the Hall County Courthouse (225 Green Street, S.E., Gainesville). When it is your turn, give all 3 sets to the clerk, along with any fees. If your paperwork is in order, the clerk will keep the originals for the Court's file. After the fees have been paid, or the *Poverty Affidavit* has been approved by the judge, the clerk will write your case number (Civil Action File No.) on both sets of copies, stamp them with the date and time stamp, and return them to you. He/she will also tell you to which judge your case has been assigned, give you a form entitled *Rule Nisi* and instruct you to go back to the fourth floor to get a Court date from that Judge's office.

Step 11: Obtaining a Court date

All offices of the Superior Court Judges are located on the fourth floor of the Courthouse. After leaving the Clerk's office, go back upstairs to the specific Judge's office and ask the calendar clerk in the office for a final hearing date. He/she will ask to see a paper indicating you have been to FLIC, and then assign you a date (using the *Rule Nisi*). Since you will have a signed *Settlement Agreement*, and the Respondent has completed the *Acknowledgment of Service* giving his/her consent to have the case heard at 31 days, then you may ask to have the final hearing take place any time at least 31 days after the *Acknowledgment of Service* was filed with the Clerk. However, you may not receive a hearing that soon. It will depend, in part, on the particular Judge's schedule.

Step 12: Make copies of the Court date (*Rule Nisi*)

Make two copies of your *Rule Nisi* (Room 468 on the 4th floor has a copier).

Step 13: Filing your Court date

Take the original *Rule Nisi* back to the Clerk's office for filing. Keep one copy and give the other copy to the Respondent – via mail or by hand.

Step 14: Appear for the Final Hearing

Appear for your final hearing on the proper date and time and bring your *Domestic Relations Case Final Disposition Information Form*. After you receive your Final Judgment from the Judge, take it and the completed *Final Disposition* form to the Clerk's office for filing.