

GEORGIA DIVORCE GUIDE

UNDERSTANDING AND PREPARING FOR A DIVORCE
IN GEORGIA

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GEORGIA DIVORCE GUIDE

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OVERVIEW

How did I get here? How do I get out of my marriage?

Divorce can sometimes be very difficult and painful, but it can also have a positive effect on one's life. Especially in cases where a marriage is not working on a basic level for the parties, divorce can be the right solution for all involved, both short term and long term.

Whether a divorce is "good" or "bad," or "right" or "wrong" often appears one way to one person and another way to the other person. Many people ask themselves, "How did I get here"? Other people ask themselves, "How do I get out of here"? Confusion often reigns.

Notwithstanding how you feel about divorce, the fact is that, under Georgia law, any married person is entitled to file for a divorce. Thus, if you or your spouse want to leave the marriage, the only real question that you have to answer is "how does the divorce happen and under what terms and conditions"?

Even if that fact is not what you want to hear, you should be clear with yourself and with your spouse that you have the right under Georgia law to participate fully in the answering of those questions.

Whether you are certain that you are headed for a divorce or you or your spouse are just 'testing the waters', you need right now to **prepare a clear plan of action**; you need to **know your alternatives**; you need to **understand what you can control and what you cannot control**; and you need to **understand what the law requires and provides**.

Facing a divorce or planning for one requires that you set reasonable expectations, develop potential timelines, understand possible outcomes and make complex decisions

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having personal, financial and legal consequences. It is possible for some people to go through the divorce process without professional guidance and help. However, most people find the need to seek legal and other professional help in order to accomplish the tasks set forth above. If you are in the latter group of people, now not later is the better and in fact most cost-effective time to seek that advice.

This brief guide is intended only to give you the general lay of the land as to divorce in the State of Georgia. It is by no means comprehensive. It is intended to answer some fundamental questions and provide a preliminary working guideline for those potentially facing a divorce in Georgia.

There are many excellent family law lawyers in the state. And there are many excellent financial advisors, analysts, counselors and clergy who can help you to develop your plan. We believe that you should seek help and guidance earlier rather than later and for an absolute certainty before you agree to anything proposed by your spouse, before you make any offers to your spouse, before you sign anything in writing, and before you raise the prospect of divorce with your spouse. However, that is of course your choice.

COMMON QUESTIONS

We have listed here some of the common questions that arise. Note that the issues mentioned are discussed more fully in other sections of this Guide. Among the most commonly asked questions are:

1. I do/don't want the divorce but my spouse does/doesn't. What can I do?

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As noted above, every married person in Georgia is entitled to file for a divorce. Many spouses consider a divorce but, with counseling, change their minds. We discuss counseling below and provide a limited list of counseling resources. You can make the divorce process shorter or longer with limitations; you cannot be rushed into a divorce in a very short period of time. Sometimes, but rarely, a party seeking a divorce changes their mind given enough time and given enough exposure to the legal process. Whether that spouse ultimately tries again, however, is anyone's guess. So, the short answer to the question, "What can I do?" if you do not want a divorce but your spouse do is that your spouse probably will obtain a divorce unless he or she changes their mind.

2. Will I have to go to court?

A court will have to grant your divorce; whether you will have to actually go to court depends on how you and your spouse handle the divorce. If you cannot reach an agreement on all of the issues in the divorce, then a judge or jury will decide the issues that remain and you will have to go to court to obtain their answer. If you do reach an agreement with your spouse on all of the issues, then you generally will not need to go to court except in some counties where at least one party has to go to court to present the agreement. All agreements in a divorce have to be in writing and made a part of the judge's final order.

3. What are the issues in a divorce?

The issues in a divorce include these which are separately discussed below:

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- How will the property of the married couple be divided? In that regard, is any of the property the so-called “separate property” of one spouse or another, meaning it was brought into the marriage by one party, inherited by one party, etc.. Separate property is a complex question.
- How will the debt of the married couple be divided? Is any of the debt “separate debt”? --- also the topic of complex rules.
- Is one party or the other entitled to alimony and, if so, how much and over what period of time and on what terms?
- If there are children, who will have legal custody of the children, who will make major decisions about them, where will they live and with whom?
- If there are children, should one parent pay to the other child support for their support and, if so, how much and over what period of time and under what terms?
- Is the divorce to be considered a no-fault divorce just because the parties have differences they cannot reconcile or is there a cause for the divorce (adultery, abuse, etc.)?

4. How will this affect my children?

Divorces with children receive careful consideration by the courts and the state has developed specific laws and rules that govern what the divorcing parents can and cannot do regarding issues involved in the children’s future. The issues, as discussed below, include legal custody, decision making, physical custody, visitation (or “parenting time”) and child support.

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5. How will this affect my finances?

There is little doubt that both parties to most divorces will suffer some short or long term financial detriment as a result of the divorce because, simply, two parties can live together more cheaply than they can separately. However, in some cases, where one spouse is a spendthrift or where one spouse has serious legal or financial issues, that is not the case. A divorce agreement or court order where the parties are each properly represented by legal counsel will be more apt to consider all of the assets, debts, and needs for support of the parties and will bridge as best as possible short term financial issues and provide for long term solutions to financial problems.

6. Will I “win” (...and how is ‘winning’ defined)?

You will not ‘win’ and your spouse will not ‘win’ in any divorce any more than you can ‘win’ in the creation or termination of any relationship. But, what you can do is to end this relationship on terms that help you in your life going forward. If you develop a plan that is supported by the law’s requirements and you skillfully argue and present proposals and respond to those of your spouse, you will accomplish the goals of your plan and that is victory in any divorce. If you set the goals properly, indeed, if you do those things, you are apt to have a better life overall than the one you have today. ‘Winning’ to you should mean accomplishing your well-reasoned and realistic plan for the divorce.

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7. How long and expensive is the process?

If you decide to handle your divorce without legal and financial counsel, a divorce can be relatively inexpensive, perhaps costing you a few hundred dollars.

If you have the financial wherewithal to have legal and financial counsel, no one would suggest that you undertake a divorce without legal counsel at a minimum and financial advisors appropriate for the size of the marital estate.

The cost of legal services varies widely, but the principal variant is simply whether you and your spouse can work together to settle quickly all of the issues in a divorce. Most lawyers handle family law cases by taking a retainer against which they bill their time. The retainer is essentially an upfront payment towards the costs of the case; the amount you ultimately spend on the lawyer will depend on you and your spouse and how you are able to 'do business' together.

If you are the spouse seeking the divorce, it is unlikely you can find experienced and skilled legal counsel to work with you on answers to all the issues, handle the court filings and negotiate with your spouse or his or her counsel without budgeting for those efforts at least a couple of thousand dollars. And that assumes that your spouse is going to be cooperative and the issues can be settled between the parties quickly.

The matter is uncontested and the issues can be reduced to a written agreement quickly, it is perhaps possible that a budget of a thousand dollars or so may work.

For most people, however, divorce is not that easy and there are profound and difficult

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differences in the parties' beliefs about the right answers. When counsel is going to be required to force your spouse to fully disclose financial information that is required, or to work with the courts and their officers and guardians on who is best suited to handle the children in the future, or to argue your positions to the other side and to judges and juries, then your budget needs to be larger.

In a contested case where the parties are not in agreement on the issues, a retainer of \$5,000, \$7,500 or \$10,000 is often necessary.

with more being required if litigation continues. To actually try a case in front of a judge or jury can cost considerably more.

If you are the financially dependent spouse, it is relatively normal to demand that the other spouse pay for your attorney and to provide the retainer. In some circumstances, courts may order that to happen.

The point here is that you need to choose counsel who you believe can help you to settle the case early but, if it cannot be settled, you are confident will represent you diligently and forcefully.

You and your spouse are the people who really determine how expensive a divorce becomes.

ALTERNATIVES TO DIVORCE

If a marriage can be saved, by all means, we encourage people to try to save it, particularly if children are involved.

One way that some marriages can be saved is by each party acquiring a good understanding of what the consequences of a divorce are likely to be both emotionally and financially.

We have included a list of counselors and clergy (index) with whom we have some personal experience. However, the counselor or clergy that you choose has to be right for you. We have also added links to resources on the Internet that we or our clients have found. Note that we are not counselors or clergy and counseling is not our training or background; thus, you will need to be careful in your screening of any counselor or clergy that you use. We would suggest that you ask anyone that you consider for this role, whether on this list or otherwise, about their specific experience with family and divorce situations.

We also have included a list of financial analysts and advisors who may be able to help you with the financial aspect of divorce. As noted above, the analyst or advisor that you choose has to be right for you. Also, note that we are not financial analysts or advisors and that is not our training or background and you will need to be careful and self-protective in your screening on any financial analyst or advisor that you use. We would suggest that you ask anyone that you consider for this role, whether on this list or otherwise, about their specific experience with family and divorce situations.

Another way that marriages sometimes can be saved is by a trial so - called “legal

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separation” which is discussed below.

COUNSELING

Counseling can be very effective in reconciling some marriages and we have noted above some resources that are available. For those marriages where divorce is inevitable, counseling to settle specific issues or to make the divorce a less painful experience is common but not universal. Where children are involved, courts sometimes require a form of counseling that makes the court feel comfortable that the parents can co-parent the children after the divorce is final. Each party has input into the decision of whether counseling is appropriate and who the counselor might be.

LEGAL SEPARATION

A legal separation also can be very effective. As a formal “cooling off period”, legal separation provides that the parties will ‘live apart’ and the legal separation order or agreement describes how the parties will interact financially and otherwise during the period of separation. Separation historically was used as an alternative to divorce for religious reasons but is still used today for that and other reasons.

TEMPORARY PROTECTIVE ORDERS

Family Violence Protective Orders may be needed in cases when domestic violence (“spousal abuse”) occurs. Spousal abuse is when a family member or partner attempts to physically or psychologically harm another.

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Georgia law allows for the abused party to file for a protective order which would be an order by the court for the abuser to stay away from the abused and his/her workplace and residence.

If you believe that you may be the victim of domestic violence, you should contact an attorney immediately. Further, acts of physical violence are a crime and local law enforcement may be notified. Once a petition for a protective order is filed, the court will typically schedule a hearing for both parties to present evidence regarding the alleged violence. If the Judge rules that a protective order is necessary, she or he may issue the order for a period of up to twelve months.

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Planning for your financial future following the divorce is a valuable first step. You will need to plan to pay for your separate living expenses and should prepare a realistic budget. Researching and selecting the attorney who will represent you in the divorce proceedings is also very important. Being comfortable with your attorney and confident in his or her abilities can greatly reduce the anxiety that can accompany a divorce.

UNCONTESTED DIVORCE

An uncontested divorce can allow for a less stressful and less expensive marital dissolution. If you and your spouse are able to come to an agreement without the need for litigation, a divorce may be granted. Issues to resolve may include: child custody, support and visitation, alimony, and division of marital property and debt. Once you have reached a consensus, you will each need an attorney to prepare a settlement agreement which memorializes your agreement and is filed with the court. Once the judge approves your agreement, a final judgment and decree of divorce can often be signed shortly thereafter.

CHILD CUSTODY AND VISITATION

Deciding who will be the primary caregiver for a couple's child(ren) is often the most important issue in a divorce. **There are two aspects of custody that must be addressed: legal and physical.** Legal custody is generally defined as having the right to make major decisions for the children concerning education, health care, extracurricular activities, and religious training.

Legal custody is often "joint," meaning that both parents continue to share in the

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rights to make decisions regarding their children's needs.

Physical custody is generally defined as where the children primarily reside. The parent who does not have physical custody (often referred to as the “noncustodial” parent) will typically be granted visitation with the children. Holidays and other special occasions, such as the children’s birthdays, religious observances and school holidays, will need to be divided between the parents.

In addition to the question of who has physical custody, there is the question of who makes decisions for the child on critical issues. Typically, the parent having physical custody is the final decision maker on child related issues about which the former spouses may disagree. However, the question of “who makes decisions” is a separate topic and sometimes parents split decision-making responsibilities by topic.

Some parents are interested in joint physical custody and sometimes it is in the best interest of the child and indeed the entire family if a child spends time with parents equally. For example, if the parents have a commitment to live very close by each other and if the child is of an appropriate age, joint physical custody may be possible.

The custody and visitation provisions will be memorialized in a written parenting plan, which must be filed with the court.

CHILD SUPPORT

Providing for the financial needs of the children is important.

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Typically, the noncustodial parent will pay monthly child support to the parent who has physical custody. **Georgia law generally provides for the calculation of the child support amount by taking into consideration the gross incomes of both parents and then calculating the amount of support on a pro rata (“proportional”) basis.**

Also taken into consideration in figuring the amount is the cost of the children’s health insurance and day care. Divorcing parents will also need to provide for health care costs that are not typically covered by insurance, such as co-pays and deductibles. Your attorney will prepare a child support worksheet, which the court requires, to calculate the actual support amount.

ALIMONY

Georgia law provides for spousal support (“alimony”) based upon the financial needs of the recipient spouse and the financial resources of the other spouse. *Many judges, however, appear to be increasingly reluctant to award alimony.*

Therefore, it is important to take the correct steps when seeking alimony. Factors considered in determining whether alimony is appropriate include:

- The standard of living established during the marriage
- The duration of the marriage
- The age and physical/emotional condition of both parties
- The financial resources of both parties
- If applicable, the time necessary for either party to acquire sufficient education or training to enable him/her to find appropriate employment

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- The contribution of each party to the marriage (such as homemaking, child care, career building of the other party, and education)
- The condition of the parties (such as separate estate, earning capacity and financial liabilities).

Societal changes have led to both parents often working, and most Judges expect that both will work following the divorce. Further, even when alimony is awarded, there is some risk that the paying party may lose his or her ability to pay due to job loss or death, in which case alimony could cease. Rehabilitative alimony is one type of alimony that may be appropriate in some cases where a spouse has not worked outside of the home for many years. Rehabilitative alimony is generally payable for a short period of time until the recipient is in a position of self-support.

PROPERTY DIVISION

Divorcing couples often have accumulated many years worth of property, furniture, vehicles, and other assets. Typically, these assets need to be divided between the spouses. Georgia law provides for the equitable (“fair”) division of marital property. Marital property is property that is acquired as a direct result of the labor and investment of both spouses during the course of the marriage. Property to be divided may include land, homes, bank accounts, 401k and other investments, pensions, a business, and stock options. Although, for example, an account may only be in the name of one spouse it may nonetheless be marital property. An equitable division of marital property does not necessarily mean an equal division. It is important to think ahead to retirement when

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dividing marital assets, especially if a spouse has not been in the workforce for a period of time.

MODIFICATIONS

Following a divorce, there are some circumstances in which child support or alimony provisions may be modified. Generally, if a former spouse has a substantial decrease or increase in income or financial wealth, an upward or downward modification may be possible. Increases in the financial needs of the children may also warrant a modification.

Child custody and visitation may also be modified under certain circumstances; for example, if one spouse moves to another state such that his or her ability to visit with the children is impacted. In such a case, a new parenting plan may need to be put into place to accommodate the distance to exercise the visitation. The child support may also need to be modified to accommodate the additional travel expenses necessary to exercise visitation. Modifications typically require the filing of another lawsuit and the exchange of financial information between the parties.

MEDIATION

Mediation is a common tool used during a divorce to try to resolve all or some of the issues without needing to go to court. Most counties have approved and trained mediators who are skilled at facilitating negotiations between the parties. The parties will commonly share the costs of the mediator equally. In order for mediation to be successful, both parties generally need to be willing to compromise on some issue of importance.

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Resolving divorce disputes through mediation can save both parties the high financial cost, and stress, of going to trial.

COLLABORATIVE LAW

Collaborative law is an increasingly popular alternative approach to obtaining a divorce. Collaborative law provides a reasonable approach to divorce based on three principles: a pledge not to go to court, an honest exchange of information by both spouses, and a solution that takes into account the highest priorities of both spouses and their children. Mutual respect is fundamental to a collaborative divorce. The process typically involves a financial consultant and divorce coaches, as well as a child specialist where appropriate. The theory behind obtaining a divorce through collaboration is that the process may avoid much of the acrimony that accompanies some divorces, and is generally less expensive due to the avoidance of traditional litigation.

PRENUPTIAL AND POSTNUPTIAL AGREEMENTS

A Prenuptial Agreement (“Prenup”) is a contract that can define who gets what in case of a divorce. A carefully drafted Prenup can assist in avoiding costly divorce litigation. **A Prenup can only address property issues; a Prenup cannot address child custody rights.** Prenups are most commonly used by parties who have accumulated separate assets prior to the marriage, with an eye towards providing a roadmap for division of joint (“marital”) assets that may be acquired after the marriage. A Postnuptial Agreement (“Postnup”) is a contract between spouses similar to a Prenup except it is signed during the marriage. A Postnup is entered into in contemplation of the marriage continuing. In

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both a Prenup and a Postnup, it is critical that both parties provide a full and fair disclosure of all their assets, and that each have separate and independent legal representation.

PATERNITY AND LEGITIMATION ACTIONS

When a child is born to parents who are not married, the mother may need to file a paternity action to establish the father's legal obligations to provide support to the child. Conversely, the father may file a legitimation action to establish his legal rights and his ability to visit with the child. In circumstances where the paternity of the child is in dispute, a DNA test may be required. In some instances, the mother may be able to recover some of the medical and birth-related expenses incurred from the father.

CONTEMPT OF COURT

Contempt of court is a court order which deems an individual as having willfully violated an order of the court. When a Judge signs a Final Judgment and Decree of Divorce ("Order"), all of the provisions of the order become legally binding on both parties. Sometimes a former spouse may fail to follow part of the Order, in which case the other former spouse may file an action for contempt. Such an action is a vehicle through which you may enforce the court's order. Common examples of causes for the filing of a contempt action include failure to pay child support or alimony. If the Judge holds a former spouse in contempt, the court may also order the contemptuous party to pay all or part of the other's attorney's fees and legal expenses. In some instances, especially where payment of child support is involved, a Judge may incarcerate the contemptuous party until she or he pays the money.

SOMEONE TO SPEAK TO

Here are counselors we recommend for your consideration:

Dr. Barbara Rubin
Psychologist
957 W. Marietta Street, NW
Atlanta, GA 30318
drbrubin@aol.com
(404) 224-0404

Dr. Lee Kyser
1263 Beech Valley Road NE
Atlanta, GA 30306-3123
drkyser@mindspring.com
(404) 842-1933

A WORD ABOUT US

Our legal philosophy



Pictured from left to right are Kitchens New partners Joyce Kitchens, Randy New, and Jeff Cleghorn.

Our firm understands that divorce is a difficult process and can be painful or provide a needed change, depending entirely on the individuals involved. We are committed to taking care of clients' legal needs with professionalism, compassion and creativity. Our attorneys and staff have chosen to be a part of the Kitchens New Cleghorn because they are committed to creating positive outcomes for individual people. We handle personal legal issues for our clients with direct

communication, clear plans of action and professionalism. We educate our clients on what we and they can control, what no one can control or change and what the law requires.

Our attorneys recognize that our clients have lives outside of the legal issues we are handling for them. In light of this, our attorneys set reasonable expectations regarding client involvement, potential timelines and possible outcomes.

Consultation and fees

When you contact our firm to discuss a divorce or other family law matter we will schedule a meeting with you so that you can decide on a 'person-to-person' basis whether we are the right attorneys for you. We are happy to discuss your situations in general on the telephone but we are unable to provide you specific legal advice without meeting you. If you feel the need for a 'get to know one another session', we are happy to schedule a one

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hour meeting at our office with one of our attorneys at a reduced “evaluation rate”. We will work with you to determine a course of action based on your needs, our assessment of your legal position and our evaluation of our firm’s suitability to handle your issue. Prior to beginning any extended representation on your behalf, our attorneys will prepare an engagement agreement that defines our course of action and fee structure.

THE INFORMATION PROVIDED IN THIS GEORGIA DIVORCE GUIDE IS GENERAL AND FOR INFORMATION ONLY AND DOES NOT CONSTITUTE LEGAL ADVICE FOR ANY PARTICULAR SITUATION OF FACTS AND CIRCUMSTANCES. IF YOU HAVE NEED FOR LEGAL ADVICE, PLEASE CONSULT WITH AN ATTORNEY FOR YOUR SPECIFIC QUESTIONS.