

THIS DOCUMENT, WHICH IS BASED ON GEORGIA LAW, IS INTENDED TO INFORM NOT

TO ADVISE. NO ONE SHOULD ATTEMPT TO APPLY OR INTERPRET ANY LAW

WITHOUT THE AID OF A LAWYER WHO KNOWS CRIMINAL LAW AND COURT RULES,

BECAUSE THE FACTS OF EACH INDIVIDUAL CASE ARE DIFFERENT AND MAY CHANGE

THE APPLICATION OF THE LAW.

SEPARATION AND DIVORCE CAN I PREVENT MY SPOUSE FROM ENTERING OUR RESIDENCE?

Your spouse has a right to be on and in property that you both own or rent unless a court decides otherwise.

WHAT IF MY SPOUSE HAS PHYSICALLY ABUSED ME?

If there has been actual or threatened physical abuse, your spouse may be ordered by the court to leave your residence.

WHAT IS THE ROLE OF A LAWYER IN SEPARATION OR DIVORCE?

If you and your spouse are having marital problems, your lawyer can assist you in three areas. First, an attorney will advise you of your legal rights and duties. Second, he or she will help to bring about an agreeable settlement of the legal disputes which arise between you and your spouse as a result of separation or divorce. Finally, your lawyer is your representative in enforcing your rights in a court of law or in defending you if your spouse files an action against you.

WHAT IS A "SEPARATION AND PROPERTY SETTLEMENT AGREEMENT?"

After a husband and wife separate, and especially if they intend to divorce, it is desirable for them to enter into a written contract to provide for:

- : division of real estate and personal property;
- : support, if any, payable to the dependent spouse and children
- : responsibility for debts and legal fees;
- : health and life insurance arrangements;
- : custody and visitation of children.

Also included are many other items which set forth the mutual rights and duties of the two people. This contract is called a SEPARATION AGREEMENT, PROPERTY SETTLEMENT AGREEMENT, or SEPARATION AND PROPERTY SETTLEMENT AGREEMENT. The exact title depends on the contents of the individual agreement. Such an agreement is a contract and is generally enforceable in court like any other contract. It is written by your attorneys and follows negotiations between you and your spouse and your attorneys.

In the event you are unable to agree on these items, an application may be made to the court as part of the divorce proceeding. The court will have the power to EQUITABLY (fairly) divide all marital property, as well as to provide for alimony payments to a dependent spouse for the period of dependency. The court's determination will be set forth in a court order, which will be valid and enforceable.

WHAT HAPPENS TO REAL ESTATE I OWN WITH MY SPOUSE?

Most married couples own their real property as "tenants in common". This form of joint ownership means that neither spouse can sell the property during the marriage without the consent of the other. Upon divorce, however, unless the parties have a written agreement providing for the division of the property, the court has the power to make the division of the real estate based on equitable principles.

WHO OWNS THE HOUSEHOLD FURNISHINGS?

Household items, such as drapes, carpets, furniture and appliances, are generally not titled in either spouse's name. Unless you can show a different intent, the law treats all such property as being jointly owned and used for the benefit of both spouses, regardless of who actually paid for it. Upon divorce, the court may consider this property as MARITAL PROPERTY and distribute it accordingly.

WHO OWNS THE BANK ACCOUNTS?

If the accounts are in both names, whether it is as you AND your spouse or you OR your spouse, you are joint owners of the funds. If one spouse draws all the money out of the account, he or she may have to account to the other for half the money on deposit, no matter which one put the funds into the account. In some cases, a spouse may be able to prove the existence of an agreement or other facts which would entitle him or her to more than half the funds. After divorce, the court may consider the bank accounts as marital property and equitably divide the funds regardless of whose names were on the accounts.

WHAT IS THE RESIDENCY REQUIREMENT FOR FILING A DIVORCE?

You must reside in Georgia for at least six months before you can file for divorce. If you have not been a resident of Georgia for at least that length of time, you may still file but only if your spouse has lived in the state for at least six months.

WHAT ARE THE GROUNDS FOR DIVORCE IN GEORGIA?

The basis or cause for which a court may grant a divorce is commonly referred to as a "ground" for divorce. There are many different grounds for divorce in Alabama, all of which are created by statutes. The most commonly used ground is incompatibility. In practice, it is ordinarily not difficult to convince the court that incompatibility exists sufficient to dissolve the marriage relationship. A divorce based on this ground is commonly referred to as a "no fault" divorce. However, even though a finding of fault is not necessary to the court's decision to grant a divorce, it is often a very important factor in such matters as child custody, alimony, and division of property.

Other grounds for which divorce in Georgia may be granted include: adultery, desertion, imprisonment in the penitentiary for certain prolonged periods, addiction to alcohol or drugs, mental incapacity, cruelty, or conditions which existed at the time of the marriage without the knowledge of the other party such as pregnancy and incurable physical problems which keep one spouse from entering into the normal marriage state.

DIVORCE BY DEFAULT OR TRIAL

Two common methods of obtaining a divorce are by default or by trial. A default divorce occurs when the party against whom the divorce suit is brought fails to respond within the time limits set by law. If the defendant does appear and files a response to the complaint, the case will be set for a trial. In this set of circumstances, unless the case is settled prior to its going to trial, there will be an actual trial before the Judge or Jury with each party having the right to call witnesses. In the case of the Judge he must decide all of the pertinent issues, such as whether or not a divorce will be granted, custody of the children, amount of child support, alimony, and division of property. The Judge will decide all of these issues and will make the final decision concerning the divorce. The difference is that if there is a default, the Judge will base his ruling on the oral or written testimony of only the party who filed the suit.

In the case of the jury the judge still decides the issue of custody of the children.

WHAT WILL BE INCLUDED IN THE FINAL COURT ORDER?

When the court issues a DECREE OF DIVORCE following the hearing, the order may include other matters if they were raised in the proceeding by either spouse. These include: disposition of marital property and other property interests; custody and visitation of children; child support payable; alimony payable (to a dependent spouse); enforcement of separation agreements voluntarily entered into between the parties.

CHILD CUSTODY AND VISITATION RIGHTS

In a divorce action, the court determines the custody of the minor children of the parties. The determination is based on the discretion of the court guided by consideration of the following factors: best interest and welfare of the children, fault of the parties, character and conduct of each parent, age and sex of the children, past care and custody of the children, economic conditions of the parents, preference of the children, and custody agreements between the parties.

The custody of the children is very important, and you should give your attorney any information that might affect which party receives custody of the children. The courts favor a natural parent having custody of the children, but it can award custody to other parties such as grandparents or even unrelated persons if it is in the best interest of the children. The parent who does not have custody of the children has the right to visit the children or have them visit him or her. Generally, visitation rights are set by the Judge and are generally expressed in terms of reasonable notice; but a divorce decree can also set out specific visitation privileges at certain times and places i.e.: every other weekend, certain holidays, birthdays, et cetera. The court may also, on request, award visitation rights to the grandparents of the children.

CHILD SUPPORT

Once the determination is made that a divorce should be granted, the primary concern of the court becomes the well-being of the minor children of the parties. It is the responsibility of the court to weigh the circumstances to determine if the non-custodial spouse should contribute to the support of the minor children. The court is given a great deal of discretion in its determination of the amount of child support to order. There are no mathematical formulas. If the case is tried by a jury the jury would set the amount of child support.

The needs of the children, including any physical or mental problems, are balanced and compared to the ability of the spouse who will be required to pay the support to meet those needs. The court will analyze the ability of the spouse who has custody to properly support the children without assistance, as well as the

other spouse's ability to pay. It will consider the income and potential income of each party balanced with the expenses associated with each person's other responsibilities.

Once the basic analysis is made, it will then be subjected to considerations such as the length of the marriage and whether the parties have entered into some prior arrangement with regard to the support of the children. The decision will often also be affected by the court's determination as to the party responsible or at fault for bringing about the dissolution of the marriage.

WHO PAYS THE COSTS OF THE DIVORCE?

In the final order, the court may award costs to the person in whose favor the order or decree is entered, or may order each person to pay his or her own costs, or may order that costs be divided equitably between the parties. Payment or recovery of costs is a matter to be discussed with your lawyer in your initial meetings with him or her. You should discuss the amount of the attorney's fees and who will pay them in your first discussion with your attorney. Attorney's fees differ greatly within the state. Non-contested divorces generally cost less and the attorney's fees increase with the complexity of any contested divorce. Factors which affect the attorney's fee in a divorce include child custody, the size and complexity of any property settlement, tax advice, alimony settlement, fault of the parties, et cetera. It should be noted that an attorney cannot ethically represent both the husband and wife in a divorce proceeding.

WHAT IS THE DIFFERENCE BETWEEN DIVORCE AND ANNULMENT?

An ANNULMENT may be sought for marriages that are by law invalid or which may be declared invalid by a court. Marriage is a contract, and if either individual was unable to enter the contract because of intoxication, being under age, or fraudulent inducements, the court may determine that no contract of marriage ever existed. If you think an annulment may be appropriate in your in your situation, discuss the matter with your lawyer.

WHAT SHOULD I DO IF I AM SERVED WITH A DIVORCE COMPLAINT?

A divorce action is like any other lawsuit. It starts with a complaint filed in court and served on the person against whom it is filed. If you receive a divorce complaint, you will have thirty days to respond. If you do not respond, the divorce may proceed without your being represented and without your having the opportunity to protect your rights as to your marital status, support, and property. You should consult an attorney immediately upon receiving the complaint.

The legal aid or legal services office in your county may be able to help you. If you feel you cannot afford an attorney, you should contact that office. If you want a private attorney but do not know how to find one, you should contact a lawyer referral service.