

FAMILY LAW - FAQs

What are the essential elements to a valid marriage in Georgia?

For a marriage in Georgia to be valid, there must be parties able to contract, an actual contract and consummation according to law.

Parties able to contract means that the persons are of:

- A. Age of consent: must be at least 16 years old, or if younger have parental consent. The age limit does not apply if there is proof that the female is pregnant, or both parties are parents of a living child born out of wedlock, then they may marry regardless of age;
- B. Proper relationship; may not be related to the prospective spouse within a prohibited degree;
- C. Previous marriage dissolved.

Actual Contract: Law of contracts controls. The parties must voluntarily consent without fraud or duress. Contract does not have to be in writing.

Consummation according to law. For ceremonial or formal marriage, consummation is accomplished either by:

- A. Obtaining a marriage license and the performance of a ceremony by a minister or other person authorized to join persons in matrimony, or
 - B. By an actual agreement in words of present tense to be man and wife with the intention of assuming a marital relationship.
- (Sexual intercourse is not essential to the consummation of a valid ceremonial marriage).

COMMON LAW MARRIAGE: No common law marriage can be entered into in Georgia after January 1, 1997, but common law marriage entered into prior to that date will be recognized.

Common law marriages are created by the three mentioned essentials including a present intent to marry, in addition must be consummated by cohabitation. Cohabitation in this sense implies marital intercourse.

All elements must exist at simultaneously in order for valid marriage to exist.

Can an invalid marriage become valid? Yes. An invalid marriage may become a common law marriage if it occurred prior to 1997. A marriage based on fraud, duress or non-age becomes valid if a child is born.

If I have only been married for a short time can I file for an annulment?

An invalid marriage is said to be "void". An annulment of marriage is a judicial declaration that the marital status is invalid from its intended inception. If the marriage was valid at its inception it will only be dissolved by divorce even if the marriage was of short duration.

If I am not ready to file for divorce can I file to become legally separated? In Georgia, "legally separated" is not a status that is recognized by law. A person is either married or not married. A person that is married but who is living apart from their spouse may file an action for "separate maintenance" in situations where the filing spouse seeks an award of spousal support, child

support, child custody, visitation or exclusive use of the marital residence or other property during the period of separation. The procedures for obtaining separate maintenance are similar to the procedures for filing for a divorce. The primary difference is that in an action for separate maintenance a divorce is neither sought nor granted. The parties remain married until either one files to obtain a divorce. An action for separate maintenance may be filed regardless of how long the parties have resided in Georgia.

Who is entitled to file for divorce in Georgia? Any person who is married according to law and has been domiciled in the state of Georgia for six months before the filing date is able to file for divorce.

What are the grounds for divorce and do I have to prove fault in order to obtain a divorce? Prior to 1973 there were 12 grounds for divorce that were all predicated upon the "fault" concept. A thirteenth ground was added at that time. A person may now get divorced in Georgia if the party alleges that the marriage is irretrievably broken. Proof of fault is no longer required to show that the marriage is irretrievably broken. The parties merely state that the marriage is broken and that there is no hope for reconciliation. The other 12 grounds involve some type of fault such as adultery or cruel treatment.

Can the court order that my spouse leave the home and pay support before the divorce is finalized?

Yes. During the period of time following the filing of the divorce but before the divorce is granted, the courts have authority to award temporary child custody, visitation rights and may order a party to pay support. The Court may also order a party to vacate the marital residence during this period.

If I have reached an agreement with my spouse regarding all issues including custody, child support, alimony, division of debts and assets, will the Court approve the agreement and make it an enforceable part of the divorce? Yes. An agreement that is properly prepared and that includes all the provisions required by law may be approved by the court and incorporated or made a part of the parties' divorce.

After a divorce has become final am I entitled to go back to court if to change the terms if there has been a change in circumstances regarding either custody or support? Yes. In certain circumstances a person may be entitled to go back to court to seek a modification of child custody if the circumstances have changed that affect the best interest of the child. A person may also seek a modification of child support if the parties' financial circumstance has materially changed since the date of the final divorce.

Is there an age at which a child is entitled to elect which parent he/she prefers to live with? Yes. In a divorce or modification of custody action if a child of the parties has reached the age of 14 then that child may elect which parent the child will primarily reside with. The child's election is controlling unless the parent chosen is determined to be unfit. The wishes of children that are between the ages of 11 and 14 may be considered but are not controlling.

As in every area of law this foregoing information is general and is subject to exceptions based on the specific facts of the case. It is not intended to substitute for the advice of counsel in any way.