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## Divorce FAQs

Divorce affects, directly or indirectly, nearly every family in the country. You are not alone. At Cerbone Law, we

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Your Name

understand that you have a lot of questions about the divorce process. Below are some of the most frequently asked questions we receive and basic answers to help you get started.

Of course, we encourage you to [contact our office](#) to schedule an appointment to discuss your unique circumstances.

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## The Cerbone Law Blog

### [It's Nearly Always About the House](#)

Real estate law is related to divorce law. Whether it is the marital home and considerations of exclusive possession, or issues arising from an asset as a source of income, nearly every case requires us to understand our client's rights and obligations and provide advice and formulate strategy vis-à-vis real property.

[Read More](#)

### **How much will this cost?**

Although divorce and child custody cases can be expensive, entering into a poorly negotiated agreement or receiving an unfavorable court judgment are far costlier. The average cost of a divorce case ranges from \$3,500 to \$7,500. However, costs can vary significantly based on the amount of conflict between the parties. At Cerbone Law, we endeavor to limit conflict as much as possible and focus our efforts on obtaining a settlement that best protects your interests.

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### **Do you charge a retainer?**

For contested divorce and child custody cases we require an initial deposit, or retainer, of \$3,500 to get started on your case. Our current hourly rate is \$250 per hour and we charge against the retainer based on the hours devoted to your case.

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### **Do you charge for an initial consultation?**

We charge \$250 for the initial interview in all our divorce cases. By spending time with you and giving advice, we are prohibited from representing your spouse. Because of our representation as one of the best divorce firms in Savannah, it is not uncommon for people to seek an initial interview for the sole purpose of forbidding their spouse from using our services. Known as "poisoning the well", this practice not uncommon and dictates that we charge accordingly. In exchange, we can provide a lifetime of advice that will help you through this difficult process whether you chose to continue with us or not.

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### **How do I get a divorce?**

Marriage is considered a civil contract protected under Georgia law. Accordingly, a marriage can only be dissolved as provided by law by either a divorce or an annulment. In some cases, a decree of separation can be granted by our courts. In any event, there must be a proceeding in the Superior Court to determine the grounds therefore.

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### **What are the grounds for divorce in Georgia?**

In Georgia there are 13 grounds for divorce. One ground is irretrievably broken (sometimes referred to as the no-fault ground). The other 12 grounds for divorce in Georgia are fault grounds.

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### **What is a no-fault divorce?**

To obtain a divorce on this basis (irretrievably broken), one party must establish that he or she refuses to live with the other spouse and that there is no hope of reconciliation. It is not necessary for both parties to agree the marriage is irretrievably broken. Also, it is not necessary to show that there was any fault or wrongdoing by either party.

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### **What are the fault grounds?**

To obtain a divorce on one of the 12 fault grounds, one must prove that there was some wrongdoing by one of the parties to the marriage.

As an example, one fault ground is adultery. Adultery in Georgia includes heterosexual and homosexual relations between one spouse and another individual.

Another fault ground for divorce in Georgia is desertion. A divorce may be granted on the grounds that a person has deserted his or her spouse willfully for at least one year. Other fault grounds include mental or physical abuse, marriage between persons who are too closely related, mental incapacity at the time of marriage, impotency at the time of marriage, force or fraud in obtaining the marriage, pregnancy of the wife unknown to the husband at the time of the marriage, conviction and imprisonment for certain crimes, habitual intoxication or drug addiction and mental illness.

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### **Is there a residence requirement for getting a divorce in Georgia?**

Yes, one spouse must have lived in the state of Georgia for 6 months or Georgia must have been the last domicile of the marriage.

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#### **Must the husband and wife live apart when a divorce complaint is filed?**

No, but the spouses must be considered separated in a legal sense before one can file for a divorce. Spouses may be considered separated even if they are living in the same house if they are not sharing the same room and/or not having a sexual relationship.

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#### **How does one file for a divorce?**

The person seeking the divorce (the plaintiff) will typically have an attorney prepare and file a complaint with the appropriate superior court. Care should be taken in drafting a complaint to ensure that all the elements of the divorce action are present and that a proper request for relief from the court is made. This complaint contains information on the marriage including present living arrangements, children of the marriage, assets, debts and the specific grounds on which he or she is seeking the divorce. A copy of the complaint will be served on the other spouse (the defendant) by the sheriff, unless the defendant chooses to acknowledge service by law.

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#### **Where does one file for a divorce?**

A complaint for divorce should be filed in the superior court of the defendant's county of residence or, if the defendant has recently moved from the state of Georgia, in the county of the plaintiff's residence. This would be considered the domicile of the marriage. Upon the defendant's consent, the complaint may be filed in the plaintiff's county of residence regardless of whether or not the defendant has moved from the state of Georgia.

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### **What should I do if I receive a complaint for divorce that my spouse has filed?**

The spouse who receives the complaint should promptly consult an attorney. There are time limits to filing a response. If you have been served with divorce papers, call us immediately! You may contest the reason claimed for the divorce or contest the claims for child custody, child support, alimony or property division by filing an answer with the court.

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### **Must I go to court to get a divorce?**

Even in cases where the parties both want the divorce and have worked out the details, an agreement still needs to be approved by the court. If you feel you have reached an agreement resolving all issues arising from the marriage, including finances, division of property and custody and visitation of children, you should still consider hiring an experience attorney to prepare a written agreement for the court to approve. There may be issues and factors you have not given thought to that should be addressed. An attorney will ensure that all matters that should be resolved in a divorce are resolved. Acting without an attorney could end up being a costly mistake both to the parties and to their children.

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### **How long does it take to get a divorce?**

If there is agreement between the parties, the divorce is considered uncontested. An uncontested divorce may be granted in as little as 31 days after the defendant has been served with the complaint for divorce depending on court availability. If there is disagreement as to any matter, the divorce will be obtained when the case reaches the court, which can take many months.

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### **Can I get financial support or visitation with my kids while I'm waiting?**

Either party, usually through an attorney, can request a temporary hearing to resolve issues of child custody, parenting time, child support, alimony, debts and possession of property on a temporary basis until the final trial.

The judge will issue a temporary order that applies only until the time of the final trial. The temporary order may also

prohibit one party from interfering with the other party or the children and prevent the transfer and selling of assets. Because testimony may be given at a temporary hearing, having an attorney present to protect your rights is highly recommended.

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#### **What is decided at final trial?**

Child custody, parenting time, child support, division of marital property and debts, and alimony are decided at final trial. Questions of child custody and parenting time are decided by the judge. The judge alone or a 12-person jury (if one of the parties has requested) will resolve all of the financial issues of the marriage, such as division of property, division of debts, alimony and certain findings concerning child support (gross income of both parties and whether any deviations from the presumptive amount of child support are in the best interests of the child, and if so, what those deviations should be). At the final trial, both spouses present evidence by his or her own testimony and may call other witnesses. The decision rendered by a judge or jury is written into a court order that is binding upon both parties. The wife's maiden or former name can be re-established if she so desires.

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#### **What about the children?**

The welfare of children is of major concern to the court. Neither parent is automatically entitled to custody. The judge looks at the best interests of the child when determining custody and what will best promote the child's welfare and happiness. The judge considers many factors when deciding custody, including but not limited to: the love, affection, bonding and emotional ties existing between each parent and the child, the child and his or her siblings, half siblings and step siblings and the residence of such other children; the willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, consistent with the best interest of the child; each parent's knowledge and familiarity of the child and the child's needs; the home environment of each parent considering the promotion of nurturance and safety of the child rather than superficial or material factors; each parent's involvement, or lack thereof, in the child's educational, social and extracurricular activities; and each parent's past performance and relative abilities for future performance of parenting responsibilities.

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### **May a child choose where he or she wants to live?**

A child more than 14 years of age may choose which parent will have custody upon consent of the court. The child's choice shall be presumptive unless the parent so selected is determined not to be in the best interests of the child. The court considers it important for a child to maintain relationships with both parents; therefore, parenting time rights are awarded to the parent who does not have legal custody of the child.

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### **May the parents share custody?**

Pursuant to Georgia law, both parents come before the court equally. The court, in its discretion, may award joint custody or sole custody. There are two types of custody. Legal custody is the right to make major decisions regarding the child. Joint legal custody means that both parents have equal rights and responsibilities for major decisions concerning the child with one parent having final decision-making authority for each of the major decision areas: medical, educational, extracurricular and religion. Physical custody means the actual physical custody of the child by each parent. Joint physical custody is shared by the parents in such a way to assure the child substantially equal time and contact with both parents. In awarding joint custody, the court may order joint legal custody, joint physical custody or both.

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### **How does the court determine parenting time?**

Effective Jan. 1, 2008, the law in Georgia requires all persons divorcing with children to have a parenting plan. Every parenting plan must include that it is important for both parents to continue a close relationship with the child; that both parents recognize that the child's needs will change and grow as the child matures and take the child's changes and growth into account; that a parent with physical custody will make day-to-day decisions and emergency decisions while the child is residing with such parent; and that both parents will have access to all of the child's records and information, including, but not limited to, education, health, extracurricular activities and religious communications.



Additionally, a parenting plan must include where and when a child will be in each parent's physical care, designating where the child will spend each day of the year, including holidays, birthdays, vacations, school breaks and other special occasions and when each will begin and end; transportation arrangements and exchange locations and times and costs associated with transportation, and whether supervision will be needed for any parenting time and, if so, the particulars of the supervision.

Finally, a parenting plan must include decision-making authority to one or both of the parents with regard to the child's education, health, extracurricular activities and religious upbringing, and if the parents agree the matters should be jointly decided, how to resolve a situation in which the parents disagree on resolution; and what, if any, limitations will exist while one parent has physical custody of the child in terms of the other parent contacting the child and the other parent's right to access education, health, extracurricular activity and religious information regarding the child.

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#### **What are child support obligations?**

The child support law in Georgia changed effective Jan. 1, 2007. The new law is based on an income shares model that requires consideration of both parties' gross income. Gross income has a very broad definition and encompasses salary, commissions, income from self-employment, bonuses, overtime payments, severance pay, recurring income from pensions, interest and dividend income, trust income, capital gains, gifts, prizes, lottery winnings and income from any other source. Once the monthly gross income of each party is determined, the two incomes are added together to get the combined adjusted income amount. A Child Support Obligation Table is then used to get the basic child support obligation. To use the table, locate the line corresponding with the combined adjusted income amount and then apply the amount in the column that corresponds with the number of children for whom support is being determined. That basic child support obligation is then applied to each parent's proportionate share of the combined adjusted income.

(For example, if the father's monthly gross income is \$3,000 and the mother's monthly gross income is \$2,000, their combined adjusted income is \$5,000, of which the mother's income represents 40 percent and the father's income represents 60 percent. The child support obligation for a family with combined adjusted income of \$5,000 per month for two children is \$1,297. Thus, if the father is the non custodial parent, he will pay 60 percent of the child support obligation, \$778.20, or if the mother is the non custodial parent, she will pay \$518.80, which is 40 percent of the

child support obligation.)

The cost of medical insurance on the child and the cost of work-related childcare will result in the amount of the child support payment being modified with credit being given to the parent who is actually paying these expenses. In addition, the amount of child support may be modified by certain deviations provided it is in the best interest of the child to deviate from the presumptive amount of child support. Examples of deviations may be extraordinary education expenses like private school tuition or tutoring; extraordinary medical expenses; or special expenses, which must exceed 7 percent of the basic child support obligation, such as extracurricular expenses, summer camps, dental insurance, parenting time adjustment or any other appropriate deviation. You can access the guided electronic worksheet used in calculating child support at [www.georgiacourts.org/csc](http://www.georgiacourts.org/csc). You may also download an Excel® version of the worksheet through this same website.

In addition to the child support payment, the court (or parties by agreement) will also designate what percentage each parent will pay of the child's uncovered medical and dental expenses.

In Georgia, both parents have a duty to financially support the child until that child turns 18, marries, dies or becomes emancipated, whichever occurs first. However, if the child has not graduated from high school prior to reaching age 18, then the obligation to support that child continues until the child graduates from high school provided the child remains a full-time student, but not beyond the age of 20. Children with disabilities may require support beyond the age of emancipation and care should be taken to ensure that their needs are adequately addressed.

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### **May I receive money for the children's college?**

The court cannot order parents to pay for college. However, parents may agree to pay child support beyond the age of 18 or to pay for college expenses.

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### **What is alimony?**

Alimony is payment by one spouse to the other for support and maintenance. The court may grant alimony to either the husband or wife. Alimony may be for a limited period or until the spouse receiving alimony dies or remarries. It may be paid in one payment of money or property, or it may be paid over a period of time.

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### **What happens to "our" possessions in a divorce?**

One of the most difficult and complex areas of divorce is the division of marital property. Marital property is all property acquired during the marriage, except for property received by gift from a third party or by inheritance. In many cases, you may not even be aware of all of the marital assets. It is not uncommon for one spouse to have principle control of the finances. An experienced attorney can help discover the assets and identify the property to be divided. Marital property will be divided equitably (not necessarily equally) between the parties regardless of how the title to the property is held. There is no set formula or percentage amount used to divide marital property. Having counsel who is familiar with courts, the judges, and how they are likely to rule can be extremely helpful in negotiating settlement and ensuring a favorable outcome.

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*This information is not intended to be a comprehensive statement of law. Its purpose is to inform, not to advise on any specific legal problem. If you have specific questions regarding any matter contained herein, we encourage you to [schedule an appointment with our office](#).*

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