

## LEGITIMATION PACKET

### FAQ

#### **Why should children be legitimated?**

The law encourages the fathers of children to legally recognize them. The legitimization process is a way for them to do this. It gives the father and the child certain rights. Legitimization means that a child may inherit from the father and the father may inherit from the child.

#### **How may a child born out of wedlock be legitimated?**

There are three ways to legitimate a child. The first way is for the mother and the reputed father to marry and for the father to then recognize the child as his.

The second way is for the mother and father to sign a voluntary acknowledgement of paternity. According to O.C.G.A. § 19-7-22(g)(2), "In any voluntary acknowledgment of paternity which has been made and has not been rescinded pursuant to Code Section 19-7-46.1, when both the mother and father freely agree and consent, the child may be legitimated by the inclusion of a statement indicating a voluntary acknowledgment of legitimation.." For more information on how to sign a voluntary acknowledgement of paternity or call the Georgia Paternity Acknowledgement program at 1-866-296-8262.

The third way to legitimate a child is for the father to file a legitimization petition in Superior Court.

#### **How do I get a certified copy of my child's signed voluntary acknowledgement of paternity?**

Write to the Georgia Department of Vital Records at 2600 Skyland Dr. NE, Atlanta, GA 30319. The following items must be included with your request:

1. Full name of person shown on the birth certificate (last name at birth if female)
2. Date of Birth (month, day, year)
3. Place of Birth (city, county),
4. Current age
5. Sex
6. Race (optional)
7. Full name of mother (include mother's maiden last name)
8. Full name of father

9. Relationship to the person named on the birth certificate requested
10. The number of certified copies requested
11. A copy of the birth certificate
12. A photocopy of the requestor's driver's license
13. A money order in the amount of \$10 per certified copy requested.

### **How does a man go about filing for legitimization in the superior or state court?**

The first step is for the father to file a petition in "the county of the residence of the child's mother or other party having legal custody or guardianship of the child; provided, however, that if the mother or other party having legal custody or guardianship of the child resides outside the state or cannot, after due diligence, be found within the state, the petition may be filed in the county of the father's residence or the county of the child's residence. If a petition for the adoption of the child is pending, the father shall file the petition for legitimization in the county in which the adoption petition is filed." (OCGA 19-7-22). The mother of the child must be named as a party, served with a copy of the petition, and given an opportunity to be heard.

The father has no absolute right to legitimate a child. The Court will consider the best interest of the minor in determining whether the legitimization should be awarded. Sometimes a Court will deny a legitimization petition if the Court believes that it has been filed to harass or interfere with the life of the mother.

### **What effect does a legitimization have?**

The Court will pass an order declaring the child legitimate and capable of inheriting from the father just as if the child had been born during a marriage.

At the time of the legitimization, the Judge will determine the duty of the father to support the child. Additionally, the Court may order visitation and/or custody based on the best interests of the child. The Court may also change the child's name to that of the father but the Court has wide discretion as to whether or not it will do so.

### **When the father files for legitimization, may he also ask for custody?**

Until July 1, 2005, the father could only get custody in a legitimization action if the mother consented. The Georgia Legislature changed O.C.G.A. § 19-7-22 effective July 1, 2005 to allow a father to ask for custody in a legitimization suit.

### **What if paternity has been established—isn't that enough for legitimization?**

No, a finding in a paternity action that a person is the father of a child is not a legitimization. Paternity establishes the identity of the biological father and it establishes the father's duty to support the child. After July 1, 2005, it can also establish custody.

O.C.G.A. § 19-7-22 provides that the petition for legitimization may be brought in “the county of the residence of the child's mother or other party having legal custody or guardianship of the child; provided, however, that if the mother or other party having legal custody or guardianship of the child resides outside the state or cannot, after due diligence, be found within the state, the petition may be filed in the county of the father's residence or the county of the child's residence. If a petition for the adoption of the child is pending, the father shall file the petition for legitimization in the county in which the adoption petition is filed.”

O.C.G.A. § 19-7-40(a) gives the superior and state courts concurrent jurisdiction in all proceedings for the determination of paternity of children who are Georgia residents.