

PETITION FOR LEGITIMATION PACKET

FAQ's

Frequently Asked Questions

Disclaimer: The information contained in this document applies only in the State of Georgia. The law changes and the information on this website may no longer be correct after January 2025. **The information on this website is intended only as information and does not constitute legal advice.** Anyone seeking specific legal advice should contact a Georgia Licensed Attorney. The information on this website was compiled by the Administrative Office of the Courts.

Who Should File a Petition for Legitimation?

Unmarried Fathers – Anyone who is the biological father of a minor child that was born out of wedlock. Born out of wedlock means that the father was unmarried to the biological mother at the time the child was conceived or born and the father is currently unmarried to the child's mother.

What Is Legitimation?

Legitimation is a civil legal action that is filed by the biological father of a child born out of wedlock. It is a legal process for the father to establish legal rights to his child and a way for the father to receive the same legal rights to his child as a married father would. *O.C.G.A. § 19-7-22*

When Can I Legitimate My Child?

ASAP – As soon as your child is born or As Soon As Possible.

Where Do I File my Petition for Legitimation?

Superior Court – Generally, you should file your petition in the superior court of the county of the residence of the child's mother or other party having legal custody or guardianship of the child.

It depends, and you should seek legal advice from a Georgia licensed attorney if you are unclear on where to file. It may be in the Superior Court or Juvenile Court depending on your case facts.

If there is a pending adoption, you may file in the county where the adoption has been filed.

If there is a pending dependency case, you may file in the county where the dependency case is.

Why Should Children Be Legitimated?

Legal Rights – The benefit of Legitimizing your child is that you can obtain a Court Order granting you legal rights to your child such as custody and parenting time/visitation. Without legitimation, the father has no legal rights to custody and visitation/parenting time with a child who has not been declared the legitimate child of the father.

The law encourages the fathers of children born out of wedlock (outside of marriage) to legally recognize them. The legitimation process is a way for them to do this. In addition, legitimation allows you to inherit from your child, your child to inherit from you, and your child to obtain any other benefits from you such as social security, life insurance, and other benefits.

How Can I Legitimate My child?

The ***Biological Father*** may do one (1) of the following three (3) things to Legitimate his child:

1. The Biological Parents of the minor child ***Get Married*** to each other;

OR

2. The Biological Parents sign and notarize the ***Voluntary Acknowledgment of Legitimation***;

OR

3. The Biological Father files a ***Petition for Legitimation*** (a civil court action).

- a. File your Petition in the Superior Court (*O.C.G.A. § 19-7-22(b)*)

OR

- b. File your Counterclaim/Response to a Petition for Paternity (*O.C.G.A. § 19-7-22(h)*)

OR

- c. If there is a Juvenile Court Dependency case, file your Petition in Juvenile Court.
(*O.C.G.A. § 19-7-22(e)* & *O.C.G.A. § 15-11-11*)

Note: Father's have the right to request custody rights, visitation/parenting time rights, minor child name changes, to be added to the minor child's birth certificate, and other rights within his Petition for Legitimation case.

What if I voluntarily acknowledged paternity at birth, but I want to submit to a DNA/Genetic Test during my Legitimation case?

In a legitimation case, the father, mother, or other party to the case may file a Motion for DNA/Genetic Testing or the Judge can order the parties to do DNA/Genetic Testing. Upon the determination of paternity or if a voluntary acknowledgment of paternity has been made and has not been rescinded pursuant to *O.C.G.A. §19-7-46.1*, the court may enter an order or decree legitimating a child born out of wedlock, provided that such is in the best interests of the child.

Many activities, such as being named the father in a paternity test, paying child support, and signing the child's birth certificate will not legitimate the child without a Court Order declaring the Father to be the Legitimate Father of the Minor Child.

How do I get a certified copy of my signed voluntary acknowledgment of paternity for my child?

Write to the Georgia Department of Vital Records at 1680 Phoenix Blvd, Suite 100, Atlanta, GA 30349. The following items must be included with your request:

1. Full name of child as shown on the birth certificate and copy of Child's Birth Certificate
2. Date of Birth of Child (month, day, year)
3. Place of Birth of Child (city, county)
4. Current Age of Child
5. Sex/Gender of Child
6. Race of Child (optional)
7. Full name of biological Mother (include mother's maiden last name)

8. Full name of biological Father
9. Relationship to the child named on the birth certificate requested
10. The number of certified copies requested
11. A photocopy of your driver's license

How does a Father go about filing for legitimation in the Superior Court?

There are several possibilities for where a father can file the petition, such as,:

1. The county where the child's mother, legal custodian or guardian lives.
2. If the child's mother, legal custodian or guardian lives outside of the state and/or cannot be found, the county where you live or where the child lives.
3. If there is an adoption pending, the county where the adoption is pending.

Fathers may either retain an attorney to file the petition for them, or file the petition for themselves, also known as filing pro se/self-represented. To file a petition pro se, the father should fill out the applicable forms, found within this packet, and file them with the court at the clerk's office.

Alongside the petition and other forms for the pro se Petitioner/Plaintiff to fill out, this packet contains pro se orders that should be given to the court but not filled out. The Court will consider the ***Best Interests of the Minor Child*** in determining whether the legitimation should be granted or not. Sometimes a Court will deny a legitimation petition if the Court believes that it is not in the ***Best Interests of the Minor Child*** or that the Father has lost his opportunity interest.

What is the Legal Effect of Legitimation?

An order of legitimation creates a father and child relationship legally between the Father and his child. An order of legitimation establishes that the child may inherit from his legal father and vice versa. An order of legitimation is the only way that the father of a child born out of wedlock can be recognized as the legal father of a child and therefore can petition for custody and/or visitation with his child. Signing the minor child's birth certificate does not Legitimate the child.

If you are already listed on the child's birth certificate as the father, but you and the child's mother were not married to each other, then you must still file a petition with the Court to legitimate your child. At the time of the legitimation, the Judge may 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 last name to that of the father, but the Court has wide discretion as to whether or not it will do so, based on the best interests of the child.

What if paternity has been established—isn't that enough for legitimation?

No, a finding in a paternity action that a person is the father of a child is not a legitimation. Paternity establishes the identity of the biological father, and it establishes the father's duty to support the child, but it does not allow the child to inherit or the father to obtain custody/visitation rights.

When the father files for legitimation, may he also ask for custody?

Yes. Until July 1, 2005, the father could only get custody in a legitimation 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. *If your child was born before 2016, consult an attorney.*

What makes a child not legitimated?

Any child born out of wedlock. Only the mother of a child born out of wedlock is entitled to custody of the child, unless the father legitimates the child as provided in *O.C.G.A. 19-7-22*.

HOW MUCH DOES IT COST TO FILE PETITION FOR LEGITIMATION?

Contact the Superior Court Clerk's Office of the County where you are filing your case to find out the Filing Fee Amount and Payment Options. If the mother has not signed an acknowledgement of service form, she will need to be served with the petition by the Sheriff—there is a fee for service to each address to which the Sheriff has to go if you are in the state of Georgia. If the mother is out of the state and you want the Sheriff there to serve the mother, you will need to contact the Sheriff's office in the mother's county of residence to find out the cost of service.

["Service" is an official way to give notice to the mother, and other parties involved in your case, that you have filed your case and they have the opportunity to file a response with the Court.]

If the mother has left the child with you and you do not know her address and you have tried but cannot find her, then you can hire a private process server to find her or try to serve her by Publication in the newspaper. This means that the Petition is filed and then published in the official county newspaper for the county in which you are filing the Petition. The Clerk of Superior Court can also advise you on the amount of the Publication fee and newspaper contact information.

WHAT IF I CAN'T AFFORD TO PAY THE COURT FILING FEES?

You may file an Affidavit of Poverty/Pauper's Affidavit to waive the Court filing fees. In completing the Poverty Affidavit, you make a written statement to the Court about your monthly income and monthly expenses, dependents, and why it would be a hardship for you to have to pay the filing fees. The Court will then let you know by a written Order if you may file your case without having to pay. Please check with the Clerk of Superior Court to determine if the Poverty Affidavit will also waive fees for Sheriff's Service, Publication, and any other Court fees/costs.

HOW LONG WILL ALL OF THIS TAKE?

The length of time depends on the facts of your case. If the other person involved in the case must be served by publication, then the hearing cannot take place until after the publication is finished (30-60 days). If the mother or another party must be served by the Sheriff with the Petition for Legitimation, the other parties in the case are given 30 days to file an answer/response with the court. After the 30 days you may file a request for a temporary or final hearing with the court.

Each county has different timelines, and it also depends on if your case is "contested" or "uncontested". Contested means that you and the other party are not in agreement. Uncontested means that you and the other party are in agreement, and you BOTH, have SIGNED and NOTARIZED all consent agreements and necessary documents showing that you are in agreement with each other. Contact your Judge's clerk/case manager to request a hearing. You may be required to file a Motion, Rule Nisi, or other notice in order to be granted a hearing.

LEGITIMATION FORMS

TERMS & DEFINITIONS

Defined Terms as Used in This Document: O.C.G.A. § 19-7-22

Legal Term	Definition
Plaintiff/Petitioner	The person who files the petition with the Court. Only the Father of a child born out of wedlock can file a Petition for Legitimation.
Defendant/Respondent	The person who the petition is being filed against; the person who should respond to the petition. (Normally the Mother/Legal Guardian)
Biological/Legal Mother	The female who is the biological, Legal, or adoptive mother of a child and whose rights to the child has not been surrendered or terminated.
Biological Father	The male who impregnated the biological mother resulting in the birth of a child outside of marriage.
Legal Father	The male whose rights to the child has not been surrendered or terminated; or who has legally adopted the child; OR <ul style="list-style-type: none"> • Was married to the biological mother of such child at the time such child was born or within the usual period of gestation, unless paternity was disproved by a final order • Married the legal mother of such child after such child was born and recognized such child as his own, unless paternity was disproved by a final order pursuant to OCGA §§ 19-70-40 et seq.
Legal Custodian	A person to whom legal custody of a child has been given by order of a court; OR A public or private agency OR private organization licensed or otherwise authorized by law to receive and provide care for a child to which legal custody of such child has been given by order of a court.
Physical Custody	Where the child lives and sleeps at night. The custody schedule established for the child pursuant to OCGA 19-9-1, which includes Visitation/Parenting Time.
Legal Custody	The legal decisions made for the child. The responsibility for the care and control of a minor, including, but not limited to, the power to make decisions regarding non-emergency health care, education, extracurricular activities, and religious upbringing.
Joint Legal Custody	Both parents have equal rights and responsibilities for major decisions concerning the child's non-emergency health care, education, extracurricular activities, and religious upbringing, provided, however, that the judge may designate one parent to have final decision-making authority.
Joint Physical Custody	50/50 Split – Physical Custody of the Minor Child is shared by the parents in such a way as to assure the child has substantially equal parenting time and contact with both parents.
Custodial Parent	The parent with whom the child resides/lives with more than 50 percent of the time.
Noncustodial Parent	The parent with whom the child resides/lives with less than 50 percent of the time OR the parent who has the greater payment obligation for child support.
Rule Nisi	Temporary Hearing on Pending Case Issues.
Surname	Last Name