

creditors consent) and there is no other need for administration, and the heirs all agree on how the estate will be divided, this proceeding may be filed. All heirs must sign an agreement disposing of the entire estate; guardians of minor or incapacitated adult heirs may execute the agreement. All creditors must consent to this.

**TEMPORARY ADMINISTRATION** Notice to all heirs is not required, but a majority of the heirs must select the Temporary Administrator, unless the petitioner is the surviving spouse or sole heir. Powers are limited to collecting and preserving the assets of the deceased. No expenditures or disbursements may be made without a special court order. Temporary Administrators must post bond and file inventories and returns. Guardians of minor or incapacitated adult heirs may consent to selection, provided the guardian is not the petitioner.

#### WHETHER OR NOT THERE IS A WILL

**YEAR'S SUPPORT** This proceeding may be filed only by a surviving spouse or for minor children of the decedent. The petition asks that specified property be awarded to the spouse and/or children. Notice must be given to all "interested persons." Property awarded as year's support is free of all unsecured debts of the estate and takes precedence over any disposition by Will.

**PETITION TO ENTER SAFE DEPOSIT BOX** This proceeding is usually filed when the Will is thought to be in a safe deposit box. It permits the bank to open and examine the contents of the box in the presence of the petitioner. If a Will is found, the bank must deliver it directly to

the Probate Court. Insurance policies may be delivered directly to the named beneficiaries. The petitioner may receive only burial instructions and any deed to a burial plot. Other property must remain in the box until an Executor of Administrator is appointed.

#### GLOSSARY

**Administrator** The person who administers a decedent's estate when there is no will.

**Administrator With Will Annexed** The person, other than an Executor, who administers a decedent's estate when there is a Will (the Will fails to name an Executor or the named Executor cannot or will not serve).

**Decedent** The deceased person.

**Executor** The person who administers a decedent's estate when there is a Will.

**Heirs** Those persons who would inherit the estate if there were no Will.

**Intestate** Without a Will.

**Letters Testamentary / Letters of Administration** The official document issued by the Probate Court evidencing the authority of an executor or an administrator.

**Probate** The court procedure by which a Will is proved to be the valid last Will of a decedent; also used generically to refer to the legal process of administering a decedent's estate.

**Probate Court** The Court having jurisdiction over proceedings to administer the estate of a decedent; also has other jurisdiction.

**Testator** A person who has made a Will.

**Will** A document, signed with the formalities required by Georgia law, by which a person makes disposition of his property, to take effect after his death.

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# Georgia Probate Proceedings

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*Presented as a public service by:*

Kristy Harris, Judge

Houston County Probate Court  
Houston County Judicial Complex  
201 N Perry Parkway  
Perry, Georgia 31069

Office phone number: 478-218-4710

Adapted from original brochure by WILLIAM J. SELF, II, JUDGE  
WILLIAM J. SELF, II, is retired as Judge of the Probate Court of Bibb County, Georgia.

## INTRODUCTION

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There are several proceedings which may be filed in the Probate Court after the death of a Georgia resident or a non-resident owning property in Georgia. File in the Probate Court of the county of the deceased's residence in Georgia or in the county where property of a non-resident is located.

You should discuss the matters of concern with an attorney who can assist you in determining which proceeding is the most appropriate for your particular situation. Often, there are other related matters which may also make it appropriate to seek the services of an attorney.

If you proceed without an attorney, it will be your responsibility to determine the proceeding appropriate to your situation. The staff of the Probate Court may not make the determination for you, since to do so may constitute the unauthorized practice of law, a misdemeanor in Georgia. Neither the Court nor the County can accept responsibility for incorrect decisions made by the staff, and they have been directed to refrain from giving that kind of advice.

It is also your responsibility to properly complete all forms, which must either be typed or legibly printed. The staff is not permitted to perform clerical tasks for the public. The staff will be able to answer any basic questions about the standard forms and about any deadlines for the filing of proceedings. They will also be able to schedule uncontested hearings and tell you how the Court schedules other matters.

The Probate Judge is required by law to remain impartial to all parties. The Judge must treat every case as though it may become contested. Therefore, the Judge may not advise

you on which proceeding is most appropriate. The Judge is prohibited from discussing the facts or evidence in any contested case with a party unless all parties are present.

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## AVAILABLE PROCEDURES

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### WHEN THERE IS A WILL

**SOLEMN FORM PROBATE** This procedure requires notice to all heirs and becomes binding upon all parties immediately upon appointment of the Executor. The original Will must be attached to the petition, and either Interrogatories or Proof of Witness must provide proof of the proper execution of the will if there is no Self Proving Affidavit. All heirs must be served or acknowledge service. The Court will appoint a guardian-ad-litem for each minor or incapacitated heir. "Heirs" are those persons who would inherit if there were no lawful Will and may or may not be beneficiaries of the Will. The notice requires objections to the alleged Will to file the objection or contest before a certain deadline.

**COMMON FORM PROBATE** This procedure may be done without notice to heirs but does not become binding until four years after the appointment of the Executor. The requirements of providing the original Will and proof of proper execution are the same as with Solemn Form Probate. Heirs and others may file an objection or contest at any time up to four years after common form probate.

**PROBATE OF WILL IN SOLEMN FORM & LETTERS OF ADMINISTRATION WITH WILL ANNEXED** If there is a Will but the named

Executor is unable or unwilling to serve, an Administrator with Will annexed must be appointed. Any living nominated Executor must sign a declination or there must be testimony that the Executor is unable to serve. A majority of the beneficiaries may select the Administrator. The Court will appoint a guardian-ad-litem for each minor or incapacitated heir.

**WILL FILED NOT FOR PROBATE** If there is no property to pass under the Will and Letters Testamentary are not required to transfer assets, probate is not necessary. However, the Will of the deceased must be filed with the Probate Court. Real estate, unlike joint bank accounts, may not automatically pass to a surviving co-owner. If the only property in the estate is an automobile, title may be transferred through the Tag Office without probate being necessary.

### WHEN THERE IS NO WILL

**PERMANENT ADMINISTRATION** This procedure requires notice to all heirs. A surviving spouse or sole heir is entitled to serve as Administrator; or, the administrator may be recommended by a majority of the heirs. Administrators must post bond and file inventories and returns, unless ALL heirs consent to a waiver of those requirements. If ALL heirs consent, the Administrator may be given additional powers. Guardians of minors or incapacitated adult heirs may acknowledge service, consent to selection and consent to waive requirements, if the guardian is not the petitioner.

**NO ADMINISTRATION NECESSARY** If all debts of the deceased have been paid (or if all