

GEORGIA PROBATE PROCEEDINGS

"WHAT TO DO WHEN YOUR LOVED ONE DIES"

INTRODUCTION

There are a number of different proceedings which may be filed in the Probate court following the death of a Georgia resident or a non-resident owning property in the State of Georgia. Proceedings are filed in the Probate Court of the county of the decedent's residence in Georgia or in the county where property of a non-resident is located. This pamphlet briefly describes the usual, initial proceedings. For each proceeding described, there is a standard form, which the Court will provide to any petitioner.

It is suggested that you discuss the matters of concern with an attorney who practices probate or estate law. An attorney can assist you in determining which proceeding is the most appropriate for your particular situation. Very often, there are other matters (e.g., tax returns, preparation of deeds, title transfers, benefit claims, creditor notices, debtor demands, etc.) which may also make it appropriate or necessary to seek the services of an attorney.

If you proceed without an attorney, it will be your responsibility to determine or select the proceeding appropriate to your situation. The staff of the Probate Court may not make the determination or selection for you, since to do so may constitute the unauthorized practice of law, a misdemeanor crime under Georgia law. 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 are 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 other matters are scheduled by the Court.

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 also may not advise you on which proceeding is most appropriate to your case. The Judge is prohibited from discussing the facts or evidence in any contested case with a party unless all parties are present. You should not ask to discuss your case privately with the Judge, and you should understand if the Judge stops any discussion which appears to require the presence of others.

PROCEDURES AVAILABLE FOR DECEDENTS' ESTATES WHEN THERE IS A WILL

SOLEMN FORM PROBATE This procedure requires notice to all heirs and becomes binding upon all parties immediately upon entry of the final order. "Heirs" are those persons who would inherit the estate if there were no lawful Will; heirs may or may not be beneficiaries under the Will. The notice requires anyone having a legal cause to object to or contest the alleged Will to file the objection or contest before a certain deadline. The original Will must be filed with the petition, and proof of the proper execution of the will must be provided by either a self-proving affidavit, Interrogatories or Proof of Witness. All heirs must be duly served or must acknowledge service. The Court will appoint a guardian-ad-litem for each minor or incapacitated heir.

COMMON FORM PROBATE This procedure may be done without notice to heirs but does not become binding for 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 the 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 either unable or unwilling to serve, an Administrator C.T.A (with Will annexed) must be appointed. Any nominated Executor still living 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 C.T.A. 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, probate is not necessary. However, the Will of the decedent 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 transferable through the Tag Agent without probate being necessary. There is no cost to file a Will not for probate.

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, unless disqualified; otherwise, the person selected by a majority of the heirs is entitled to serve, unless disqualified. 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 and authority. Guardians of minor or incapacitated adult heirs may acknowledge service, consent to selection and consent to waive requirements, provided the guardian is not the petitioner.

TEMPORARY ADMINISTRATION Notice to the heirs is not required, but a majority of the heirs may select the Temporary Administrator. Powers are limited to collecting and preserving the assets of the decedent, and the Court may appoint a Temporary Administrator upon any

showing of necessity or appropriateness. 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.

NO ADMINISTRATION NECESSARY If all debts of the decedent have been paid (or if all creditors consent or fail to object after notice), if there is no other need for formal administration, and if the heirs have all agreed 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. Creditors who have not consented in writing must be given legal notice of the filing.

BANKING AFFIDAVIT If the deceased person had no will and the only asset is money deposited in a bank or other financial institution, and the amount is less than \$10,000, an heir-at-law may be able to claim those assets by completing an affidavit for financial institution without petitioning for Letters of Administration.

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. The lien of certain ad valorem taxes on real estate is divested by the award of the property as years' support

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 or 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 of a decedent if there were no Will under the rules of descent and distribution. “Heir” does not mean the same thing as “beneficiary,” although an heir may also be a beneficiary.

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.

Personal Representative Any executor, administrator, guardian or trustee, but not a temporary 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.

This information was originally prepared as the public serve by the Hon. William J. Self, II, Judge of the Probate Court of Bibb County, Georgia. Judge Self received his B.A. and J.D. degrees from the University of Georgia, is active in the American, Georgia and Macon Bar Associates, is a member of the National College of Probate Judges and is a frequent lecturer for the Institute for Continuing Education in Georgia. Minor revisions have been made for the addition of the Banking Affidavit.