

**PETITION TO PROBATE WILL IN SOLEMN FORM AND FOR LETTERS OF
ADMINISTRATION WITH WILL ANNEXED**

INSTRUCTIONS

I. Specific Instructions

1. This form is to be used when filing a combined petition to probate will in solemn form pursuant to O.C.G.A. §53-5-20 et seq., and for letters of administration with the will annexed pursuant to O.C.G.A. §53-6-13 et seq.
2. It is permissible, but not mandatory, to use this form in connection with a petition to probate a copy of a will in lieu of a lost original pursuant to O.C.G.A. §53-4-46, provided that appropriate interlineations are made, and additional information is given to overcome the presumption of revocation.
3. Signatures of heirs and beneficiaries who acknowledge service must be sworn to before a notary public or the clerk of any probate court of this State. An attorney at law may acknowledge service on behalf of an heir or beneficiary; however, the attorney must certify that he or she currently represents that heir or beneficiary with regard to the pending matter and, in order to comply with O.C.G.A. §53-11-6, the attorney's signature must be sworn as provided above. It is not necessary that all acknowledgments appear on the same page. With regard to a power of attorney, the attorney-in-fact may acknowledge service on behalf of the grantor of the power, provided that the power of attorney grants such authority, the signature of the attorney-in-fact is attested, a copy of the power of attorney is attached, and the attorney-in-fact certifies that the copy is a true copy and is still in effect.
4. O.C.G.A. §53-11-2 provides that a party to a probate proceeding who is not sui juris must be represented by a guardian provided that the Court may appoint a guardian ad litem or determine that the natural guardian, guardian, conservator or testamentary guardian has no conflict and may serve. If a guardian ad litem is necessary because a party is not sui juris, use GPCSF Supplement 1.
5. O.C.G.A. §53-6-15 (b) provides that the petition shall be served on the beneficiaries of the will and the executor, if any, of any deceased executor whose death created the vacancy in the manner described in Chapter 11 of Title 53. O.C.G.A. §53-11-3 (a).
6. O.C.G.A. §53-5-22 (c) provides that service of notice, when made personally or by mail, shall include a copy of the petition and of the will for which probate is sought. The same is true when service is acknowledged. This form may, but is not required to, be used where service by registered or certified mail with return receipt requested, restricted delivery, is requested by the petitioner(s) in lieu of personal service, in accordance with O.C.G.A. §53-11-3 (e). Make appropriate changes in the order for notice, notice, and certificate of service. If petitioner(s) request(s) personal service by registered, certified, or statutory overnight delivery with return receipt requested and with delivery restricted to the addressee only and that service is unsuccessful, pursuant to O.C.G.A. §53-11-3 (e) service must be made pursuant to O.C.G.A. §53-11-3 (a).

7. Paragraph 4 of the petition requires sufficient factual information for the Court to conclude that those listed in paragraph 3 of the petition include each and every heir of the decedent and that there are not additional heirs of similar or closer degree according to O.C.G.A. § 53-2-1. These facts must allow the Court to rule out the possibility that there may be other heirs of the same or closer degree who have not been listed. Provide the date of death of any deceased heirs and the name of the deceased heir's personal representative, if applicable. The personal representative of a post deceased heir is authorized to consent on behalf of that heir. O.C.G.A. § 53-7-1. When a party to a proceeding in the probate court is a post deceased heir whose estate has no personal representative, such deceased heir's estate may be represented in the proceeding by a guardian ad litem. A person's heirs are determined at the time of that person's death. A close relative must be alive at the time the decedent dies to be an heir. If an heir who outlived the decedent subsequently dies, that post deceased heir must be represented by the personal representative of his or her estate or by a guardian ad litem. *[If you are uncertain how to determine the heirs of a decedent, refer to the "Heirs Determination Worksheet" available from the probate court or at www.gaprobate.gov.]* Examples of such statements would be: (a) "Decedent was or was not married at the time of his death and had no children born, adopted, living, or deceased, other than listed herein"; (b) "Decedent had no other siblings half or whole other than those listed herein"; and (c) "Decedent's brother who died previously had no other children born, adopted, living, or deceased, other than listed herein."
8. For paragraph 9 of the petition, if there is a testamentary conservator named in the will according to O.C.G.A. § 29-3-5 and the decedent died leaving minor children, then the consent to serve should be completed. When a testamentary guardian is to be appointed, GPCSF Supplement 5 (Testamentary Guardianship) should be included with this petition, and the petitioner(s) must provide full names and addresses for the minor children's adult siblings and grandparents. If there are no living adult siblings or grandparents, the petitioner(s) must provide full names and addresses for the minor children's great-grandparents, aunts, uncles, great-aunts, or great-uncles, if any such relatives exist. If the minor children shared the same parents, the petitioner(s) may complete one GPCSF Supplement 5 for such similarly situated children. If the minor children did not share the same parents, a separate GPCSF Supplement 5 must be filed for each minor. Contact the probate court in which the petition will be filed for its policy as to the filing of GPCSF Supplement 5 when there are multiple children.
9. Use GPCSF Supplement 2 if the Court determines it is appropriate to appoint a special process server.
10. Use GPCSF Supplement 3 when an additional certificate of service is necessary.
11. Exhibits should be labeled at the bottom of each exhibit as "Exhibit A," "Exhibit B," etc. in consecutive order. The corresponding letter of each said exhibit should be inserted into the appropriate place in the form.
12. An oath must be administered by a probate judge or clerk (the oath cannot be administered by a notary public). Use GPCSF Supplement 4 for the oath. The oath

is not included in this form. GPCSF 53, Commission to Administer Oath, can be used if the oath is to be administered by a court outside the State of Georgia.

13. According to Uniform Probate Court Rule 5.6 (A), unless the Court specifically assumes the responsibility, it is the responsibility of the moving party to prepare the proper citation and deliver it properly so it can be served according to law. All pages after the notice regarding Uniform Probate Court Rule 5.6 (A) are to be completed by the moving party, unless otherwise directed by the Court.

II. General Instructions

General instructions applicable to all Georgia Probate Court Standard Forms are available in each probate court or at www.gaprobate.gov, labeled GPCSF 1.

4.

Required: *[Provide sufficient factual information to enable the Court to conclude that all of the heirs of the decedent are included and that there are no heirs of the same or closer degree according to O.C.G.A. §53-2-1. Provide the names of any deceased heirs, the name and address of his or her personal representative, if any, and include the date of death for each (see instructions for further clarification). Also, state here all pertinent facts that may govern the method of giving notice to any person and that may determine whether or not a guardian ad litem should be appointed for any person. If any heirs listed above as heirs are cousins, grandchildren, nephews or nieces of the decedent, indicate the deceased ancestor through whom they are related to the decedent. If any executor nominated in the will has a priority equal to or higher than the propounder but will not qualify, indicate the name and reasons.]*

5.

Listed below are all of the beneficiaries under said will who have a present interest, including but not limited to a vested remainder interest but not including trust beneficiaries where there is a trustee who is not the nominated administrator with will annexed or persons who succeeded to the interest of any heir or beneficiary who died after the decedent.

<i>Name</i>	<i>Age (or over 18)</i>	<i>Address</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

6.

Petitioner(s) further show(s) that the circumstances giving rise to the need for an administrator with will annexed are as follows:

[Initial all that apply]

- _____ (a) The decedent failed to nominate an executor in the will.
- _____ (b) The nominated administrator has not reached age of majority.
- _____ (c) The nominated executor is deceased.
- _____ (d) The nominated executor has renounced or declined his/her right to serve as such. *[Attach Renunciation as Exhibit _____.]*
- _____ (e) Other reason a testate estate is unrepresented: _____

7.

The petitioner(s) _____ is/are entitled to be appointed administrator with will annexed by reason of:

[Initial (a) or (b) and complete (b) if initialed]

- _____ (a) Having been unanimously selected by the beneficiaries of the will who are capable of expressing a choice. If the sole beneficiary is the decedent's surviving spouse, no action for divorce or separate maintenance was pending at the time of death of the decedent.
- _____ (b) Appointment of the proposed administrator(s) with will annexed named above will best serve the interest of the estate and the proposed administrator(s) with will annexed is/are:
 - _____ (1) A beneficiary or the trustee of any trust that is a beneficiary under the will.
 - _____ (2) A surviving spouse and no action for divorce or separate maintenance was pending or completed at the time of the decedent's death.
 - _____ (3) An eligible person as defined in O.C.G.A. §53-6-1.
 - _____ (4) A creditor of the estate. *[Evidence of such indebtedness is attached as Exhibit _____.]*
 - _____ (5) The county administrator.

8.

The proposed administrator(s) with will annexed should be allowed to qualify without the necessity of posting bond, since only personal representatives of intestate estates and temporary administrators are normally required to post bond. See O.C.G.A. §53-6-50 (a).

9.

[Initial all that apply; however, please note that this form may not be appropriate if the petitioner(s) is/are seeking the appointment of a testamentary guardian, which requires notice to the relatives of the decedent's minor child(ren) pursuant to O.C.G.A. §29-2-4.]

At the time of the decedent's death, and at this time, the decedent left (a) minor child(ren) and the will names a testamentary conservator.

_____ (a) The will names a testamentary conservator of (a) minor child(ren) of the decedent. At the time of the decedent's death, he/she had (a) minor child(ren) and there is/are no court-appointed conservator(s); the following individual(s) is/are named as testamentary conservator(s) in the decedent's will:

Name	Address
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_____ (b) The will names a testamentary conservator of (a) minor child(ren) of the decedent. At the time of the decedent's death, he/she had (a) minor child(ren) and there is/are a court-appointed conservator(s), who is/are identified as follows: *[If named testamentary conservator(s) and court-appointed conservator(s) are different.]*

Name	Address
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10.

[Initial one]

_____ (a) To the knowledge of the petitioner(s), no other proceedings with respect to this estate are pending, or have been completed, in any other probate court in this State or any other state.

_____ (b) The probate of another purported will of the decedent is pending in the State of _____, in the _____ County _____ Court. The name(s) and address(es) of the propounder(s) and the name(s), address(es) and age(s) or majority status of the beneficiaries under the other purported will to whom notice is required under O.C.G.A. §53-5-22 (b) are listed on the attachment hereto, as Exhibit _____, which is expressly made a part hereof, as if fully set forth herein.

_____ (c) An administration is pending in the State of _____, in the _____ County _____ Court. The name(s) and address(es) of each petitioner, and the name(s) and address(es) of any appointed administrator(s), if any, are listed on the attachment hereto, as Exhibit _____, which is expressly made a part hereof, as if fully set forth herein.

11.

Additional data: *[Where full particulars are lacking, state here the reason for any such omission or any special circumstances. If the propounder is not an heir or a beneficiary under the will, state how the propounder is interested in the administration of the estate. If it is alleged that a nominated executor has failed to qualify, state here the name and address of such nominated executor.]*

WHEREFORE, petitioner(s) pray(s):

1. Leave to prove said will (and codicil(s)) in solemn form;
2. That due and legal notice be given as the law requires;
3. That said will be admitted to record on proper proof;
4. That letters of testamentary conservatorship issue, if applicable;
5. That letters of administration with will annexed issue; and
6. That this Court order such other relief as may be proper under the circumstances.

Signature of Petitioner

Printed Name

Mailing Address

Telephone Number

Signature of Attorney: _____

Printed Name of Attorney: _____

Address: _____

Telephone Number: _____ State Bar # _____

VERIFICATION

GEORGIA, _____ COUNTY

Personally appeared before me the undersigned petitioner(s) who, after being duly sworn, state(s) that the facts set forth in the foregoing petition to probate will in solemn form and for letters of administration with will annexed (and the attached exhibit(s)) are true and correct.

Sworn to and subscribed before me this
_____ day of _____, 20_____

Signature of Petitioner

NOTARY/CLERK OF PROBATE COURT

Printed Name of Petitioner

My Commission Expires: _____

**IN THE PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA**

IN RE: ESTATE OF _____)
)
) **ESTATE NO.** _____
DECEASED _____)

**ACKNOWLEDGMENT OF SERVICE, ASSENT TO PROBATE WILL IN SOLEMN
FORM BY HEIRS, AND SELECTION BY BENEFICIARIES**

The undersigned, being 18 years of age or older, laboring under no legal disability, and being an heir of the above-named decedent or a beneficiary of the purported will, hereby acknowledges service of a copy of petition to probate the will in solemn form and for letters of administration with will annexed, purported will, and notice, waives copies of same; waives further service and notice; assents to the probate of said will in solemn form instanter; and selects the administrator with will annexed nominated in the petition.

Sworn to and subscribed before me this
_____ day of _____, 20_____

Signature of Heir/Beneficiary

NOTARY/CLERK OF PROBATE COURT
My Commission Expires: _____

Printed Name of Heir/Beneficiary

Sworn to and subscribed before me this
_____ day of _____, 20_____

Signature of Heir/Beneficiary

NOTARY/CLERK OF PROBATE COURT
My Commission Expires: _____

Printed Name of Heir/Beneficiary

Sworn to and subscribed before me this
_____ day of _____, 20_____

Signature of Heir/Beneficiary

NOTARY/CLERK OF PROBATE COURT
My Commission Expires: _____

Printed Name of Heir/Beneficiary

IN THE PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA

IN RE: ESTATE OF _____)
)
_____,) ESTATE NO. _____
DECEASED)

**TESTAMENTARY CONSERVATOR'S
CONSENT TO SERVE**

[To be completed only in the event a testamentary conservator is named in the will]

The undersigned, being 18 years of age or older, laboring under no legal disability, and being named as testamentary conservator, hereby consents to serve. I understand that once appointed, I will have the rights, powers, and duties as set forth in O.C.G.A. §29-3-5.

Sworn to and subscribed before me this
_____ day of _____, 20_____

Signature of Testamentary Conservator

NOTARY/CLERK OF PROBATE COURT
My Commission Expires: _____

Printed Name of Testamentary Conservator

Sworn to and subscribed before me this
_____ day of _____, 20_____

Signature of Testamentary Conservator

NOTARY/CLERK OF PROBATE COURT
My Commission Expires: _____

Printed Name of Testamentary Conservator