

PETITION TO PROBATE WILL IN COMMON FORM

INSTRUCTIONS

I. Specific Instructions

1. This form is to be used when filing a petition to probate will in common form pursuant to O.C.G.A. § 53-5-15 et seq.
2. An order for probate of a will in common form may be granted without service to any one, unless required by the Court. The Court may refuse to grant a petition to probate a will in common form. (*Henderson v. McVay*, 269 Ga. 7 (494 SE2d 653) (1998).)
3. According to O.C.G.A. § 53-5-19, a probate in common form is not conclusive on all parties until four years from the date of the order admitting the will to probate (or if minors, four years after said minor reaches the age of majority).
4. As set out in O.C.G.A. § 53-5-16 (b) “probate of a will in common form does not protect the executor in any acts beyond the executor’s normal duties of collecting and preserving assets.”
5. This form should not be used in connection with a petition to probate a copy of a will in lieu of a lost original without checking with the Court in which the petition will be filed.
6. This form should not be used to file a combination petition to probate will and for letters of administration with will annexed [*See GPCSF 7, Petition to Probate Will in Solemn Form and for Letters of Administration with Will Annexed*].
7. 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.
8. Paragraph 4 requires sufficient factual information for the Court to conclude that those listed in paragraph 3 include each and every heir of the decedent and that there are not additional heirs of the same 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 deceased heir is authorized to consent on behalf of that heir. O.C.G.A. § 53-7-1. [*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 statement 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.”

9. If a testamentary conservator is 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.
10. Use GPCSF Supplement 2 if the Court determines it is appropriate to appoint a special process server.
11. Use GPCSF Supplement 3 when an additional certificate of service is necessary.
12. 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.
13. 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.
14. 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 similar 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 a guardian ad litem should be appointed for any person. If any heirs listed above 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.

[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 names, addresses and ages 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 and address of each petitioner, and the name and address of any appointed administrator is listed on the attachment hereto, as "Exhibit _____," which is expressly made a part hereof, as if fully set forth herein.

6.

[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

_____ (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

Additional Data: *[Where full particulars are lacking, state here the reason for any such omission.]*

WHEREFORE, petitioner(s) pray(s):

1. Leave to prove said will (and codicil(s)) in common form;
2. That due and legal notice be given as required by the Court;
3. That said will be admitted to record on proper proof;
4. That letters of testamentary conservatorship issue, if applicable;
5. That letters testamentary 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 Common Form (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: _____

