

GEORGIA PROBATE PROCEEDINGS

“WHAT TO DO WHEN YOUR LOVED ONE DIES”

Presented as a public service by:

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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. Pleadings are filed in the Probate Court of the county of the decedent's domicile.

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.

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 cannot make the determination or selection for you and cannot give you legal advice.

It is your responsibility to properly complete all forms. 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 deadlines for the filing of proceedings. They will also schedule uncontested hearings.

The Probate Judge is required by the law to remain impartial to all parties. The Judge must treat every case as though it may become contested.

The Judge is prohibited from discussing the facts or evidence in any contested case with a party unless all parties are present. You may not ask to discuss your case privately with the Judge, and the Judge will stop any discussion which appears to require the presence of others.

PROCEDURES AVAILABLE FOR DECEDENTS' ESTATES

A. WHEN THERE IS A WILL

SOLEMN FORM PROBATE

This procedure is used when someone passes away with a Will. The original will must be filed with the Petition. All heirs must be duly served or must acknowledge service. The Court will appoint a guardian ad litem if there are minor children who are heirs.

COMMON FORM PROBATE

This procedure is the same as with the solemn form probate except this process may proceed without notice to the heirs. This procedure does not become binding until four years after the appointment of an Executor. Objections or contests may be filed up to anytime up to four years after common form probate.

PROBATE OF WILL IN SOLEMN FORM/LETTERS OF ADMINISTRATION WITH WILL ANNEXED

This is the same procedure as solemn form probate but the named executor in the will is unable or unavailable to serve and an administrator would need to be appointed.

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. However, 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.

B. WHETHER THERE IS A WILL OR NOT

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."

C. WHEN THERE IS NO WILL

PERMANENT ADMINISTRATION

This procedure is used when someone passes away without a will. This procedure requires notice to all heirs. The petitioner is requesting to be the "Administrator" of the decedent's estate.

TEMPORARY ADMINISTRATION

Powers as a "Temporary Administrator" are limited to collecting and preserving the assets of the decedent. The Court may appoint a Temporary Administrator upon a showing of necessity. No expenditures or disbursements can be made from the estate without a special court order. Temporary Administrators must post bond and file inventories and returns.

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. Creditors who have not consented in writing must be given legal notice of the filing.

D. GLOSSARY

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

Administrator With Will Annexed: The person who administers a decedent's estate when there is a will but 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 under the rules of decent and distribution. See heir worksheet.

Intestate: Without a Will.

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

Personal Representatives: The name for any executor, administrator, guardian or trustees, but not a temporary administrator.

Probate: The court procedure by which a will is proved to be the valid; also the legal process of administering a decedent's estate.

Probate Court: The court having jurisdiction over proceedings to administer the estate of a decedent.

Proceeding Pro Se: Representing yourself without an attorney.

Testator: A person who has made a Will.

Will: A document, signed with the formalities required by Georgia law, to take effect after a person's death.

(Adapted from a Brochure Created by Judge William Self, Bibb Co. Probate Court)