

What to do When a 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. 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 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.

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 year's 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.

Proceeding Pro Se Representing yourself in court without an attorney

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.

Representation by an Attorney at Law

While you are not generally required to have an attorney, you are encouraged to seek legal advice on all matters of legal importance. It is suggested that you seek advice in probate matters from an attorney who practices probate or estate law. The attorney can assist you in determining which proceeding is the most appropriate for your particular situation and can discuss fully with you the benefits, if any, in considering alternative proceedings. Very often, there are other matters related to probate proceedings (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.

Proceeding Without an Attorney-Proceeding “Pro Se”

If you proceed without an attorney, i.e., pro se (a Latin phrase meaning “for one’s self”), 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 will also be your responsibility to properly complete all forms, which must either be typed or legibly printed, and to assure the sufficiency and accuracy of all required information. The staff are not permitted to perform clerical tasks for the public and cannot accept responsibility for determining the legal sufficiency of the information required for any proceeding or form. 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 the most appropriate to your case. The Judge is prohibited from discussing the facts or evidence in any contested case with one party unless all parties are present or represented. 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.

Furthermore, if you proceed without an attorney, it will be your responsibility to make arrangements for personal service on all persons upon whom personal service is required, to assure the filing of a proper return of service on all such persons, to assure the publication of any notices not performed by the court or its staff, and to secure the presence of or interrogatories from any witnesses whose testimony is necessary under law or desired by you for the presentation of your case. If the matter is contested, it will be your further responsibility to prepare yourself and your case for trial, including the pursuit of and response to discovery

Penalties for Filing Frivolous Pleadings, Etc.

Caution is particularly given to persons representing themselves in court that there are provisions under Georgia law for the assessment of penalties against anyone who files false, frivolous, vexatious or groundless pleadings. These penalties may include the dismissal of such pleadings, the assessment of costs of court and attorney's fees against the offending party, and other remedies appropriate to the particular case. Additionally, there are similar penalties for the failure or refusal, without just cause, to respond to proper discovery requests.

Generally, one must have "legal grounds" for objecting to or for filing a caveat to a probate proceeding. Because of the penalty provisions briefly discussed above, it is especially recommended that legal advice be sought before the filing of an objection or caveat to a pending probate proceeding.

Court Costs

There is a cost set by law for the filing of every new probate proceeding, as well as for most pleadings filed after the initial filing, including objections, caveats and claims. There is a minimum deposit toward costs required for every new proceeding which must be paid in advance. Unless otherwise ordered or directed by the court, costs are the responsibility of the person filing the original proceeding, and full payment of any balance due may be required prior to issuance of a final order. A party filing an objection or caveat to a pending proceeding or a creditor filing a claim must pay the fee for the filing of same before the court is required to accept it for filing.

Court costs are considered an expense of administration under law, having a priority over other debts and claims, and must be paid by the personal representative of the estate prior to the payment of other debts and prior to distribution to heirs or beneficiaries. The failure or refusal to pay court costs may result in the dismissal of proceedings, the removal of the personal representative or other actions by the court to assure and receive payment.

While we want to be of service to the public, there are restrictions on and limits to what the staff and judge of the Probate Court may properly do. This brochure is intended to help the public understand these restrictions. It is never our intent to seem unhelpful or uncooperative. Within these restrictions and limitations, it is our desire to be of assistance to all who come into this office. We do hope that you will understand these limitations. With that in mind, please let us know if we may be of further service to you. Thank you.

WILLIAM J. SELF, II, Judge of the Probate Court of Bibb County, Georgia since April, 1989, holds a B.B.A. and a J.D. from the University of Georgia. He is active in the American, Georgia and Macon Bar Associations, is a member of the National College of Probate Judges and the National Conference of Special Court Judges, and is a frequent lecturer for the Institute for Continuing Judicial Education in Georgia.