

# Georgia Probate Proceedings

## "What to Do When Your Loved One Dies"

There are a number of different proceedings which may be filed in the Probate Court following the death of a Georgia resident or a nonresident who owned property in Georgia. Proceedings are filed in the Probate Court of the County of Deceased's residence or a County where property of a nonresident is located.

This briefly describes the usual initial proceedings. For each proceeding described, there is a standard form which the Court will provide to any person or is available online at [www.gaprobate.gov](http://www.gaprobate.gov) under "Standard Forms."

It is recommended that you discuss 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, etc.) which may also make it necessary for you 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. Probate Court Staff may not make the determination or selection for you, since to do so may constitute the unauthorized practice of law, a misdemeanor under Georgia law. Neither the Court nor the county can accept responsibility for incorrect decisions made by staff, and the staff members have been directed to refrain from giving such advice.

It is also your responsibility to properly complete all forms, which must be typed or legibly printed in black ink. Staff are not permitted to perform stenographic tasks for the public. Staff may be able to answer general questions about the standard forms, deadlines for filing of proceedings, scheduling uncontested hearings, and 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 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 conversation with you which he deems to require the presence of others.

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# Procedures Available For Decedents' Estates

## When There Is a Will

**Solemn Form Probate:** This procedure requires notice to all heirs-at-law and becomes binding upon all parties immediately upon appointment of the Executor. All heirs must be duly served or must acknowledge service. The Court will appoint a Guardian ad litem for each minor or incapacitated adult heir. The notice requires anyone having a legal cause to object to the Will ("contest it") to file the objection by a certain deadline. "Heirs-at-law" are the persons who would inherit the estate if there were no lawful Will; they may or may not be beneficiaries under the Will. The original Will must be filed before or at time petition to probate is filed and proof of the execution of the Will must be provided by Interrogatories or other legal proof of Witness. Since March 28, 1984, it has been possible to have a will or codicil "self-proven" by means of a specially worded affidavit signed by the Testator and Witnesses.

**Common Form Probate:** This procedure may be done without notice to heirs but does not become legally binding for four years after the appointment of the Executor. The requirements of filing the original Will and proof of proper execution are the same as with solemn form probate. Heirs and others legally interested in the estate may file a petition that the Will be offered for probate in solemn form so that objection may be filed to it, at any time up to four years after the common form probate.

**Probate Will in Solemn Form & for Letters Administration With Will Annexed:** If there is a Will but the named Executor(s) is/are either unable or unwilling to serve, an Administrator with Will Annexed may be appointed. If a named Executor is still living, he/she must sign a document that he/she declines to serve, or there must be testimony that the nominated Executor is unable to serve, in which case he/she must be served as are the heirs.

**Will Filed Only, Not Probated:** If there is no property to pass under the Will, probate is not necessary. However, the Will of a Deceased 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 a motor vehicle, title may be transferable through the Tag Office without probate being necessary. There is no cost to file a Will not offered 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; otherwise, the administrator must be selected by a majority of the Deceased's heirs. Administrators must post bond and file inventories and returns, unless ALL heirs-at-law consent to a waiver of those requirements. If ALL heirs consent, the Administrator may be given additional powers and authority. Natural guardians of minor heirs and legal guardians of incapacitated adult heirs may acknowledge service, consent to selection and consent to waive requirements, unless guardian is Applicant.

**Temporary Administration:** Notice to all heirs-at-law is not required, but a majority of the heirs-at-law must select the Temporary Administrator, unless the Applicant is the surviving spouse or

sole heir. Powers are limited to collecting and preserving the assets of the Deceased. No expenditures, disbursement or transfer of title may be made without a special court order. Temporary administrators must post bond and file inventories and returns. When selection is required, natural guardians of minor heirs and legal guardians of incapacitated adult heirs may consent to selection unless the guardian is the Applicant.

**No Administration Necessary:** If there is no Will, all heirs are over the age of 18 and not under any legal disability, all debts have been paid (or if all creditors consent), there is no need for formal administration, and the heirs have agreed on how the estate will be divided, this proceeding may be filed. Any creditors who have not consented to entry of Order Declaring No Administration Necessary must be served and not object.

### **Whether or Not There Is a Will**

**Year's Support:** This proceeding may be filed only for the benefit of a surviving spouse and/or minor children of a Deceased. Minor children must be given a share of a year's support award. The Application asks that specific, identified property be awarded to the spouse and/or minor children. Notice must be given to all "interested persons". Property awarded as year's support is free of all unsecured debts of the Deceased's Estate, and the Award takes precedence over any disposition by Will.

**Petition to Enter Safety Deposit Box:** This proceeding is usually used when there is thought to be a Will in a safety deposit box. The order authorizes a bank to open and examine 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 to the named beneficiaries, and petitioner may receive burial instructions and deed to a burial plot. Other contents must remain in the box until an Executor or Administrator is appointed.

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### **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 either 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 at Law** - Those persons who would inherit the estate if there were no Will.
  - **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.
  - **Probate** - The court procedure by which a Will is proved to be the valid last Will and Testament 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 jurisdiction over many other matters.
  - **Testator** - 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.
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