



**A Layman's Guide  
To Probate Procedures  
In  
Georgia**

**Important Information about  
Georgia's Probate Court  
And  
Estates of Deceased Individuals**

**By  
Marion Guess  
Retired Judge**

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**NOTE:** The Glossary that begins on page 23 defines the legal terms that are used in this booklet. You may want to refer to it when you come across a word that is unfamiliar to you.

# 1

## Estates of Deceased Individual: Frequently Asked Questions

1. What are the first legal steps should I take after someone dies?
  - ❖ The first step is to determine whether the individual who has died (the “decedent”) left a Will. If there is a valid will, then the executor (who is named in the will) or some other person may offer the will for probate in the Probate Court. (See Chapter 2)
  - ❖ Even if the Will is not going to be probated, anyone who is in possession of the Will of a decedent must bring the Will to the Probate Court for filing.
  - ❖ If there is no Will (that is, the decedent has died “intestate”) then the usual procedure is to have an administrator appointed to take care of the decedent’s estate. ( See Chapter 3)
  - ❖ Whether or not there is a will, if a spouse or minor children (under age 18) survive the decedent, they may want to consider whether to file for Year’s Support. (See Chapter 4)
  
2. Do I need to have a lawyer?
  - ❖ This booklet and the Probate Court Standard Forms are designed to help you perform simple filings on your own  
  
However, if you find that the filing is more difficult than you expected or that you need help in determining which procedure should be filed, you should not hesitate to seek the assistance of an attorney.
  
3. Which Probate Court should I go to?
  - ❖ The Probate Court in the county where the decedent was domiciled at the time he or she died
  
4. What is the procedure in the Probate Court?
  - A. First, you fill out a formal document, called a petition, which you will file in the Probate Court
    - ❖ The Probate Court has forms that must be used for filing most petitions. The forms are available at the courthouse.
    - ❖ Chapters 2, 3, & 4 are designed to help you fill out the information needed for the most common types of petitions
    - ❖ Whoever files the petition will also sign a verification in which the person swears in front of a notary public or a clerk of the Probate Court that everything in the petition is true.
  - B. You file the petition and pay the filing fees. The Probate Court clerks will calculate your fees.

- ❖ Some Probate Courts will only accept cash, money orders, or cashier's checks
- C. Notice is given to people who might be affected if the petition is granted. (See Questions #5 & 6 below)
  - D. If no one objects after notice is given and after the appropriate time period has passed, the Court will issue an order.
    - ❖ The order will appoint someone to represent the estate, pay the debts, and distribute the remaining property of the decedent. In some circumstances, this person may need to get court permission to sell property in the estate. (See Chapter 5)
5. Who are the people who may be affected by the filing of a petition and how is notice given to them?
- ❖ The persons who may be affected vary depending upon what type of petition is filed. Usually, however, these will include close family members of the decedent.

The Procedures for notice also vary. Here are the basic rules.

- A. If the person lives in Georgia, the law requires that notice be personally delivered to that person. This is done by the county sheriff. (In most Probate Courts, you will pay a fee to the Court and then they will take care of sending the sheriff to deliver the notice)
- B. If the person lives outside Georgia, a copy of the notice is mailed to the person and there will be a publication of the notice in the county newspaper. (In most Probate Courts, you will provide the Court with the addresses and a fee for mailing and publication and they will take care of the mailing and of notifying the newspaper)
- C. If you don't know the person's address, the person will be notified by the publication in the county newspaper. (In most Probate Courts, you will provide the Court with the fee for publication and they will take care of notifying the newspaper).

NOTE: Any of these people may waive notice by signing and having notarized the waiver form that is provided by the Probate Court. This saves both time and money!

6. What if one of these people is a child or is otherwise not able to understand the proceedings, or if the identity of address of the person is unknown?
  - ❖ The Probate Court must appoint a *Guardian Ad Litem* to represent any minor or other incapacitated person, or anyone whose identity or address is not known. Generally, the *Guardian ad Litem* will be an attorney.

## 2

### When there is a Will: Probate of a Will in Solemn Form

1. What happens when an individual dies with a Will?
  - ❖ In most circumstances if an individual dies with a will, the person who is named in the will as the executor will probate the will.
  - ❖ Even if the will is not going to be probated, anyone who is in possession of the will of the will of an individual who has died must bring the will to the Probate Court for filing.
  - ❖ If the individual has died without a will, see Chapter 3
  - ❖ If the individual is survived by a spouse and/or minor children, they may consider filing for Year's Support. (See Chapter 4)
  
2. What does "probate a will" mean?

The process of probating a will is the formal process by which the Probate Court approves a document as the last will and testament of someone who has died (the "decedent") and appoints someone to handle the distribution of the decedent's property.
  
3. Who offers the will for probate?

The Will is usually offered for probate by the individual who is named in the Will as the executor—that is, the person who will handle the decedent's estate.
  
4. Where is the will probated?

The will is probated in the Probate Court of the country in which the decedent was domiciled at death.
  
5. How is a will Probated?

Standard Form #5 (Petition to Probate Will in Solemn Form) is usually used to probate a will, although Probate in Common Form may be used as an alternative. Standard Form #5 is filed in the Probate Court along with the original signed will. In addition, Standard Form #6 (Interrogatories to Witness to Will) is also usually required. The Standard Forms are available at the courthouse.
  
6. How do I fill in Standard Form #5?
  - A. First, write the name and address of the executor at the beginning of the form in the blank after "The Petition of \_\_\_\_\_".
  - B. Write the name and last address of the decedent (Part 1)
  - C. Fill in the date of the decedent's will (Part 2). REMEMBER, you must give the original signed will to the Probate Court when you file this form

- D. In Part 3, fill in the names, ages, and addresses of the decedent's heirs and tell how each individual is related to the decedent (for example, "sister"). If an heir is over age 18, you can simply write "over 18" for the age

The heirs are the closest living relatives of the decedent:

- ❖ The decedent's spouse, if living and the living children of the decedent. Include adopted children and children born out of wedlock. Do not include stepchildren. If a child has died before the decedent, list any living children, grandchildren, or other descendants of that child.
- ❖ If the decedent had no living spouse or children or other descendants, the decedent's mother and father are the heirs
- ❖ If the decedent's mother and father are not living, the decedent's living brothers and sisters, along with the children or other descendants of any deceased brother or sister are the heirs.
- ❖ If none of the decedent's brothers, sisters, nieces or nephews or other descendants are living, the decedent's living grandparents are the heirs.
- ❖ If none of the decedent's grandparents are living the decedent's living aunts and uncles, along with the children of any deceased aunt or uncle, are the heirs.
- ❖ If the decedent's aunts, uncles, or cousins are not living, the closest living relatives are the heirs
- ❖ A parent may not inherit from his/her minor children if the parent has "willfully abandoned" the child. The parent's share, if he/she is found to have abandoned the child, is distributed as if the parent had predeceased the child. A parent has abandoned a child if he/she "without justifiable cause, fails to communicate with the minor child and provide for the minor child's support as required by law or judicial decree for a period of at least one year prior to the date of the death of the minor." The law requires a separate hearing to be conducted for the purpose of determining abandonment. Since filing such a petition and presenting proof before the court is probably beyond the capabilities of a layperson, an attorney should be employed.

If you are unsure about the name or age or address of an heir, tell the Probate Court what the problem is on Part 4.

- E. Part 6 says that you believe that this is the only will of the decedent and that no one else is trying to probate a different will in a different court. If you think that someone is trying to probate a different document in another place, you probably will need the help of an attorney.
- F. Sign the verification in front of a notary public or a clerk of the Probate Court. In this section, you are swearing that everything in the Petition is true.

7. How do I fill out Standard Form §6 –Interrogatories to Witness to Will?

This form is required unless the will has a “Self-Proving Affidavit” (which usually appears on the last page). If there is no self-proving affidavit, then you must contact one of the witnesses to the will and ask the witness to fill out Standard Form #6 and sign it in front of a notary public. You then must file this form along with the Standard Form #5.

8. Who receives Notice of the Petition to Probate the Will in Solemn Form?

- ❖ Notice must be given to all the heirs of the decedent
- ❖ If any heirs are Georgia residents, they must be personally served by the sheriff of the county in which they reside. The Probate Court clerk will collect the sheriff’s fee from you and contact the sheriff.
- ❖ Alternatively, the heirs may waive notice by filing a written and notarized waiver which is contained in the standard form. This is much less expensive than having the sheriff deliver the notice personally.
- ❖ If the heirs live in different places, you may make several copies of the waiver page and have each heir sign a copy and have the signature notarized and then you can file all of the separate copies.
- ❖ Heirs living outside the state must be served by the Probate Court Clerk by certified mail
- ❖ Notice must be published in the county newspaper if the identities or addresses of any heirs are not known

In most probate courts, if publication is required, the Probate Court Clerk will collect a publication fee from you and then handle the publication process.

If there are heirs who are minors or incapacitated adults, or who are unknown or whose addresses are unknown, a *guardian ad litem* must be appointed. Generally the *guardian ad litem* is an attorney.

9. What happens after the will is admitted to probate?

The Probate Court will issue “Letters Testamentary” to the executor. This is the paper that the executor will use when handling the decedent’s estate as proof that the executor has the authority to do so. The executor may need certified copies of the Letters Testamentary, as institutions (such as banks) often ask to keep a copy in their records.

10. What fees must be paid to the Probate Court?

Check with the clerk of the Probate Court to see what fees are due upon filing the petition. Some probate courts will only accept cash, money orders, or cashier’s checks.

### 3

## Administration of the Estate When there is No Will

#### 1. What happens when someone dies without a Will?

An individual who dies (the decedent) and who has no will is said to have died “interstate”. In most circumstances, an administrator will need to be appointed to handle the decedent’s estate, that is, to determine the assets of the estate, to pay the decedent’s debts, and to transfer the decedent’s property to the heirs.

- A. If the decedent is survived by a spouse and/or minor children they may consider filing for Year’s Support (see chapter 4)
- B. The judge of the Probate Court of the county where the decedent was domiciled at death will appoint the administrator, who will receive Letters of Administration showing the administrator’s authority to handle the estate.
- C. Use Standard Form #3 (Petition for Letters of Administration) to apply to have an Administrator appointed. The Standard Forms are available at the courthouse.

#### 2. What information do I need to prepare Standard Form #3?

- A. First, identify the decedent’s heirs. The heirs are the closet relatives of the decedent:
  - ❖ The decedent’s spouse, if living and the living children of the decedent. Include adopted children and children born out of wedlock. Do not include stepchildren. If a child has died before the decedent, list any living children, grandchildren or other descendants of that child.
  - ❖ If the decedent had no living spouse or children or other descendants, the decedent’s mother or father are the heirs.
  - ❖ If the decedent’s mother and father are not living, the decedent’s living brothers and sisters, along with the children or other descendants are living, the decedent’s living grandparents are the heirs.
  - ❖ If none of decedent’s brothers, sisters, nieces or nephews or other descendants are living, the decedent’s living grandparents are the heirs.
  - ❖ If none of the decedent’s grandparents are living, the decedent’s living aunts and uncles, along with the children of any deceased aunt or uncle are the heirs.
  - ❖ If the decedent’s aunts, uncles, or cousins are not living, the closet living relatives are the heirs.

- ❖ A parent may not inherit from his/her minor children if the parent has “willfully abandoned” the child. The parent’s share, if he/she is found to have abandoned the child, is distributed as if the parent had predeceased the child. A cause, fails to communicate with the minor child and provide for the minor child’s support as required by law or judicial decree for a period of at least one year prior to the date of the conducted for the purpose of determining abandonment. Since filing such a petition and presenting proof before the court is probably beyond the capabilities of a layperson, an attorney should be employed.

- B. Determine the approximate value of the decedent’s real property (houses, land) and personal property (all other property).

3. How do I prepare Standard Form #3?

- A. Identify yourself at the top of the form.
- B. Identify the decedent in paragraph 1; give the date of death and the approximate value of the decedent’s property.
- C. In paragraph 2, nominate an administrator

4. Who is eligible to serve as an administrator?

Any person who is age 18 or over and who is not incapacitated can serve as an administrator. The person does not have to be a resident of Georgia or a U S citizen. Paragraph 2 lists possible administrators.

5. Who decides who will be the administrator?

- A. The heirs may unanimously select the person who will serve
- B. If the heirs cannot agree, the Judge will choose the administrator. In making this selection, the Judge will consider the decedent’s spouse, heirs, a person selected by a majority of the heirs, a creditor, or another eligible person.
- C. Even if the heirs cannot make a unanimous selection, the person who files the petition can fill in a suggested name in paragraph 2.
- D. List names, ages, and addresses of the heirs of the decedent in paragraph 3 and tell how each individual was related to the decedent (for example, “sister”). If an heir is over age 18, you can simply write “over 18” for the age.
- E. In paragraph 4, provide the court with any additional information needed.
  - ❖ Explain why you do not have any information that the form requests
  - ❖ If the heirs are not the decedent’s immediate family, show how they are related to the decedent.

- ❖ If any of the heirs are under 18 or incapacitated, notify the court here. A guardian ad litem must be appointed to represent these heirs in this matter.
- F. Before completing paragraph 5, go on to: Selection by Heirs (and Consent of Heirs to Waiver of Bond and Grant of Certain Powers.) Before an administrator can be appointed, all the heirs must be given notice of the filing of the petition. Each heir must be given an opportunity to sign this paper in the presence of a notary or a clerk of the Probate Court. In it, the heir acknowledges service of the petition and waives any other notice.

This is a very important part of the petition because this is where the heirs choose the person they want to be the administrator. This is also where the heirs may choose to ask the Probate Court Judge to grant the proposed administrator powers not otherwise provided by law.

- ❖ The powers of an administrator are limited by law so that an administrator may need to petition the Probate Court to get permission to perform certain acts, such as selling the property of the estate. By signing this page with “b” checked, the heirs can consent to the granting of the power to act without first seeking court permission.
- ❖ To protect the estate during administration, an administrator is normally required to post a bond and to file reports with the Probate Court regarding the assets of the estate and showing the distribution of the property. By signing this page with “a” checked, the heirs may choose to waive the administrator’s responsibility to post a bond and file reports.

In order for the Probate Court Judge to do either of the above, ALL OF THE HEIRS MUST AGREE. Also, notice of the request of the heirs to the grant of powers and waiver must be published in the county newspaper in order to give anyone who has a claim against the estate the opportunity to object.

If any heirs do not acknowledge service by signing this document, notice must be mailed to them by the Probate Court. If the addresses of any of the heirs are unknown, notice must be published in the county newspaper.

- G. Once you know whether all of the heirs are in agreement, you can check the applicable sentence in paragraph 5.
- H. Sign the verification in front of a notary or a clerk of the Probate Court. By signing here, you swear or affirm that everything in the petition is true and correct
- I. The Probate Court will complete the remainder of the form.

4. What fees must I pay when I file the Petition?

Check with the clerk of the Probate Court to see what fees are due upon filing the petition. In addition to filing fees, there may also be fees for *a guardian ad litem* or for publication. Some probate courts will only accept cash, money orders, or cashier's checks.

## 4

# Petition for Year's Support

### 1. What is Year's Support?

Year's Support is an award of property from a decedent's estate to the decedent's surviving spouse, surviving spouse, surviving minor children, or both.

Year's Support may only be awarded from property owned by the decedent at his or her death. Property owned in joint tenancy with right of survivorship automatically becomes the property of the surviving joint tenant and may not be awarded as Year's Support.

### 2. Who may apply for Year's Support?

- A. The surviving spouse of the decedent. (The spouse may not receive Year's Support if he or she has remarried after the decedent's death)
- B. The decedent's living minor children. (A minor child's parent or other guardian or a *guardian ad litem* may file a petition on behalf of the child).
  - ❖ A Child must be under age 18 in order to receive Year's Support
  - ❖ The Child must not be married
  - ❖ The child must be the decedent. (This includes adopted children or children born out of wedlock. This does not include stepchildren of the decedent.)

### 3. What if the decedent left a will that gave his estate to his surviving spouse and minor children? Can they still apply for Year's Support?

In most cases, Year's Support may be granted whether or not the decedent had a will.

- ❖ If the decedent has died without a will ("intestate"), you may also want to consult Chapter 3 –Administration of Estate When There is No Will.
- ❖ If the decedent has died with a will, you may also want to consult Chapter 2 – When There is a Will: Probate of Will in Solemn Form.

### 4. If the spouse or children are already expected to receive property under the decedent's will or by law if the decedent died without a will, why should they apply for Year's Support?

Year's Support is treated very favorably by the laws of Georgia. Two important reasons for applying to receive the decedent's property as Year's Support are:

- A. If the property is awarded as Year's Support, then in many cases the decedent's creditors cannot use the property to pay debts that the decedent owed them. This is not true if the property is received under a will or by intestacy.
  - B. If the decedent owned real property at death – such as a house – which is granted to the spouse and children as part of the Year's Support award, then the property taxes that were due on that property may not need to be paid.
5. When should the spouse of children apply for Year's Support?

A petition for Year's Support must be filed within 24 months of the day of the decedent died.

6. Where should the Petition for Year's Support be filed?

The petition should be filed in the Probate Court of the county in which the decedent was domiciled at death, although if another petition has already been filed for the decedent's estate, the petition for Year's Support should be filed in the Probate Court where the first petition was filed.

7. How do I file a Petition for Year's Support?

Use Standard Form #10: Petition for Year's Support. The Standard Forms are available at the courthouse or online at.

8. How do I fill in Standard Form #10?

- A. At the top of the form, fill in your name and mailing address after the words "The Petition of \_\_\_\_\_."
- B. In Section 1, check whether you are the surviving spouse of the decedent or a guardian applying on behalf of the decedent's spouse or minor children. Write in your relationship to that person (for example, "parent" or "brother").
- C. In Section 2, write in the decedent's name and address at death and the date of death.
- D. In Section 3, if the decedent did not have a will, check Part A. If the decedent had a Will, check part B and show whether or not the will is going to be probated by striking out the terms that do not apply.
- E. In Section 4, give an estimated value of all the property the decedent owned at death.
- F. In Section 5, list the names of the decedent's surviving spouse and surviving minor children for whom the Year's Support is requested. List each child's date of birth where it says "D.O.B."

Sometimes the other parent of some or all of the decedent's minor children may be a person who was not the decedent's spouse when he died. If that is the case, write in the

name of the child's other parent. Also, if the petition is being filed only for the minor children, write in the name of each child's other parent.

EXAMPLE: Decedent Dave was married to Mary Smith and they had a son named Sam Smith. They were divorced after Sam was born. Dave died when Sam was age 13. If Dave had married Cindy Smith after his divorce and was still married to her when he died, Cindy Smith is listed as Dave's surviving spouse. Sam Smith is listed as a minor child and the name of Sam's other parent, Mary Smith, is written next to Sam's name. If Dave was not married when he died, no one is listed as his surviving spouse and Sam is listed as his surviving minor child, along with the name of Sam's mother, Mary Smith.

- G. Make a list of the decedent's property (including money, furniture, and other personal property) that you would like to have awarded as Year's Support. This may be all of the decedent's estate or only part of the decedent's estate. Write out this list under "Exhibit A" and attach to form.

If you are including real property in your request, you must include a full, legal description of the property. You can obtain the legal description from the deed, which will be recorded with the clerk of Superior Court in the county where the property is located.

The full, legal description of the real property must also be added or attached to the form.

- H. If you are the executor or administrator of the decedent's estate, or if there is no executor or administrator, check box A in section 7. You will need to fill out Exhibit B, listing anyone who has an interest in the estate, including creditors.

If there is an executor or administrator other than yourself, check box B and give that person's name and address.

- I. Section 8 deals with the property taxes on real property that you have requested as Year's Support. You will be excused from paying property taxes on that property for one of the three years listed. You may make your own choice as to which year it will be.
- J. Sign the Verification in front of a notary public or a clerk of the Probate Court. In this section, you are swearing that everything in the Petition is true.
- K. The Probate Court will complete the remainder of the form.

9. Who receives notice of the Petition for Year's Support?

The Probate Court will publish notice of the filing of the Petition in the county newspaper. The Probate Court will collect a publication fee from you and will then handle the publication process. The Probate Court will also mail a copy of the petition to the Tax Commissioner of any county in which requested property is located.

If there is an executor or administrator of the decedent's estate, notice of the petition will be mailed to that person

If there is no executor or administrator, or if you are the executor or administrator, the Probate Court will mail a copy of the petition to all the persons listed in Exhibit B. These people may waive notice by filing a written and notarized waiver.

If any of these persons are minors or incapacitated adults, or if their address is unknown, a *guardian ad litem* must be appointed to represent them.

10. What happens after notice is given?

If any objections to your petition are filed, the Probate Court will hold a hearing to determine how much property, if any, will be awarded as Year's Support. If no objection is filed, the Probate Court Judge will award the property that you requested in your petition.

The Judge may make separate awards of property to the surviving spouse and to the minor children.

After the order awarding Year's Support is signed by the Judge. The certificate is filed in the Superior Court by the Probate Court clerk. This document shows that the property has been transferred and takes the place of a deed

11. What fees must be paid to the Probate Court?

Check with the Clerk of the Probate Court to see what fees are due upon filing the petition. Some probate courts will only accept cash, money orders, or cashier's checks.

## 5

# Petition for Leave to Sell

1. What is “leave to sell”?

- ❖ “Leave to sell” is permission given to you by the Probate Court to sell property belonging to a decedent’s estate or which was awarded as Year’s Support from a decedent’s estate. This section covers leave to sell real property and personal property. Real property is land and anything permanently attached to it, such as a house. All other property is called personal property and includes cars, clothing and furniture.
- ❖ Sometimes personal property is “perishable” (for example, crops that are likely to spoil or go down rapidly in value if not sold quickly), liable to deteriorate from keeping, or expensive to keep (such as furniture or cars). In this case, special permission may be obtained from the court to sell this property as quickly as possible.

2. Who is required to obtain a leave to sell from the Probate Court?

- A. The administrator of an intestate estate, unless the administrator has been granted the power to sell estate property without receiving permission in advance.
- B. The temporary administrator of an estate
- C. The executor appointed under a will unless the will itself or the beneficiaries under the will have granted the executor the power to sell estate property without receiving advance permission.
- D. The recipient(s) of a Year’s Support who want(s) to sell or encumber property that has been set aside as Year’s Support for the joint benefit of a surviving spouse and minor children, if any of the children are still minors.

3. How do I obtain a leave to sell?

You must file a petition for leave to sell in the Probate Court that appointed you, if you are an administrator or executor, or that awarded Year’s Support to you. The Standard Forms for filing petitions are available at the courthouse.

4. There are three forms to choose from:

- ❖ Standard Form #13: Petition of Personal Representative for Leave to Sell Property (Use this form if you are an administrator or executor and need court permission to sell real or personal property of the estate)

- ❖ Standard Form #15: Petition for Leave to Sell Perishable Property (Use this form if you are an administrator or executor and you need to sell personal property quickly because it is perishable, likely to deteriorate, or expensive to keep).
- ❖ Standard Form #17: Petition for Leave to Convey or Encumber Property Previously Set Aside as Year's Support. (Use this form if you are a surviving spouse or represent a minor child who has been awarded property as Year's Support and you wish to sell property that was set aside as Year's Support.)

Form #13: Petition of Personal Representative for Leave to Sell Property

4. What information must I put on Form #13: Petition of Personal Representative for Leave to Sell Property?
  - A. Identify yourself at the beginning of the form after the words "The Petition of \_\_\_\_\_". Indicate whether you are an administrator or executor by crossing out the word that does not apply to you. Write in the name of the decedent whose estate you are representing.
  - B. In Section 1, list the names, ages, addresses and relationship to the decedent of those who may be affected by the sale of the property:
    - ❖ If you are the administrator of an intestate estate, list the decedent's heirs
    - ❖ If you are an executor, list the names of the people who are named as beneficiaries in the will
    - ❖ If an heir or beneficiary is not *sui juris* – that is, is not at least age 18 and competent – the court must appoint a *guardian ad litem* to represent that person. In section 6, give the names of any heirs or beneficiaries who are not *sui juris*.
  - C. In Section 3, you must give a detailed description of the property that you wish to sell. If you are including real property in your request, you can obtain the legal description from the deed, which will be recorded with the clerk of the Superior Court in the county where the property is located.
  - D. In Section 4, give the reason for selling the property
  - E. In Section 4, show how you want to sell the property (auction, private sale, garage sale, etc.), the date you plan to sell it, and the lowest price you will accept for the property. If you have already entered into a contract to sell the property, you must attach copy of that contract to the petition. The contract should include a clause that says that the sale can be completed only with the approval of the court. You must also include a copy of a recent appraisal or the most recent *ad valorem tax* statement for the property to be sold.
  - F. If you were required to post a bond when you began to serve as administrator or executor, state in section 6 the value of your current bond. You will need to increase your bond so that it covers the net proceeds of the sale.

- G. Sign the verification in front of a notary public or a clerk of the Probate Court. In this section, you are swearing that everything in the petition is true.
5. Who receives notice after I file Form #13: Petition of Personal Representative for Leave to Sell Property?
- ❖ Notice must be given to all the heirs of the decedent, if this is an intestate estate, or to the beneficiaries if there is a will.
  - ❖ The Heirs or beneficiaries may waive notice by filing a written and notarized waiver. This is much less expensive than having the sheriff deliver the notice personally. Notice must be published in the county newspaper if the addresses of any heir or beneficiaries are not known. If publication is required, the Probate Court will collect a publication fee from you and will then handle the publication process
  - ❖ If there are heirs or beneficiaries who are minors or incapacitated adult, or who are unknown or whose addresses are unknown, a *guardian ad litem* must be appointed.

Form #15: Petition for Leave to Sell Perishable Property

6. What kind of information must I put on Form #15: Petition for Leave to Sell Perishable Property?
- A. Identify yourself at the beginning of the form by filling in the first four blank lines.  
EXAMPLE: “The petition of Mary Smith as Administrator of the estate of John Smith”
  - B. Next give a description of the property that you would like to sell. Remember, this must be personal property and it must be property that is perishable, liable to deteriorate, or expensive to keep.
  - C. Tell the court how you plan to sell the property (auction, private sale, garage sale, etc.) and any terms you will require (cash only etc.)
  - D. Sign the Verification in front of a notary public or a clerk of the Probate Court. In this section, you are swearing that everything in the Petition is true. Because the purpose of this petition is to allow you to sell personal property quickly, the Probate Court will decide who should receive notice of the petition, if anyone.
7. Who receives notice after I file Form #15: Petition for Leave to Sell Perishable Property?

Because the purpose of this petition is to allow you to sell personal property quickly, the Probate Court will decide who should receive notice of the Petition, if anyone.

Form #17: Petition for Leave to Convey or Encumber Property Previously Set Aside as Year’s Support

8. What information must I put on Form #17: Petition for Leave to Convey or Encumber Property Previously Set Aside as Year’s Support?

- A. Identify yourself at the beginning of the form after the words “The Petition of \_\_\_\_\_” and give the name of the decedent from whose estate you received Year’s Support and the country in which that decedent resided at the time of death.
  - B. In Section 1, fill in the details of the Year’s Support award. If the property awarded was real property, you will need a detailed description of the property. You can obtain the legal description from the certificate of Year’s Support filed with the Clerk of Superior Court when the award was made.
  - C. In Section 2, tell the court why the sale is necessary.
  - D. If you have a contract for the sale of the property, you must include a copy of that contract with the petition.
  - E. In section 4, you are swearing that you have tried but been unable to find the current address of someone you listed on the first page as “address unknown” and so you have put down the person’s last known address.
  - F. In Section 5, notify the court which of the people listed on the first page are still under 18, so that a *guardian ad litem* may be appointed to represent them.
  - G. Sign the Verification in front of a notary public or a clerk of the Probate Court. In this section, you are swearing that everything in the Petition is true.
9. Who receives notice after I file the Petition for Leave to Convey or Encumber Property Previously Set Aside as Year’s Support?

All of the children who were awarded the property as Year’s Support will be served personally by the sheriff with notice of the filing of the petition.

Any child who has reached age 18 may waive this notice by filing a written and notarized waiver

Notice must be published in the county newspaper if the address of any child is not known or if the child lives outside Georgia and has not acknowledged service. If publication is required, the Probate Court will collect a publication fee from you and will then handle the publication process.

10. What fees will be charged for filing these petitions?

Check with the clerk of the Probate Court to see what fees are due upon filing the petition. Some probate courts will only accept cash, money orders, or cashier’s checks.

## 6

# Returns and Inventories Of an Administrator

### 1. Why must I make an inventory and return?

Georgia law requires that all administrators who have not been granted relief from making returns make an inventory within two months from the date they are appointed and a return of receipts and disbursements annually within 60 days of the anniversary of the appointment . If you believe you have been relieved of these duties, you should check your Letters of Administration to see if you have been granted this relief.

### 2. What must be included in the inventory?

The required inventory should list all assets belonging to the decedent. All assets means all real estate, bank accounts, certificates of deposit, stocks, bonds, cash, jewelry, household furnishings, automobiles, boats, and any other property.

### 3. Why do I need a bond?

Georgia law requires that each administrator post a bond equal to the value of the personal property in the decedent's estate (unless the administrator is relieved). Most courts require that a licensed commercial surety company guarantee the bond. These bonds can be purchased from insurance companies selling fiduciary bonds. Check with your court to see if there is an approved list of surety companies.

### 4. What will happen if I do not file my inventory and return?

If you fail to file your inventory and/or return, the Probate Court will cite you into court to show cause why you should not be removed as administrator for failure to perform your duties. This means that the sheriff will personally deliver to you a citation to appear before the judge. At this hearing you should be prepared to file your inventory and/or return and to account for all funds held by you. The result of the hearing could be your removal and the convening of an additional hearing to determine if a money judgment will be issued against you. In the best case you will be responsible for the court costs and sheriff fees after you have made the required returns.

### 5. Can I hire a bookkeeper, accountant, or lawyer to prepare the inventory and return?

Yes, Georgia law permits an administrator to hire someone to prepare the returns and inventory and to pay the preparer's fee from estate assets. Even if someone else prepares the return you will be required to sign the return and swear to its correctness.

6. When preparing a return of receipts and disbursements must I list each expenditure or source of income or can I group them together into categories?

Some probate courts require that each receipt and expenditure be listed individually. Other probate courts will accept grouping together receipts and expenditures of the same nature. You should check with your court to determine which is required. In any event all cancelled checks and statements should be kept ready to be exhibited to the court on request.

7. Am I required to type my inventory and return?

No, although courts do request that you prepare the return legibly and in black ink.

8. If I discover that there is a change in the assets of the estate after I have filed my inventory, how do I notify the court?

You should file an amended inventory showing the changes.

9. If I am filing a second annual or any return after the first, what should my beginning balance be?

Your beginning balance on a second or any subsequent return should be the balance remaining on the previous return.

10. How should I hold funds belonging to the estate or to my ward?

You should open a checking account titled in your name as administrator of the estate.

11. Am I permitted to use an ATM card to withdraw from the estate account?

The use of ATM cards to withdraw funds from an administrator's account is absolutely prohibited.

12. How may the estate funds be used?

The estate funds should be used to pay the decedent's debts and the expenses of administration. Any funds remaining after this should be distributed to the heirs.

13. What happens if the debts of the decedent exceed the assets of the estate?

Georgia law sets a list of priorities of debts. If your estate's debts exceed its assets you should consult an attorney before paying any debts.

14. Do I get a commission for performing my duties as administrator?

Yes, annually you are entitled to two and one-half percent of the cash received, and two and one-half percent of the cash paid out as a commission. In addition you are entitled to ten percent on interest earned. You may be entitled to zero to three percent on property delivered in kind with probate court approval.

NOTE: Forms for use by an Executor or Administrator to file a Return or an Inventory are available for photocopying on pages 36-39.

## Glossary of Common Terms

Administrator:	The person appointed by the Probate Court to handle the estate of a decedent who died without a will.
Administrator with the Will Annexed (Administrator C.T.A.) :	The person appointed by the Probate Court to handle the estate of a decedent who died with a will if the executor named in the will cannot serve for some reason.
Adult:	Anyone who is age 18 or over.
Affidavit:	A written statement under oath that is signed by the person making it and also notarized.
Beneficiary:	Someone who is named in the will to receive some benefit under the will.
Bond:	A written agreement that is designed to protect the assets of the estate. A bond is issued by a licensed bonding company and the cost of the bond is payable from the estate.
Child:	A biological or adopted child. A stepchild does not meet the legal definition of a child. A child born out of wedlock is legally considered the child of the mother and is also usually considered the child of the father for inheritance and other purposes.
Codicil:	A formal, written amendment or addition to a will which has been executed and witnessed in the same manner as a will.
Conservator:	A person appointed to handle the financial affairs and property of another.
Decedent:	The individual who has dies and whose estate is being administered.
Descendant (also, Lineal Descendant):	The child, grandchild, great-grandchild, etc. of an individual
Domicile:	The place where a person lives and intends to remain.
Estate:	The real and personal property that a decedent owns at death, or the property of a minor or incapacitated adult.
Executor:	The person names in will to handle the decedent's estate

Father:	The biological or adoptive father of a child; not a stepfather. If the child is born out of wedlock and paternity can be proved, the biological father is also the child's father for inheritance purposes.
Filing a Will:	Anyone who is in possession of a will is required to take it to the Probate Court for filing, even if the will is not going to be probated.
Forms:	The Probate Court has standard forms that should be used for filing petitions, such as a Petition to Probate a Will in Solemn Form. The Forms are available at the court or.
Guardian:	The Person who represents the interests of someone who is legally incapable of representing himself (such as a minor or incapacitated adult). This may be someone who is already the natural guardian (such as a parent) or someone appointed by the court (such as a <i>guardian ad litem</i> .)
Heir:	A relative of a decedent who is entitled to inherit the decedent's property if there is no will.
Incapacitated Adult:	An adult who is not capable of handling his or her own affairs
Intestate:	To die "intestate" is to die without a valid will
Leave to Sell:	A personal representative or guardian may need to petition the Probate Court for permission to sell property of the decedent's property
Letters of Administration:	An Official document issued to an administrator that shows that the Administrator has been formally appointed by the Probate Court to handle the decedent's property under the terms of the will.
Letters Testamentary:	An official document issued to an executor that shows that the executor has been formally appointed by the Probate Court to handle the decedent's property under the terms of the will.
Majority Status:	Age 18 or over
Minor:	An individual who is under age 18

Mother:	The biological or adoptive mother of child, including a child born out of wedlock; not a step-mother
Natural Guardian:	The parents of a child. If the parents are separated or divorced, the parent who has custody of the child
Notarized:	Signed under oath in the presence of a notary public, who then signs the document and affixed a seal
Notice:	An Official notification that a petition has been filed. People who receive notice are given an opportunity to object.
Oath:	Sworn statement by a personal representative that that person will faithfully fulfill his or her responsibilities as an executor or administrator
Perishable Property:	Property of an estate that needs immediate attention or that may deteriorate quickly.
Personal Property:	Any property other than land and the buildings on the land (e.g., car, furniture, money)
Personal Service:	Notice given by the sheriff, who personally delivers the notice to an individual
Petitioner:	The person who files a petition in the Probate Court
Probate:	The Process of proving a will so that property may be distributed in accordance with its terms
<i>Pro se</i> :	To act in court on your own, without the assistance of a lawyer
Publication:	Notice of an event (such as the filing of a petition) which is given by publication in the county newspaper
Real Property:	Land and the buildings on the land (e.g., house)
Self-proved Will:	A will that has been executed in such a way that when it is probated, it is not necessary that the witness appear in court or give testimony by affidavit
Service:	Giving notice to someone who is entitled by law to be notified. Service may be made by the sheriff (personal Service) or by publication, by mail, or by a combination of methods.

Spouse: Husband or wife as the result of a ceremonial marriage. A common law marriage is only recognized in Georgia if entered into prior to 1997

*Sui Juris*: An individual is *sui juris* if age 18 or over and competent.

Survive: If anyone lives for any time after the decedent dies (even if only for a few minutes), that individual survived the decedent

Temporary Administrator: An Administrator who is appointed for limited purposes if there is a matter that needs immediate attention.

Testator: An individual who writes a will to tell how his or her property is to be distributed at death

Unanimous Consent: Everyone votes the same way; there are no disagreeing votes

Waive: To give up a right

Ward: An individual for whom a guardian or conservator has been appointed

Will: The legal document by which an individual tells how his or her property is to be distributed at death

Witness: The individual who watched the testator sign the will and then signed the will as a "witness".