

WILL FILED NOT FOR PROBATE. If there is no property (real or personal) to pass under the Will, probate is not necessary. However, the will of the deceased may be filed with the Probate Court. There is no cost to file a non-probated Will.

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 the personal representative (Administrator); otherwise if selected by a majority of the heirs. Once the petition is complete and the time requirements have been met, then the Letters of Administration are issued. This is the paper that gives the personal representative the legal authority to conduct the business of the deceased person's estate.

TEMPORARY ADMINISTRATION. Notice to all heirs-at-law is not required. Powers are very limited to the Temporary Administrator; they may only collect and preserve the assets of the deceased. No expenditures or disbursements may be made without a special court order. A bond must be posted in the amount of the estate and inventories and returns must be made to the court.

NO ADMINISTRATION NECESSARY. If all the debts of the deceased have been paid (or if all creditors consent) and there is no other need for formal administration, and the heirs have all agreed on how the estate will be divided, this proceeding may be filed. All heirs must be over the age of 18 and not under and legal disability and must sign an agreement disposing of the estate. All creditors must consent to the entry of the Order Declaring No Administration Necessary.

WHETHER OR NOT THERE IS A WILL

TWELVE MONTH'S SUPPORT. This proceeding may be filed only by a surviving spouse or for minor children of the decedent. Minor children must be given a notice of the twelve month's support award. The petition asks that specified property be awarded to the spouse and/or children. Property awarded as year's support is free of all unsecured debts of the estate and takes precedence over any disposition by a Will.

PETITION TO ENTER SAFE DEPOSIT BOX. This proceeding is usually used when the Will is thought to be in a safe-deposit box. It allows 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 a personal representative is appointed to the estate.

The Probate Court may have other information available to assist you. Please make sure you ask for the information.

**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. Proceedings are filed in the Probate Court of the county where the deceased was domiciled at the time of the death, or the county where property of a non-resident is located.

This pamphlet briefly describes the usual, initial proceeding. The law can change from year to year. However, this information will give you some insight as to how to approach the process. For each proceeding described in the pamphlet, there is a standard form available in every Probate Court in the State, which the Court will provide to the Petitioner at no charge.

It is suggested that you discuss the matters of concern with an attorney who practices probate or estate law. The attorney can assist you in determining which proceeding is the most appropriate to your situation. Very often, there are other matters (i.e., tax returns, preparation of deed, title transfers, 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 DOING 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 THE ESTATE AND THEY HAVE BEEN DIRECTED TO REFRAIN FROM GIVING THAT KIND OF ADVICE.

All forms must be properly completed, they must be typed or legibly printed in black ink. Any corrections must be made in a manner that is not visible, mark-over corrections will not be accepted. The staff is not permitted to perform clerical tasks for the public. The staff will answer 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 for 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 that appears to require the presence of others.

The following may help you understand and determine the process you will need to complete.

PROCEDURES AVAILABLE FOR DECEDENTS ESTATES WHEN THERE IS A WILL

SOLEMN FORM PROBATE. This procedure requires notice to all the heirs-at-law, with a date for anyone with legal cause to object or contest the Will. The original Will must be attached to the petition, and proof of the execution of the will must be provided by either a self-proven affidavit or interrogatories. All heirs must be duly served or must acknowledge service. The Court will appoint a guardian-ad-Item for each minor or incapacitated adult. When the petition is complete and the final order is signed by the Probate Judge, then the personal representative (Executor) is appointed and will receive Letters Testamentary from the Probate Court, allowing him/her to carry out the terms of the Will and conduct the business of the estate.

COMMON FORM PROBATE. This procedure may be done without notice to heirs-at-law but does not become binding for four years after the appointment of the personal representative (Executor). The requirements of providing the original Will and proof of execution are the same as with the Solemn Form Probate. Heirs and others with standing may file an objection or contest at anytime up to four years after the common form probate.

LETTERS OF ADMINISTRATION WITH WILL ANNEXED. If there is a Will but the named personal representative (Executor) is either unable or unwilling to serve and there is no alternate executor or the alternate executor is unable or unwilling to serve, then a personal representative with Will annexed must be appointed. The majority of the heir-at-law must select the personal representative.