

PETITION TO PROBATE WILL IN SOLEMN FORM

INSTRUCTIONS

I. Specific Instructions

1. This form is to be used when filing a Petition to Probate Will in Solemn Form pursuant to O.C.G.A. § 53-5-20 et seq.
2. It is permissible, but not mandatory, to use this form in connection with a petition to probate a copy of a will in lieu of a lost original pursuant to O.C.G.A. § 53-4-46, provided that appropriate interlineations are made, and additional information is given to overcome the presumption of revocation.
3. Signatures of heirs who acknowledge service must be sworn to before a notary public or the Clerk of any Probate Court of this State. It is not necessary that all acknowledgments appear on the same page. An attorney at law may acknowledge service on behalf of an heir; however, the attorney must certify that he or she currently represents that heir with regard to the pending matter and, in order to comply with O.C.G.A. § 53-11-6, the attorney's signature must be sworn to as provided above. With regard to a power of attorney, the attorney-in-fact may acknowledge service on behalf of the grantor of the power, provided that the power of attorney grants such authority, the signature of the attorney-in-fact is attested, a copy of the power of attorney is attached, and the attorney-in-fact certifies that the copy is a true copy and is still in effect.
4. O.C.G.A. § 53-11-2 provides that a party to a probate proceeding who is not sui juris must be represented by a guardian provided that the Court may appoint a guardian ad litem or determine that the natural guardian, guardian, conservator, or testamentary guardian has no conflict and may serve. Should a guardian ad litem be necessary because a party is not sui juris, use Supplement 1.
5. O.C.G.A. § 53-5-22 (c) provides that service of notice, when made personally or by mail, shall include a copy of the Petition and of the Will (and Codicil(s)) for which probate is sought. The same is true when service is acknowledged. This form may, but is not required to, be used where service by registered or certified mail with return receipt requested, restricted delivery, is requested by the Petitioner(s) in lieu of personal service, in accordance with O.C.G.A. § 53-11-3 (e). Make appropriate changes in the Order for Notice, Notice and Certificate of Service. If Petitioner(s) request(s) personal service by registered, certified, or statutory overnight delivery with return receipt requested and with delivery restricted to the addressee only and that service is unsuccessful, service must be made pursuant to O.C.G.A. § 53-11-3 (a).
6. Paragraph 4 requires sufficient factual information for the Court to conclude that those listed in Paragraph 3 include each and every heir of the Decedent and that there are not additional heirs of the same or closer degree according to O.C.G.A. § 53-2-1. These facts must allow the Court to rule out the possibility that there may be other heirs of the same or closer degree who have not been listed. Provide the date of death of any deceased heirs and the name of the deceased heir's Personal Representative, if applicable. The Personal Representative of a deceased heir is authorized to consent on behalf of that heir. O.C.G.A. § 53-7-1. [NOTE: If you are uncertain how to determine the heirs of a decedent, refer to the "Heirs Determination Worksheet" available from the Probate Court or at

www.gaprobate.gov.] Examples of such statements would be: (a) “Decedent was or was not married at the time of his death and had no children born, adopted, living or deceased, other than listed herein”; (b) “Decedent had no other siblings half or whole other than those listed herein”; (c) “the Decedent’s brother who died previously had no other children born, adopted, living or deceased, other than listed herein.”

7. Paragraph 6. In the event there is a Testamentary Conservator named in the Will according to O.C.G.A. § 29-3-5 and the Decedent died leaving minor children, then the Consent to Serve should be completed. When a Testamentary Guardian is to be appointed, Supplement 5 (Testamentary Guardianship) should be included with this Petition, and the Petitioner(s) must provide full names and addresses for the minor children’s adult siblings and grandparents. If there are no living adult siblings or grandparents, the Petitioner(s) must provide full names and addresses for the minor children’s great-grandparents, aunts, uncles, great-aunts, or great-uncles, if any such relatives exist. If the minor children shared the same parents, the Petitioner(s) may complete one Supplement 5 for such similarly situated children. If the minor children did not share the same parents, a separate Supplement 5 must be filed for each minor. Contact the Probate Court in which the Petition will be filed for its policy as to the filing of Supplement 5 when there are multiple children.
8. Use Supplement 2 if the Court determines it is appropriate to appoint a special process server.
9. Use Supplement 3 when an additional certificate of service is necessary.
10. Exhibits should be labeled at the bottom of each exhibit as Exhibit “A,” Exhibit “B,” etc. in consecutive order. The corresponding letter of each said exhibit should be inserted into the appropriate place in the form.
11. An oath must be administered by a Probate Judge or Clerk (the oath cannot be administered by a notary public). Use Georgia Probate Court Supplement 4 for the oath. The oath is not included in this form. Georgia Probate Court Standard Form 53, Commission to Administer Oath, can be used if the oath is to be administered by a court outside the State of Georgia.
12. According to Uniform Probate Court Rule 5.6 (A), unless the Court specifically assumes the responsibility, it is the responsibility of the moving party to prepare the proper citation and deliver it properly so it can be served according to law. All pages after the Notice regarding Uniform Probate Court Rule 5.6 (A) are to be completed by the moving party, unless otherwise directed by the Court.

II. General Instructions

General instructions applicable to all Georgia Probate Court Standard Forms are available in each probate court or at www.gaprobate.gov, labeled GPCSF 1.

4.

Required: *[Provide sufficient factual information to enable the Court to conclude that all of the heirs of the Decedent are included and that there are no heirs of the same or closer degree according to O.C.G.A. § 53-2-1. Provide the names of any deceased heirs, the name and address of his or her Personal Representative, if any, and include the date of death for each. [See instructions for further clarification.] Also, state here all pertinent facts that may govern the method of giving notice to any party and that may determine whether or not a guardian ad litem should be appointed for any party. If any heirs listed above are cousins, grandchildren, nephews or nieces of the Decedent, indicate the deceased ancestor through whom they are related to the Decedent. If any executor nominated in the Will has a priority equal to or higher than the Propounder but will not qualify, indicate the name and reasons.]*

5.

[Initial one]

_____ (a) To the knowledge of the Petitioner(s), no other proceedings with respect to this estate are pending, or have been completed, in any other Probate Court in this State or any other state.

_____ (b) The probate of another purported Will of the Decedent is pending in the State of _____, in the _____ County _____ Court. The name(s) and address(es) of the Propounder(s) and the names, addresses and ages or majority status of the beneficiaries under the other purported Will to whom notice is required under O.C.G.A. § 53-5-22 (b) are listed on the attachment hereto, as Exhibit “____,” which is expressly made a part hereof, as if fully set forth herein.

_____ (c) An Administration is pending in the State of _____, in the _____ County _____ Court. The name(s) and address(es) of each Petitioner and the name(s) and address(es) of any appointed Administrator(s), if any, are listed on the attachment hereto, as Exhibit “____,” which is expressly made a part hereof, as if fully set forth herein.

6.

[Initial all that apply; however, please note that this form may not be appropriate if the Petitioner(s) is/are seeking the appointment of a Testamentary Guardian, which requires notice to the relatives of the Decedent's minor child(ren) pursuant to O.C.G.A. § 29-2-4.]

At the time of the Decedent's death, and at this time, the Decedent left (a) minor child(ren) and the Will names a Testamentary Conservator.

_____ (a) The Will names a Testamentary Conservator of (a) minor child(ren) of the Decedent. At the time of the Decedent's death, he/she had (a) minor child(ren) and there is/are no court-appointed Conservator(s); the following individual(s) is/are named as Testamentary Conservator(s) in the Decedent's Will:

Name	Address
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_____ (b) The Will names a Testamentary Conservator of (a) minor child(ren) of the Decedent. At the time of the Decedent's death, he/she had (a) minor child(ren) and there is/are a court-appointed Conservator(s), who is/are identified as follows: *[NOTE, if named Testamentary Conservator(s) and court-appointed Conservator(s) are different.]*

Name	Address
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7.

Additional Data: *[Where full particulars are lacking, state here the reasons for any such omission.]*

WHEREFORE, Petitioner(s) pray(s):

1. Leave to prove said Will (and Codicil(s)) in Solemn Form;
2. That due and legal notice be given as the law requires;
3. That said Will be admitted to record on proper proof;
4. That Letters of Testamentary Conservatorship issue, if applicable;
5. That Letters Testamentary issue; and
6. That this Court order such other relief as may be proper under the circumstances.

Signature of Petitioner

Printed Name

Mailing Address

Telephone Number

Signature of Attorney _____

Printed Name of Attorney _____

Address _____

Telephone Number _____

State Bar # _____

VERIFICATION

GEORGIA, _____ COUNTY

Personally appeared before me the undersigned Petitioner(s) who, after being duly sworn, state(s) that the facts set forth in the foregoing Petition to Probate Will in Solemn Form (and the attached Exhibit(s)) are true and correct.

Sworn to and subscribed before me this
_____ day of _____, 20_____

Signature of Petitioner

NOTARY/CLERK OF PROBATE COURT
My Commission Expires _____

Printed Name of Petitioner

**IN THE PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA**

IN RE: ESTATE OF _____)
)
_____,) **ESTATE NO.** _____
DECEASED)

**TESTAMENTARY CONSERVATOR'S
CONSENT TO SERVE**

[To be completed only in the event a Testamentary Conservator is named in the Will]

The undersigned, being 18 years of age or older, laboring under no legal disability, and being named as Testamentary Conservator, hereby consents to serve. I understand that once appointed, I will have the same rights, powers, and duties as set forth in O.C.G.A. § 29-3-5.

Sworn to and subscribed before me this
_____ day of _____, 20_____

Signature of Testamentary Conservator

NOTARY/CLERK OF PROBATE COURT

Printed Name of Testamentary Conservator

My Commission Expires _____

Sworn to and subscribed before me this
_____ day of _____, 20_____

Signature of Testamentary Conservator

NOTARY/CLERK OF PROBATE COURT

Printed Name of Testamentary Conservator

My Commission Expires _____

NOTICE

THE FOLLOWING PAGES ARE TO BE COMPLETED BY THE PETITIONER (MOVING PARTY) UNLESS OTHERWISE DIRECTED BY THE COURT.

SEE PROBATE COURT RULE 5.6 (A).

**IN THE PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA**

IN RE: ESTATE OF _____)
)
_____,) **ESTATE NO.** _____
DECEASED)

NOTICE

IN RE: The Petition to Probate Will (and Codicil(s)) in Solemn Form in the above-referenced estate

[Strike any paragraph if not applicable]

TO: _____
[List here all interested parties who reside in Georgia to be served personally or by registered or certified mail or statutory overnight delivery with restricted delivery to the addressee, if specifically requested by the Petitioner(s)]

This is to notify you who are required to be served personally, to file objection, if there is any, to the Petition to Probate Will in Solemn Form, in this Court on or before the tenth (10th) day after the date you are personally served or sign the return receipt.

TO: _____
[List here all heirs having known addresses outside the continental U.S. to be served by registered or certified mail or statutory overnight delivery with restricted delivery to the addressee, if specifically requested by the Petitioner(s)]

This is to notify you to file objection, if there is any, to the Petition to Probate Will in Solemn Form, in this Court on or before the thirtieth (30th) day after _____, 20____ (the date of the mailing of this Notice to you by certified or registered mail, return receipt requested); provided, however, that if a return receipt for such Notice is actually received by the Court within such thirty (30) days, the deadline for the filing of any objection shall be ten (10) days from the date of receipt shown on such return receipt.

TO: _____
[List here all heirs having known addresses in the continental U.S. to be served by registered or certified or statutory overnight delivery with restricted delivery to the addressee, if specifically requested by the Petitioner(s)]

This is to notify you to file objection, if there is any, to the Petition to Probate Will in Solemn Form, in this Court on or before the thirteenth (13th) day after _____, 20____ (the date of the mailing of this Notice to you by certified or registered mail, return receipt requested); provided, however, that if a return receipt for such Notice is actually received by the Court within such thirteen (13) days, the deadline for the filing of any objection shall be ten (10) days from the date of receipt shown on such return receipt.

BE NOTIFIED FURTHER: All objections to the Petition must be in writing, setting forth the grounds of any such objections. All objections should be sworn to before a notary public or before a Probate Court Clerk, and filing fees must be tendered with your objections, unless you qualify to file as an indigent party. Contact Probate Court personnel for the required amount of filing fees. If any objections are filed, a hearing will be (held on _____, 20____) (scheduled at a later date). If no objections are filed, the Petition may be granted without a hearing.

Judge of the Probate Court

By: _____
Clerk of the Probate Court

Address

Telephone Number

**IN THE PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA**

IN RE: ESTATE OF _____)
)
_____,) **ESTATE NO.** _____
DECEASED)

NOTICE

IN RE: The Petition to Probate Will (and Codicil(s)) in Solemn Form in the above-referenced estate having been duly filed,

[For use if an heir is required to be served by publication]

TO: _____
[List here all heirs having unknown addresses to be served by publication]

This is to notify you to file objection, if there is any, to the Petition to Probate Will in Solemn Form, in this Court on or before _____, 20____.

BE NOTIFIED FURTHER: All objections to the Petition must be in writing, setting forth the grounds of any such objections. All objections should be sworn to before a notary public or before a Probate Court Clerk, and filing fees must be tendered with your objections, unless you qualify to file as an indigent party. Contact Probate Court personnel for the required amount of filing fees. If any objections are filed, a hearing will be (held on _____, 20____) (scheduled at a later date). If no objections are filed, the Petition may be granted without a hearing.

Judge of the Probate Court

By: _____
Clerk of the Probate Court

Address

Telephone Number

**IN THE PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA**

IN RE: ESTATE OF _____)
)
) **ESTATE NO.** _____
DECEASED)

LETTERS TESTAMENTARY
[Relieved of Filing Returns]

At a regular term of Probate Court, the Last Will and Testament dated _____ (and Codicil(s) dated _____) of the above-named Decedent, who was domiciled in this County at the time of his or her death or was domiciled in another state but owned property in this County at the time of his or her death, was legally proven in Solemn Form to be the Decedent's Will and was admitted to record by order, and it was further ordered that _____, named as Executor(s) in said Will, be allowed to qualify, and that upon so doing, Letters Testamentary be issued to such Executor(s).

THEREFORE, the Executor(s), having taken the oath of office and complied with all necessary prerequisites of the law, is/are legally authorized to discharge all the duties and exercise all powers of Executor(s) under the Will of said Decedent, according to the Decedent's Will and the law.

Given under my hand and official seal, the _____ day of _____, 20____.

Judge of the Probate Court

*NOTE: The following must be signed if the
Judge does not sign the original of
this document:*

Issued by: _____ *[Seal]*

Clerk of the Probate Court

**IN THE PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA**

IN RE: ESTATE OF _____)
)
) **ESTATE NO.** _____
DECEASED _____)

LETTERS TESTAMENTARY
[Not Relieved of Filing Returns]

At a regular term of Probate Court, the Last Will and Testament dated _____ (and Codicil(s) dated _____) of the above-named Decedent, who was domiciled in this County at the time of his or her death or was domiciled in another state but owned property in this County at the time of his or her death, was legally proven in Solemn Form to be the Decedent's Will and was admitted to record by order, and it was further ordered that _____, named as Executor(s) in said Will, be allowed to qualify, and that upon so doing, Letters Testamentary be issued to such Executor(s).

THEREFORE, the Executor(s), having taken the oath of office and complied with all necessary prerequisites of the law, is/are legally authorized to discharge all the duties and exercise all powers of Executor(s) under the Will of said Decedent, according to the Decedent's Will and the law and is/are hereby required to render a true and correct inventory of all property, both real and personal, and any and all debts of the estate, and make a return of them to this Court, and further, to file a proper annual return or final return with this Court each year within sixty (60) days of the anniversary date of appointment until the Executorship is fully discharged.

Given under my hand and official seal, the _____ day of _____, 20____.

Judge of the Probate Court

*NOTE: The following must be signed if the
Judge does not sign the original of
this document:*

Issued by: _____ *[Seal]*

Clerk of the Probate Court

