

**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.

THANK YOU

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.

**The Judge and Staff
of the Probate Court**

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

**PROCEEDING
PRO SE IN
PROBATE COURT**

Please read this brochure BEFORE

**"Representing Yourself in Probate
Court Without an Attorney"**

PRESENTED AS A PUBLIC SERVICE BY

**HOUSTON COUNTY
PROBATE COURT
201 N. PERRY PARKWAY
P.O. BOX 1801
PERRY, GA 31069
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WILLIAM J. SELF, II, JUDGE
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**DOCUMENT PREPARED BY
WILLIAM J. SELF, II, JUDGE
BIBB COUNTY PROBATE COURT**

NOTICE: Before proceeding without an attorney, you are required by this court to receive and review this brochure. Please read its contents carefully before asking the assistance of court staff with the filing of forms or pleadings.

**GEORGIA PROBATE
COURT STANDARD FORMS**

Many of the usual and ordinary proceedings filed in probate court require the use of standard forms approved in accordance with the Uniform Probate Court Rules established by law.

The Probate Court gladly provides to citizens of this County and to others desiring to file proceedings in this Court copies of the Georgia Probate Court Standard Forms as required by law. These forms are printed or reproduced at taxpayers' expense; therefore, unless a true need is demonstrated, only one set of a requested form will be provided. Georgia Probate Court Standard Forms may be reproduced on copy machines, and exact reproductions are acceptable for filing in any probate court. The forms may also be re-created in computer word processors, but re-printed or re-created forms must contain a certificate that the content is identical in all material aspects to the standard form except for additions and deletions as noted.

The standard forms are primarily for use in the initial filing of new proceedings. There is not a standard form for every possible proceeding or pleading which may be filed in probate courts. In

particular, there are no standard forms for the filing of most objections, caveats, answers or responses or for the many motions and discovery pleadings which may be filed.

**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.

It is the responsibility for all such matters which would be assumed by an attorney employed to represent you, and you are again encouraged to consult first with an attorney before deciding whether to proceed *pro se*.

must be selected by a majority of the 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 the guardian is the petitioner.

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 petitioner is the surviving spouse or sole heir-at-law. Powers are limited to collecting and preserving the assets of the deceased. No expenditures or disbursements 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 petitioner.

NO ADMINISTRATION NECESSARY:

If all 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 any legal disability and must sign an agreement disposing of the estate. All creditors, if any, must consent to the entry of the Order Declaring No Administration Necessary.

WHETHER OR NOT THERE IS A WILL

TWELVE MONTHS' SUPPORT: This proceeding may be filed only by a surviving spouse or for minor children of the decedent. Minor children must be given a share of a twelve months' support award. 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.

PETITION TO ENTER SAFE DEPOSIT BOX: This proceeding is usually used 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.

WILLIAM J. SELF, II is Judge of the Probate Court of Bibb County, Georgia. He holds a B.B.A. and 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 is a frequent lecturer for the Institute for Continuing Judicial Education in Georgia. He is also active in church and community activities.

SEE INSIDE FOR DEFINITIONS

GEORGIA PROBATE PROCEEDINGS

"WHAT TO DO WHEN YOUR LOVED ONE DIES"

Presented as a Public Service by:

HOUSTON COUNTY PROBATE COURT
P.O. Box 1801
Perry, GA 31069-1801

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Janice D. Spires, Judge



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WILLIAM J. SELF, JUDGE

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DEFINITIONS

- ◆ **Acknowledgment of Service:** A written statement signed by a party to a legal action stating that he has received a copy of the pending proceeding. This does not by itself mean that the party consents to the relief requested in the petition.
- ◆ **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 and/or Alternate Executor, or the named Executor and/or Alternate Executor cannot or will not serve.
- ◆ **Affidavit:** A written signed statement of facts followed by a certificate of an officer authorized to administer oaths that was sworn to and subscribed before him.
- ◆ **Age of Majority:** The age at which, by law, a person is entitled to the management of his own affairs. In Georgia, eighteen years.
- ◆ **Beneficiary:** A person, including a trust, who is designated in a will to take an interest in real or personal property.
- ◆ **Caveat:** Objections in writing to the probate of a will, granting of letters of administration or other proceeding in the probate court stating the grounds for objection and seeking a denial of the relief sought in the pending application. In substance, an answer to a proceeding pending in the probate court.
- ◆ **Citation:** A written order of a court commanding a person named in the order to appear on a specific day and do a particular act, or show cause why he should not. A notice to file objections, if there are any.
- ◆ **Codicil:** An amendment of or republication of a will. (defined in O.C.G.A. §53-1-2)
- ◆ **Decedent:** The deceased person.
- ◆ **Domicile:** That place where a person has a true, fixed and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning. (Legal Residence: An actual residence at a place coupled with intent to remain.)
- ◆ **Estate:** The interest someone has in lands or in any other property. Property composing the assets of a decedent or person under guardianship.
- ◆ **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
- ◆ **Interrogatories: (Interrogatories To Witness To Will)** A series of formal written questions used in the examination of a party or a witness. They must be answered under oath. (Notary Public)
- ◆ **Letters Testamentary/Letters of Administration:** The official document issued by the Probate Court evidencing the authority of an executor or administrator.
- ◆ **Petition:** Formal written request, made to some official or body having authority to grant it.
- ◆ **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.
- ◆ **Self-Proving Will: (Proof of Witnesses)** A will that is witnessed by two witnesses and signed in front of a notary public.
- ◆ **Testate:** With a Will
- ◆ **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.

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 deceased's residence in Georgia or in the county where property of a non-resident is located.

This pamphlet briefly describes the usual, initial proceedings. 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. The 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 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 under Georgia law. Neither the Court or 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 in black ink. 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 proceeding. 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' 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. "Heirs-at-Law" are the persons who would inherit the estate if there were no lawful Will; heirs-at-law may or may not be beneficiaries under the Will. The notice requires anyone having a legal cause to object or to contest the alleged Will to file the objection or contest before a certain deadline. The original Will must be attached to the petition, and proof of the execution of the will must be provided by either 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(s) is (are) either unable or unwilling to serve, an Administrator C.T.A. (with Will annexed) must be appointed. If a named Executor is still living, the Executor 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 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 an automobile, title may be transferable through the Tag Office 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; otherwise, the administrator