



FORT GORDON CYBER CENTER OF EXCELLENCE
OFFICE OF THE STAFF JUDGE ADVOCATE
Legal Assistance Office



This Information Paper from the Fort Gordon Legal Assistance Office contains general legal information on a topic upon which Legal Assistance Attorneys typically advise. The information provided is general in nature and does not constitute formal, specific legal advice. If you wish to receive legal advice specific to your situation, please consult an attorney.

CYBER ADVOCACY: THE PROBATE PROCESS IN SOUTH CAROLINA

A will is the legal document that allows someone to direct who is to receive their property when they pass away, but the will itself does not allow your loved access to your accounts or property. The will must be offered for Probate in the county Probate court. If you take the will to a bank in South Carolina and ask for access to the person's account, the bank will likely tell you to bring them the Certificate of Appointment. The Certificate of Appointment is the document issued by the Court appointing the personal representative of the estate.

Your spouse has passed away, and you have their will. What is the next step? First you need to determine if probate is necessary. Ask yourself is there any property, bank accounts, stock, or investments accounts that were just in your spouse's name. Any accounts that have both your name and your spouse's name on them will, most likely, pass automatically under the law. If there are no accounts, property, or assets that you cannot access, then you will not be required to offer the will for probate. You may simply take the will to the county Probate Court and have the will filed for record with the Probate Court.

If you discover there is property, accounts or assets that you cannot access then you will need to probate the will. Probate is the process that the Court uses to certify that the will is the last will and testament of the person who passed away and appoints the personal representative to administer the estate. You are not required to hire an attorney to probate a will, but is recommended to hire an attorney to ensure the process is properly handled.

What do you need to take with you to the Probate Court or to meet with the attorney? First you need a copy of the death certificate and the original will. If you cannot find the original will, you can take a copy of the will, but it is significantly easier to probate the original will. You will also need to provide the information for the heirs of the person who passed away, such as: Was the person married? How many children did they have? Did they adopt any children? Did any of their children die before they died? If a child of theirs died, did that child have any children? This information will be necessary to probate the will.

The probate process in South Carolina is more complicated and expensive when compared with other states. In South Carolina, probate is required to remain open for eight months and multiple forms must be filed with the Probate Court, including the initial petition, information to heirs and devisees, inventory and appraisal, and final accounting. You can, typically, receive the Certificate of Appointment within a couple of weeks in South Carolina.

Due to time and forms required for Probate in South Carolina, it is difficult to estimate the expense of the attorney's fees. Additionally, there is a probate fee due to the Probate Court based on the value of the estate as listed in the inventory and appraisal. Typically, the Probate Court will want the

probate to be completed within a year. You are not required to hire an attorney for probate, but the Court will require you to hire an attorney to assist with deeding real property (land or a house) out of the estate. It is recommend that you consult with an attorney who is familiar with the probate process.

Additional Information

For additional information, the Fort Gordon Legal Assistance Office is located at 267 3rd Avenue, Building 35202. You may need to reach the office by calling (706) 791-7812 / 7813. Please be advised you must have an appointment to consult with one of the attorneys; however, paralegals are available during hours of operation to answer general questions.