



CYBER LEGAL ADVOCACY BRIEF

A Preventive Law Series

Cyber Center of Excellence Office of the Staff Judge Advocate
Legal Assistance Division, Fort Gordon



THE PROBATE PROCESS IN GEORGIA

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 access to their accounts or property. The will must be offered for probate in the county Probate Court where the person lived before the accounts or property can be accessed. If you take the will to a bank and ask for access to the person's account, the bank will likely tell you to bring them the Letters Testamentary. The Letters Testamentary is the document issued by the Court appointing the executor of the estate.

What is the next step when your loved one has passed away and you have their will? 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 loved one's name. Any accounts that have both your name and loved one'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 do not have access to 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 executor or executrix to administer the estate. You are not required to hire an attorney to probate a will, but it is highly 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 an 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. Probating a copy of the will requires an affidavit or testimony from one of the witnesses to the will to prove that the copy is the same as the original and that it was properly signed and witnessed. 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? You will also need the name and addresses of all the legal heirs. This information is required on the Probate Court forms.

The probate process in Georgia is relatively simple and inexpensive when compared with other states. In Georgia, you can typically receive the Letters Testamentary within two months. Attorney's fees for a simple probate, one with no contest or issues, should cost approximately \$2,000 or less with court costs being less than \$500. The time it takes to administer the estate depends on multiple factors. If you do not use an attorney, do not forget that you are required to run a debtor and creditor's notice in the local newspaper. Again, it is recommended that you consult with an attorney who is familiar with the probate process. The type of Probate action to be filed should be carefully considered based on the facts and circumstances of each individual person. There are times when probating a will is not in the best interest of the parties and other options should be pursued.

Georgia Probate Court forms are available at <https://www.gasupreme.us/probate-court-standard-forms/>. Again, it is highly recommended that you consult with an attorney before filing a probate action to ensure it is best action for the specific facts and circumstances. For example, a spouse may be able to file an action for a Year's Support as opposed to probating the will. There will be benefits and detriments that must be considered in the type of filing. Additionally, there may be other legal documents that will need to be prepared such as a deed.

Additional Information

For additional information, the Fort Gordon Legal Assistance Office is located at 267 Heritage Park Lane, Building 35202, Fort Gordon, Georgia. 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.