

PROBATING AN ESTATE AFTER A DOMESTIC VIOLENCE MURDER-SUICIDE

When a friend or family member passes away, many times their estate has to be probated. Below is basic probate information that may help you determine the next steps to take.

WHAT IS PROBATE?

Probate is the process done through the local Probate Court to gather and distribute a person's assets and pay their debts after death. A "decedent" is the person who has passed away.

WHEN SHOULD YOU CONSIDER PROBATE?

You will usually have to file for probate to have authority to transfer the assets if there are assets in the decedent's name. If the decedent had a will, it must be probated for the executor to have authority over the estate. A person named executor in the will has just been nominated by the decedent, they are not officially the executor until the Court issues an order and authority called "letters testamentary." Once appointed, an executor or administrator has a fiduciary duty to the heirs or beneficiaries to manage the estate. The executor (if there is a will) or administrator (if there is no will), is responsible for administering the estate, paying the debts of the estate and distributing the property as required by law. However, they are not personally responsible for debts of the estate.

WHAT HAPPENS IF THERE IS NO WILL?

Any family member or interested party can file for probate. The person appointed to manage the estate is called the "administrator" and the heirs of the decedent will inherit the property. Heirs, usually next of kin, are the individuals who receive any inheritance from the estate. To determine who the heirs are, please see the heir determination worksheet located at www.gaprobate.gov.

DO ALL ASSETS HAVE TO GO THROUGH PROBATE?

Certain assets, like joint bank accounts, life insurance policies that list a beneficiary other than the decedent, and real estate titled as "joint tenants with rights of survivorship," are among the assets that typically do not have to be probated and automatically become the property of the other joint owner or beneficiary at death.

HOW DO I START THE PROBATE PROCESS?

Legal assistance is always recommended. Check with your local Legal Aid office, Bar Association, and Probate Court for resources if you cannot afford an attorney. Some counties also have free probate clinics. Some of the most common probate forms along with a handbook for executors can be found at www.gaprobate.gov. Depending on the circumstances surrounding the decedent's death, you may have to notify the court that a crime was committed and the guilty party should not inherit any assets as a result of the death.

YEAR'S SUPPORT FOR SURVIVING SPOUSES OR MINOR CHILDREN

A Year's Support Petition can be done with or without probating an estate. It asks the court to award all of the assets of the decedent to decedent's spouse or minor child over and above other people and creditors. This Petition must be filed within 24 months of death.

The probate process takes time and can also be difficult and confusing.

We're here to help!



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