Georgia Probate Handbook

Third Edition

GEORGIA PROBATE HANDBOOK

Third Edition

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Georgia Probate Law Group

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Introduction

Welcome, and thank you for reading this book.
Perhaps you just lost a spouse or a parent, and you're feeling confused or helpless about what steps you need to take to ensure things move in the right direction. Or maybe a relative, heir, or other person has taken property from the estate of a loved one, and you want to stop this wrongdoing. In any case, you know you need help.

Right now, you may be in the midst of one of the most challenging times of your life. Maybe you know you need answers, but you're not even sure what questions to ask and in what order. Maybe you feel driven to do something: you're not sure what to do or how to do it, but you want it done the right way.

You also want to reduce hassles as much as possible for yourself and for your loved ones -- a smooth process that is as simple, clear and stress-free as it can be.

As attorneys who focus exclusively on helping with situations after a family member has passed away, it is our mission to make probate easier for you. That way, you can concentrate on your life, breathe easier, and ensure your loved one's estate is handled properly.

This book contains a lot of high-level overview information on the Georgia Probate Process. We wrote it to give you information you need to know, so you can understand the legal landscape and make better decisions, without feeling overwhelmed.

It is by no means comprehensive - if you have questions about your situation please contact our office for a complimentary consultation.

DISCLAIMER: While we sincerely hope that this book it helpful in giving you an overview of how the probate process works in Georgia, this book is in no way intended to give legal advice. Nothing in this book should be construed to be legal advice, and your receipt and reading of this book does not create an attorney / client relationship with Georgia Probate Law Group by Broel Law, LLC or any of its attorneys.

If you would like to discuss particular aspects of your case and find out how our firm can help you make this time easier, please click here to contact us for a complimentary consultation or call our office at 770-343-4043.

Where to Start?

Below is a list of first few things you should think about when settling an estate in Georgia. There are many more steps to the process, but this list should give you some immediate direction about what to do right now.

1. Determine Whether the Estate Requires Immediate Attention. Is there disharmony among the family? Are there minor children (under age 18) without a surviving parent or guardian? Did the deceased own a business? Are there any other circumstances that, if not dealt with now, could cause significant harm to the estate or others? If so, you may need to file an appropriate petition with the probate court right away. If this is the case, contact our office right away so we can help you get it done right.

2. Determine Whether There is a Will. If your loved one had a will, you will have different options in probate than if there was no will. If there is a will, it should name someone to serve as executor. It is important to remember that the named executor does not have any power until he or she is confirmed as executor by the Probate Court. If there is no will, then someone will need to be appointed by the probate court as the administrator to manage the estate.

3. File Claims with Life Insurance. Often, life insurance can help pay for expenses after someone passes away, so it is important to file a claim right away. It can take 30 days or more for the insurance company to send payment. The insurance company can give you the forms to file a claim. The insurer may wait until after the estate is opened to process the life insurance claim if the beneficiary is no longer alive, or if the estate itself has been named as a beneficiary.

4. Begin Collecting Important Documents. Probate is the legal process of determining what to do with property and assets that are left after someone passes away, and distributing those assets to creditors, heirs, and beneficiaries. To do that, you will need to get a good idea of what the deceased's financial situation is. Begin collecting all documents that might be important, such as bank statements, credit card statements, business documents, deeds, titles, and any other

financial documents you find or receive in the mail. This will help later when you need to make a complete list of all assets and creditors.

This part of the process is important because Georgia probate law has a specific order in which creditors, heirs, and beneficiaries must be paid. If an heir, beneficiary, or creditor receives property out of order, then the person making the distribution (and potentially the person receiving the property) could be liable to the party that was skipped.

5. Secure the Estate Property. The home, the vehicles, and other valuable assets should be secured until probate is opened. For example, you should store the vehicles in the garage if possible and consider changing the locks on the home. If the estate has valuable jewelry or other small valuable items, you should consider putting them into a safe deposit box. Do not let family members take any property of the estate until probate is opened, the inventory is complete, and the executor or administrator has approved the distribution – even if they ask nicely!

6. Cancel Utilities and other Nonessential Services. If there is no one else living at the home, cancel nonessential services, such as cable television, internet service, and phone service. Also, cancel any magazine and newspaper subscriptions to preserve the estate. Additionally, you should notify the homeowner's insurance carrier that the home is vacant. The premium on a vacant home can be higher than the premium for a non-vacant home, but unless the insurance company is notified, a vacant home may not be covered by homeowner's insurance. Lastly, you may be able to reduce the auto insurance premium by informing the insurance company of the death and telling them that the vehicle will not be driven. The insurance policy should not be cancelled until after probate is opened and the vehicle is sold or distributed to an heir or beneficiary.

7. Open the Estate with the Probate Court. Almost all estates will need to be opened with the probate court in order to sell and transfer property correctly. In fact, you cannot change the title to real estate without opening probate, and many times banks and other financial institutions will not discuss the deceased's accounts until an executor or administrator has been appointed by the probate court. You open an estate by filing the appropriate petition with proper probate court.

Typically, the petition should be filed with the probate court in the county where the deceased resided. There are a number of petitions that can be used to open probate in Georgia, so you want to make sure you select the right one for the situation in your case.

8. Determine Whether the Estate is Simple Enough For You to Handle on Your Own.

Sometimes an estate is simple enough for you to handle on your own, while other times you will want to have an experienced legal team help you. More often than not, the costs associated with getting experienced help are more than made up for in time savings and expenses saved to the estate.

Some things to consider when determining if you will handle the estate on your own are:

- Whether the family is totally harmonious, somewhat peaceful, or hostile;
- How much time each week you have to dedicate to the estate;
- How large or small the estate is;
- How many asset types are involved;
- How many or few creditors there may be; and
- Your experience and comfort level in handling legal matters and your comfort with court procedures and court documents.

Click here to take a short assessment to help you determine if the estate is simple enough to handle on your own.

Overview of Settling an Estate

There are a lot of moving parts to settling an estate. As a result, knowing what needs to happen, when it needs to happen, and how it needs to happen is not always obvious or straight forward. To make things a little simpler at GPLG, we break the estate process down into three phases:

- Appointment Phase
- Administration Phase
- Distributions & Discharge Phase

If all three phases are completed properly, then the estate will be fully settled and done right. Let's take a brief look at some key parts of each phase.

Phase 1: Appointment

We call the first phase the appointment phase. That is because the central goal of this phase is to have someone appointed to represent the estate. There are a couple of ways that person can be chosen.

When the deceased leaves a will, it will often nominate someone to manage the estate and that person is called the nominated executor. To have the executor officially appointed to the position, a petition must be filed with the appropriate probate court asking the court to formally appoint the named executor. It is important to note that the formal appointment is necessary even though there is a will – someone named as executor in a will is not automatically the executor and does not have any power to act for the estate until he or she is officially appointed by the Probate Court. The reason for this is that a will is not officially considered valid until it is filed for Probate (which literally means "to prove the will") with the Probate Court and approved by the Probate Judge.

When the deceased does not leave a will, the person who will manage the estate is called an administrator. The process for having an administrator appointed is similar to that of an

executor, but different document must be filed with the court. Either way, the petitions must make certain disclosures to the court, including the identity of the heirs.

In addition to selecting the person who will manage and make decisions about the estate, there are some other very important things going on in Phase 1. For example, a determination must be made whether the executor or administrator will need to post a bond, will be required to file inventories, and will serve with limited or expanded powers. These three items will have a very large impact how long it takes to settle the estate and how much it will cost. For example, if the executor or administrator has only limited powers, then court permission must be secured prior to engaging in some common activities, such as selling the estate home.

Phase 1 ends once either Letters Testamentary or Letters of Administration are received from the court. It is that document that provides the executor or administrator with power to formally begin settling the estate. That takes us to Phase 2.

Phase 2: Administration

We call the second phase the administration phase. This is the longest of the three phases. Some of the key things that must be done in Phase 2 are to assess assets and creditors of the estate, determining what will be done with each asset and creditor, and identifying what property is likely to be distributed to heirs or beneficiaries. There are a lot of things going on in Phase 2. Some examples of things that the executor or administrator should be considering are:

- How to best gather and protect estate assets?
- Where to open estate bank account and how to move funds?
- What is the total value of all creditor claims?
- How will creditors be paid?
- What is the financial health of the estate?
- Are there enough liquid funds to pay all creditors? If not, which creditors should be paid and how many of the seven creditor categories will be left out?
- Must real estate or other assets be sold to raise cash to pay creditors?
- Will a formal inventory be required? Should an informal inventory be prepared?
- Should property be sold to pay beneficiaries/heirs, or should it be distributed to them as is?

- Is the estate required to pay off the mortgage on the estate home prior to distributing it to beneficiaries?
- Will creditors negotiate?
- Are interim distributions possible? Should they be made?
- Is court permission required prior to selling an asset or taking another action?
- If there is a will, what is the proper order to distribute property to the beneficiaries?
- What if there is not enough property to meet all of the disbursements required by the will?

This list is just a sample of some things that an executor or administrator must consider. There are many more considerations that did not make our short list. And, each estate will usually have its own unique factors that should be considered.

The executor/administrator has many duties to an estate. One very important responsibility is ensuring that all creditors are paid properly and in accordance with Georgia law. If not done correctly, then mistakes in this area could result in the executor or administrator becoming personally responsible to pay estate creditors out of their own pocket. So, be careful!

Phase 2 comes to an end once all estate property and creditors have been handled, and final distributions are ready to be made to beneficiaries or heirs. At that point, we move on to Phase 3.

Phase 3: Distributions & Discharge

The third Phase is called Distribution & Discharge. The main goals of this phase are to successfully distribute all remaining assets of the estate to the heirs or beneficiaries, and then to close the estate in such a way that the executor or administrator is protected from liability for anything that happened while the estate was open. The liability protection is important because that is what gives the executor or administrator the peace of mind to know that the estate is finished, and nothing can come back to haunt them later.

To do that, the executor or administrator must file an appropriate petition with the probate court. It is usually best if the heirs and beneficiaries have signed a legal release to release the executor or administrator from any legal liability before the petition is filed. The best way to secure this

release is to have it ready when distributions are made so that beneficiaries or heirs may sign the release and receive their distribution at the same time.

If the probate court grants the liability protection, then the executor or administrator will not have to worry about future liability as a result of managing the estate. When this type of petition is filed, however, the probate court is required to notify all heirs or beneficiaries who did not sign a formal consent. As a result, each heir or beneficiary is given the opportunity voice a concern and challenge the executor or administrator if they are unhappy about how the estate was handled. These situations can be difficult and must be handled with care.

Once the discharge is granted (whether or not the court approves the liability protection), the court will issue a discharge order, which is the formal order that closes the estate. When this happens, the estate is finished!

How Simple is the Estate?

It is very common for an executor or administrator to wonder how simple the estate will be to settle. Is it simple enough to handle on your own? Would you be better served by having an experienced legal team by your side to guide you through handling it right?

We often see situations where the estate appeared simple at first, then got complicated. Mistakes were made because the executor or administrator didn't know about all of their options. In addition, there can often be pressure from family members to just do it yourself because that saves the estate money. Unfortunately, many executors and administrators realize too late that if a mistake is made, it is the executor or administrator that is liable for it, not the other heirs or beneficiaries. And, on top of that, fixing mistakes always requires more time, money, and effort than just doing it right the first time.

Any way you look at it, these are not easy issues.

This is such a common question that we designed a short, 3 minute assessment to help you answer it. **Click here to take the free assessment** so you have a better idea of how complicated the estate may get, and you can make better decisions for the estate.

How to Handle Estate Disputes

Estate disputes can cause havoc in families and create problems that can last for years. Each probate dispute has unique challenges. However, certain types of disputes tend to emerge again and again:

- Fights over who will be the administrator or executor of the estate;
- Challenges to the validity of a will;
- Concerns that someone has misappropriated the property of the estate;
- Frustrations with the administrator or executor – for instance, when requests for information about the estate are ignored, or inaccurate information is provided;
- Disputes about who should be allowed to inherit;
- Disputes over what estate property should be sold versus what items should be kept in the family, such as the estate home or other valuable property;
- Disputes about which family member should receive specific property or important sentimental items;
- Frustrations when someone feels like their loved one's wishes are not being followed.

Estate disputes can be challenging to navigate as well as hard to process emotionally. After the death of a loved one, the last thing most of us want is to deal with an contested estate situation. But, unfortunately, there is usually only one chance to make sure the estate is handled properly. As a result, if you feel something is not quite right, you will have to make a decision about whether you want to take appropriate action to set it right, or let it go forever.

Below, we've compiled general insights into common disputed estate scenarios. This list is by no means comprehensive, but it hopefully can help you begin to understand the most common situation, and some of the options that you have for each of them.

Someone Has Been Taking Property from the Estate

No one can legally claim property of the estate unless that person is an administrator or executor lawfully appointed by the Probate Court. If someone other than an administrator or executor has usurped property, that person should be stopped as soon as possible. As time passes, the wrongdoer may sell off the property, or a missing asset may "disappear." Obviously, this type of situation is time sensitive and it is important to take appropriate action in the probate court to stop this wrongdoing quickly before more estate assets are lost.

Someone Has Filed a Fraudulent Will

Intuitively, you might think that the Georgia probate court would stop someone from filing a fraudulent will. Unfortunately, that is not the case. The court will accept any will that passes a minimum threshold. Family members, however, can challenge wills that they believe are fraudulent, but this process is complicated. You can only challenge a will on a handful of legal grounds. For instance, some of the most common are: someone committed fraud; the person who signed the will was not of sound mind; or another person had undue influence on the process of creating the will.

Time is of the essence if you want to challenge a fraudulent will. The deadline to file an objection is usually as short as 10 to 13 days. In addition, these allegations require a high burden of proof to overturn the will. Fortunately, filing the objection will open the civil discovery process, which is designed to allow both parties access to information to prove their case.

Disputes Over Who Should Be the Administrator or Executor of the Estate

The administrator or executor has a tremendous amount of power over the estate. For instance, he or she can distribute property and decide which of the estate's assets should be kept and which should be sold.

If your loved one left a will, that document will nominate an executor. But a nomination does not guarantee appointment by the court. For example, if the executor has a history of misusing your loved one's property, the probate court may refuse the nomination if another family member files a timely legal objection.

If your loved one did not leave a will, then the heirs vote to choose an administrator. If a family member is unsatisfied with the vote, he or she can challenge the administrator's appointment in

the probate court. Majority does not always rule, as the probate court judge has the final word.

Time is of the essence with these situations! You may have as little as 10 to 13 days to prepare and file a legal objection to another person's request to be appointed as executor or administrator. Missing the deadline can have serious consequences! For example, the probate court may refuse to allow you to file an objection at all after the deadline.

Administrator Or Executor Is Not Forthcoming with Information

Depending on the powers granted to the executor or administrator, they may be required to provide inventories to the court and all other interested parties. Even if an executor or administrator is exempt from the requirement to provide a formal inventory, being transparent with heirs and beneficiaries is always a good idea.

Some common examples of requests that are reasonable for an heir or beneficiary to make are:

- A list of the assets of the estate and the value of each
- A list of the known debts of the estate and the amount of each
- The general plan on what will be done with each asset: will it be sold? Held? Distributed to a family member?
- The general plan for paying creditors: will debts be negotiated? Paid in full? Will any not be paid? What's the legal reason for nonpayment?

When information is not forthcoming, it is natural to question whether everything is being done properly. A common sentiment we hear from clients in this situation is: why would someone hide information if everything was above board?

Executor or Administrator Not Acting in Best Interest of Estate

The executor or administrator has a fiduciary duty to act in the best interests of the estate and put the interests of the estate ahead of their own personal gain. That means that the executor or administrator must seek to settle the estate as expeditiously as possible; use their best judgment in how to handle estate property to benefit the creditors, beneficiaries, and heirs of the estate; and to maximize the value of the estate.

In addition, the executor or administrator cannot, for example, purchase the estate home or other estate property for less than the fair market value. It also means that the executor or administrator should not be living in the estate home (or allowing another person to live in the estate home) without paying rent.

If you believe the executor or administrator is not acting in the best interests of the estate or has put their interests ahead of the interests of the estate, then you may file a formal objection in probate court. There are a variety of legal sanctions you may request, and the court has wide ranging authority over executors and administrators.

Disputes About Who Is an Heir

During the probate process, the administrator or executor has to sign a sworn statement that identifies all of your loved one's heirs. The probate court typically accepts this sworn statement, except in the event of a challenge.

But what if an heir is left out? If a person believes that an heir was omitted or that a person identified as an heir should not be, then he or she must file a formal petition in the probate court to preserve their rights.

Once the petition is filed, each person who desires to remain an heir must present proof of their relationship to the deceased. This proof may come in a variety of ways, such as marriage certificate, birth certificate, order for child support, DNA test results, as well as several others. This is especially important when the deceased was male and one or more proposed heirs was born out of wedlock.

Estate Disputes Are Complicated

Every estate dispute is complicated and you often have only one shot to get it right. Many times, the correct path is not the one that seems obvious. As a result, our office recommends you have an attorney experienced in estate litigation by your side for any estate dispute.

Click here to contact our office or call 770-343-4043 for a complimentary consultation to see what your options are and how we can help you through it.

What To Do If You Cannot Find the Will?

Sometimes you may believe that your loved one left a will, but you cannot find it. What do you do?

First, have you checked the common locations where a will may be kept? A fire proof box in the home? File cabinets? Safe deposit box at the bank? Any other place where your loved one kept important papers, such as birth certificates, social security cards, and insurance policies? The will could be kept inside an envelope or a binder.

If it is not in any of the usual places, do you have any information about the attorney that may have prepared the will? Sometimes, but not always, the attorney that prepared the will may keep a copy in his or her file. Talk with friends and other family members about whether they have any idea where the will might be found or whether they know the name of an attorney your loved one may have worked with.

Finally, Georgia law allows a will to be put on file with the local Georgia probate court while the person is still alive. Unfortunately, this is rarely done. But, if you cannot find a will any other way, it is worth checking into.

What if you suspect foul play?

Sometimes, a will or codicil (amendment to a will), goes missing shortly after a family member passes away. You may be concerned that someone who did not like what the documents said destroyed them. Unfortunately, that makes the probate situation much more complicated. Fortunately, there are often ways to set things right, but you must move quickly. If you think you may be in this situation, **click here** to contact our office right away before it is too late.

Common Probate Terms

It is not uncommon to feel like there are a lot of confusing legal terms thrown around when talking about estate and trust matters. Our goal is to make the process simple and easy to understand. We love to educate our clients on the process and what is going on in their specific situation because we believe the best kind of client is a fully informed and educated client.

To that end, we have compiled a list of the most common legal terms used when discussing probate estate and trust situations. This list is designed for use as a quick reference to help you make sense of your situation. We hope you find it helpful.

Administrator: *the person that is appointed by the Probate Court to represent the estate in the case that the deceased did not have a will.*

Beneficiary: *a person who is named in the will to receive property (if the deceased had a valid will).*

Creditor: *individuals and companies to whom the estate owes money.*

Estate Administration: *the formal legal process of gathering and distrbuting the property of the deceased to beneficiaries, creditors, and heirs.*

Executor: *the person who is named as executor in the will and appointed by the Probate Court to represent the estate if the deceased had a will.*

Heir: *a person who would be eligible to inherit from the deceased under Georgia law if the deceased did not have a will.*

Intestate: *when the estate is administered under the provisions of Georgia law when there is not a valid will.*

Nominated Executor: *the person that the will names as executor of the estate. That person is not actually the executor until he or she is permitted to qualify by order of the Probate Court and takes an oath.*

Personal Representative: *this term generally refers to an executor, administrator, or administrator CTA. A temporary administrator is not a Personal Representative.*

Petitioner: *the person that signs and files a petition with the Probate Court requesting the Court to do something, such as open an estate.*

Probate: *the formal legal process of proving to the probate court that a document is the legal last will and testament of the deceased. Although, the word probate is commonly used to mean estate administration.*

Testate: *an estate where the deceased had a valid will, opposite of intestate.*

Frequently Asked Questions

Is Probate necessary? How can I avoid this?

Georgia law does not require an estate to be opened with the probate court. As a practical matter, however, most, if not all, estates should go through probate to protect against liability and prevent potentially costly problems in the future. For example, you cannot change the title to real estate without opening probate, and many times banks and other financial institutions will not discuss the deceased's accounts until an executor or administrator has been appointed by the probate court. So, probate is almost always required, and it does not matter if there is a will or not.

What does a will do?

While a Will does not save the family from having to go through probate, it can make a few things simpler. For example, the will should designate an executor to manage the estate and the will should identify who the deceased wanted their property to go to after they pass away. A also will has some other functions that can make settling the estate easier.

What if there is no will?

If your loved one did not leave a valid will, then the estate will proceed under Georgia intestacy laws. Those laws determine how your loved one's assets will be distributed. The largest differences between situations where there is a will versus estates without a will are that the will tells us who will manage the estate as Executor and who will receive what from the estate. When there is no will, we look to Georgia law to determine those things.

How long will probate take?

Settling an uncontested estate takes anywhere from 9 months to 18 months, on average. The process can sometimes be longer depending on the types and amounts of property involved.

When there is an estate dispute, the dispute itself can take a while because of the start and stop nature of the legal process. Depending on the type of claims involved in the dispute, resolving the conflict can take anywhere from a few months to a year or more.

I am being pressured to sign some documents. What do I do?

You never want to sign something unless you understand what you are signing. Typically, in an estate situation, the person trying to file the will or open the estate will ask the heirs to sign off on it. If you agree with the will or what that person is doing, then signing off will make the process easier. If you don't agree or have any hesitations, do not sign because if you do sign, you will be giving up important rights to challenge the situation. Don't let someone pressure you into signing if you are not comfortable with it. If you are unsure what to do in your situation, contact our office for a complimentary consultation.

I just received a notice from the Probate court, now what?

Read it very carefully. Often, the deadlines in Probate Court are very short – as little as 10 or 13 days. If you do not respond by filing a formal objection by the deadline, then the process will continue moving forward. If you are uncomfortable with what is happening, you must file an objection to preserve your rights. If you have questions about your situation or are unsure what to do, reach out to our office to discuss your options and have our team help you.

What legal duties does an executor or administrator have?

Executors and administrators have many legal duties under Georgia probate law. Generally, an administrator or executor must ensure that Georgia law is complied with in managing the estate and distributing estate property and funds. Also, an executor or administrator owes a fiduciary duty to the heirs and beneficiaries of the estate. This means the executor or administrator must take care to make sure that all of his or her actions are in the best interest of the estate. In fact, an executor or administrator must be careful not to get involved in a situation where there is the appearance that the executor or administrator may be doing something for their own gain that is to the detriment of the estate. If an executor or administrator violates his or her fiduciary duty, then they may be held personally liable, in addition to other sanctions that an heir or beneficiary may request the probate court to impose.

What property will go through probate?

Property may or may not have to go through the formal probate process. How each item of property is titled will determine how that item must be handled. For example, if the deceased was the sole owner of the property, then it will go through probate unless there is another special rule that would make it exempt, such as a valid beneficiary designation or TOD/POD designation. If, however, the property is titled in more than one person's name, things get more complicated. Georgia allows multiple people to own property together as either joint tenants or tenants in common. If property is owned as joint tenants, then ownership will usually be transferred outside of the formal probate process. If the property is owned as tenants in common, however, then formal probate will be required to transfer ownership. Properly categorizing probate and nonprobate property is a key part of the personal representative's duties to the estate, and getting it wrong can be a source of liability.

When is a will invalid?

There are a number of reasons why a will could be invalid in Georgia. First, if the person who wrote the will wrote another will later, the second will will likely revoke the first will, rendering the first will invalid.

Second, if the will is not signed properly, then it will be invalid under Georgia law. Georgia law requires that a will be signed by the person making the will (testator) in the presence of two witnesses, who must also sign the will. It is best that neither of the witnesses be a beneficiary of the will, but that alone will not invalidate the will. It does mean, however, that the beneficiary signing the will may not receive property under the will (unless certain other circumstances apply).

Third, a will may be invalid if it is signed at a time when the person making the will is not competent to make a will, or if the person is under the undue influence of another person. These situations are unique and proving them depends on the specific circumstances of how the will was created, which are different in every case.

There are other reasons why a will may be found invalid, although the three above are the most common. These situations are very complicated, and small differences in how the situation is handled can have a large difference in the outcome.

What happens if someone violates the terms of the will?

Once a will has been admitted to probate by the Probate Court, the Executor is bound to follow its terms. If the Executor does not follow the will, then a beneficiary or other interested person can file a petition with the Probate Court to seek sanctions against the Executor. These sanctions can range from denying executor compensation, to paying funds back to the estate, to removal from office.

But what if the will has not yet been admitted to probate by the Probate Court? In that case, no one has been appointed as executor. So, if someone is claiming to be an executor or otherwise taking control of the estate, then that person can be liable for a multiple of the amount of harm they caused to the estate as a result of their actions. To pursue that relief, a petition will need to be filed with the probate court.

Can someone live in (or continue to live in) the estate home for free?

The estate home must be treated like an estate asset. As a result, generally speaking, the executor or administrator should charge market rate rent to anyone who is living in the estate home. If the executor/administrator is living in the home, they are not exempt from this rule –they should pay rent to the estate.

These situations are usually tricky to deal with, especially if maintaining good relationships is a concern. In addition to that, there are a lot of little rules to trip over. If you're considering how to ask (or force) someone to leave the estate home, contact our office for help.

What happens when there are multiple estates involved?

One of the most common ways a multiple estate situation can come up is when one parent passes away, and nothing is done with their estate. After that, the other parent passes away. Now both estates must be handled to fully sort out where the property will wind up. Often, this involves transferring certain property from one estate to the other estate, and then from there to the family members who should inherit. At each stage, however, creditor claims must be considered and dealt with to make sure everything happens properly.

What is spousal support in Georgia?

Georgia has some very powerful spousal support provisions known as "Year's Support." Year's Support is available to a surviving spouse and/or minor children of the deceased for two years from the date of death. It is important to keep that deadline in mind, because the right goes away after two years. Year's Support is a powerful tool because it allows a surviving spouse to receive property and money from the estate

before anyone else – including most creditors. In addition to that, it can allow the surviving spouse to save one year of real property taxes on the estate home.

Year's Support is often very beneficial for surviving spouses, but it has some complications. First, there are sometimes provisions in the will that can conflict with it or force the surviving spouse to choose between the will or Year's Support. Second, care must be taken to ensure the entire petition is completed correctly and completely – you only get one shot at year's support and leaving out even one interested party can have negative consequences. Third, if someone objections, the situation become vastly more complicated.

Year's Support is a fantastic tool that should be considered in every situation with a surviving spouse or minor children. It is complicated, though. Reach out to our office for help getting it done right.

What if someone has abused a power of attorney?

This can be an very serious situation. There are two things that may be done.

First, someone who has abused a power of attorney should not be in control of an estate. Unfortunately, we find that many times the person named in the power of attorney is also the person selected to be the executor of the will. Fortunately, Georgia probate law provides a way to object to the named executor's appointment if it can be demonstrated that the person abused a power of attorney. You should be aware that the deadline for this objection can be very short, so you will need to act quickly when you receive notice that a petition has been filed.

Second, once someone other than the person who abused the power of attorney is acting as executor or administrator, then the estate may pursue a claim against the wrongdoer for the harm done by their actions.

What if there is a trust?

A trust is a vehicle that is sometimes used in estate planning to avoid probate, to withhold property from a person until he or she meets a certain condition or reaches a certain age, or to deal with estate tax concerns.

If the trust was created during the deceased's life, then it is referred to as a living trust. A living trust is usually created to avoid probate or to take advantage of favorable tax laws. If all of the deceased's property is owned by the living trust, then probate can be avoided. The property held by the trust will be distributed to the trust beneficiaries according to the instructions in the trust's governing document, and trust administration will be necessary.

If the trust is found in the deceased's will, then it may or may not be used. Frequently, the trusts found in a will are called testamentary trusts or contingent trusts, meaning that the trust only comes into existence if a certain condition is met. Most often these types of trusts are used to make sure that a minor child does not receive property from an estate until he or she reaches a certain age.

These are the most common uses for a trust. If your loved one's estate involves a trust, then trust administration maybe necessary in addition to probate. It will be important to understand all of the complications so they interact properly.

Do I need a probate attorney to help me with this?

It really depends on your situation and your goals.

In a disputed situation, an attorney is necessary if you want to give yourself the best possible chance to win. The civil litigation system is very complicated and does not always follow common sense. As a result, there are any number of ways a person without legal training can harm their own case or miss an important part of the process.

For an uncontested estate, you should consider the complexity of the situation, the amount and type of assets at stake, and the amount of time you can personally devote to settling the estate.

Often, at the outset of settling an estate, the situation will appear to be simple. Unfortunately, there are very few estates that wind up being very "simple," and these typically have less than $50,000

in total assets (including the value of the home). When there are more assets at stake, there is more work to do, more legal requirements to be met, and more things to consider when making decisions.

Because most people have very little, if any, experience with settling an estate they wind up in a situation where "you don't know what you don't know." As a result, it becomes like walking through a field that you don't know contains landmines, and without the proper equipment to ensure you don't step on one.

In addition, in estates with even a modest amount of assets, doing the job of administrator or executor without professional help can easily become a part time job requiring 10 to 20 hours a week.

We often find that when an estate has more than $50,000 in total assets, the costs of hiring professional help are more than made up for by saving the administrator/executor time, energy, hassle, and headache throughout the process. Often, there are also monetary savings to the estate as well.

If you would like to discuss your specific situation and find out if it makes sense to have our experienced team help you, click here to contact our office or call 770-343-4043.

Georgia Probate Law Group's Mission

Georgia Probate Law Group's mission is to help those who have lost a loved one settle the estate correctly, and with as little hassle and stress as possible. Sometimes, the situation is peaceful and we guide the family to make the process simple. Other times, the family is not all on the same page and there are suspicions of wrongdoing, and we take the action necessary to protect the estate and discover the truth.

Our mission comes from a very personal experience in our founder's life. When Erik Broel was in college, one of his uncles died and left an aunt he was very close to a widow. His uncle had two adult children from a different marriage. The relationship between his aunt and his uncle's two kids seemed to be good, but soon after his uncle's death it was apparent that there were undercurrents that his aunt never noticed or expected.

The two children forced everything to an estate sale. Everything. When Erik describes it, he says he will never forget watching his aunt, in a wheelchair, in her front yard while strangers walked through her home where almost everything was tagged, on sale. She was mortified while people bought her things right in front of her. Then her home was put up for sale. Luckily, the rest of the family came together and bought the home back from the estate.

The experience left an indelible mark, and it spurred him to find his vocation - one where he could make a difference by finding a better way to handle estates and trusts.

Because of that, we believe, strongly, in specialization and that clients are always better served by having a firm on their side that focuses exclusively on helping people who have lost a loved one and are facing estate and trust issues.

It goes back to Erik's unshakable belief that if his aunt had hired a firm that focused on probate matters, her situation could have worked out a lot differently and she could have been saved a lot of completely unnecessary heartache.

Our firm strives to create an environment where our clients receive the best possible help, service, and compassionate understanding after losing a loved one, and where our employees can thrive and grow to their fullest potential.

Our mission as a firm is to help those who have lost a loved one through the legal situation they now find themselves in. We understand that it can be a confusing and frustrating process, and our team is here to make it as stress free as we can, and to make sure things are done right.

If you need help in an estate situation, it would be our honor to assist you. Please click here to contact us or call our office at 770-343-4043 for a complimentary consultation. We are here to help you.