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Administration and Probate of Intestate Estates in Georgia

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Research Guides

Administration and Probate of Intestate Estates in Georgia

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Introduction

Dying without a will causes a person's property to pass through intestacy according to the state's laws on descent and distribution. An estate may also have to be probated according to intestacy statutes if a will is declared to be invalid. This guide is designed to direct researchers or professionals in the right direction to find information on intestacy in Georgia. This guide does not specifically address issues regarding estate and gift tax.

There are four stages to probating an estate:

1) Appoint a personal representative
- A prospective administrator must file a petition for letters of administration in order to act on behalf of the estate. A person with an interest in the estate can file a caveat to that petition alleging the petitioner would not best serve the interests of the estate.

2) Ascertain the condition of the estate
- The administrator determines what all is in the estate and identifies any potential problems. The duties of the administrator at this stage are governed by what statutory powers they have reserved and which ones they waived.

3) Payment of debts and distributions
- The administrator dispenses funds to creditors and heirs based on the law of descent and distribution.

4) Dismissal and closing of the estate
- Once all creditors have been paid and the remaining funds dispensed to heirs, the administrator petitions to be released from duty and for the estate to be closed.

About the Author

Michael Sisk - Spring 2007 - Georgia Law; Wills and Estate Planning

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Primary Sources

Statutes

1. Georgia Statutes

Title 53 of the Official Code of Georgia Annotated (O.C.G.A.) governs “Wills, Trusts, and Administration of Estates.” The print volumes of the O.C.G.A. are officially published by Lexis-Nexis and can be found in most law libraries in Georgia. These volumes contain annotations with case citations and cross references for each statute. It can also be accessed online through Westlaw or Lexis, though these resources are costly. Lexis offers a free version online which can be accessed through the Georgia General Assembly web site at www.legis.state.ga.us/ but it only contains the text of the statutes. Follow the link at the bottom of the page to "Georgia Code." It does allow searching through keywords and browsing the table of contents. In 1998 the General Assembly enacted a revised Probate Code and many sections of Title 53 were changed.

The following are important statutes pertaining to intestacy:

O.C.G.A. §53-6-20: States the requirements for appointing an administrator and lists statutory preferences for who should be appointed.

O.C.G.A. §53-12-232: Lists the fiduciary powers of an administrator.

O.C.G.A. §53-6-50: Requires the administrator to post a bond on the estate but allows the heirs to waive that requirement.

O.C.G.A. §53-7-68: Requires a statement of return listing what has come in to and leaves the estate.

O.C.G.A. §53-3-1: Georgia’s Year’s Support statute. This statute is peculiar to Georgia. Surviving spouses and minor children of the testator can petition to have a year’s worth of support set aside from the estate. If there is no objection, this amount can be the entire estate.

O.C.G.A. §53-3-7: Defines what standard is used to determine the amount for year's support.

O.C.G.A. §53-11-2: Governs when a guardian ad litem must be appointed.

O.C.G.A. §15-9-88: All caveats must be in writing.

O.C.G.A. §53-2-20: Petition for determination of heirs.

O.C.G.A. §53-6-2: Executor de son tort. Any person who takes property out of an estate before an executor/administrator is appointed is liable to the heirs for double the value of the property taken.

O.C.G.A. §53-7-54: Petition for breach of fiduciary duty. Action against the administrator.

O.C.G.A. §53-7-55: Petition to revoke letters of administration. You must show cause to have these revoked.

O.C.G.A. §53-1-5: Georgia’s “slayer statute.” This statute precludes a person who kills another from inheriting from the victim either through intestacy or a will.

O.C.G.A. §53-4-48: Revocation of a will by operation of law. If a testator remarries or a child is born either during the testator’s lifetime or within ten months of his death, the will is revoked unless there is language contemplating such an event. This can lead to intestacy if no subsequent will was made or if the will is determined to be revoked by a court after the testator’s death.

2. Federal Statutes

All gifts and estates are subject to federal estate and gift taxation. These taxes are governed by Title 26 of the United States Code. The code is available online at www.gpoaccess.gov/uscode/index.html.

Administrative Regulations

There are many administrative regulations that govern what happens to particular interests when they are inherited through intestacy. These regulations can be found in the Code of Federal Regulations (CFR). The CFR is available in print at most law libraries. Westlaw and Lexis allow you to search the CFR online but require a subscription to use. It is also available free online through www.gpoaccess.gov/cfr/index.html. Searching “intestacy” will bring up bring up many of the topics intestacy affects

The following are ways interests can be affected by intestacy:

12 CFR §5.50: Governs procedure to use when an heir inherits controlling shares of a national bank.

16 CFR §802.71: Intestate gifts are not subject to the Hart-Scott Rodino Antitrust Improvement Act.

20 CFR §222.32: Employee benefits affected by intestacy.

22 CFR §72.1: Deals with intestacy of United States Nationals who die abroad.

25 CFR §11.702: Probate proceedings for Indians.

Title 26 of the CFR deals with the Internal Revenue code. Many sections of Title 26 affect intestacy probate.

Title 27 involves Alcohol, tobacco products and firearms and governs what to do if you inherit any of these products.

Georgia Cases

The following cases address different aspects of intestacy. Many of them are good examples of how Georgia courts apply the probate code.

Holland v. Holland, 267 Ga.App. 251, 599 S.E.2d 242 (2004). Applying statutory factors to determine amount for year’s support.

Driskell v. Crisler, 237 Ga.App. 408, 515 S.E.2d 416 (1999). Amount of year’s support must be reasonably related to the amount needed for one year after the testator’s death.

Hunter v. Hunter, 256 Ga.App. 898, 569 S.E.2d 919 (2002). Purpose of year’s support. Trial court can look beyond the household income for the previous year when determining

amount of support.

Wansley v. Tull, 153 Ga.App. 92, 264 S.E.2d 567 (1980). Grounds to caveat.

Cain v. Cain, 176 Ga.App. 671, 337 S.E.2d 377 (1984). Lists grounds to be able to caveat.

Prince v. Black, 256 Ga. 79, 344 S.E.2d 411 (1986). Georgia Supreme Court held that a child born out of wedlock can inherit from the father through doctrine of equitable/virtual adoption.

Tolbert v. Whatley, 223 Ga.App. 508, 478 S.E.2d 587 (1996). Doctrine of equitable adoption does not apply retroactively.

Tankesley v. Thompson, 220 Ga.App. 641, 469 S.E.2d 853 (1996). Presumption that gifts to children during testator's lifetime are advancements and reduce that child's inheritance at probate. Presumption can be rebutted by clear and convincing evidence.

Sieg v. Sieg, 265 Ga. 384, 455 S.E.2d 830 (1995). A spouse can waive their rights as an heir through a prenuptial agreement.

Keith v. Johnson, 211 Ga.App. 678, 440 S.E.2d 230 (1993). Application of Georgia's slayer statute.

Hagan v. Cone, 21 Ga.App. 416, 94 S.E.2d 602 (1917). This case has been overruled as to the applicable "slayer statute", but it is an interesting look at Georgia's early law. The court held that a murderer is not precluded from inheriting from his victim because the Georgia constitution prohibited criminal convictions from affecting a person's right to an estate. Since this case Georgia has adopted new constitutions and passed the slayer statute mentioned above. See also Crumley v. Hall, 202 Ga 588, 43 S.E.2d 646 (1947) for a similar application of early Georgia law on the right of murderers to inherit from their victim.

Beals v. Beals, 203 Ga.App. 81, 416 S.E.2d 301 (1992). A common law wife is entitled to appointment as administrator of their spouse's estate.

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Secondary Sources

Treatises

Treatises are research materials that contain in-depth coverage of a particular area of law. They can be very useful to gain an initial understanding in an area of law and can also contain references to statutes and cases that are on point. Here are a few treatises helpful for intestate probate that are available from a law library.

1. Bertram L. Levy & Benjamin T. White, Georgia Estate Planning, Will Drafting, and Estate Administration Forms, (Aspen Publishers 1987). Call number: KFG140.A65 L48 1987.

This is a good resource as a starting point for standard forms necessary to probate an intestate estate. However, it was published prior to the 1998 revisions to the Georgia probate code so some of the material is inaccurate about what the petitions require.

2. Daniel H. Redfearn, Redfearn Wills and Administration in Georgia, (Harrison Co. 2000). Call number: KFG144 .R4 2000 c.2.

This is a great research source to find almost any issue with probating an estate. It has a comprehensive table of contents and each section contains footnotes with applicable Georgia statutes and cases which apply that law. The second volume contains standard forms for probate and explains what information must be in them. This series is updated with current Georgia probate law.

Law Review Articles

Law review articles can provide a starting point for research since the issues are narrow and specific. When using law review articles you must take account of the date of the article since the law at issue could have changed since the article was written. Law school libraries typically have a large collection of Law Journals either in print or microfiche. Westlaw and Lexis also have full text articles available online, but these services require a subscription. Law review articles can also be found online at HeinOnline and through LegalTrac but access to these is limited by subscriptions, typically through law school law libraries.

1. Mary F. Radford, Wills, Trusts, Guardianships, and Fiduciary Administration, 58 Mercer L. Rev. 423 (2006).
- Professor Mary Radford from Georgia State University writes this yearly article analyzing important Georgia cases dealing with fiduciary duties as they pertain to wills, trusts, decedent's estates, and guardianships/conservatorships of minor and adult wards.

2. Mary F. Radford, Wills, Trusts, and Administration of Estates, 54 Mercer L. Rev. 583 (2002).

- This is Professor Mary Radford's article on Georgia cases affecting wills, trusts, and estates for the period from June 1, 2001 until May 31, 2002. The major focus of the intestacy part of the article is on Georgia's position on the inheritance rights of children born out of wedlock. The article is a good source of information on how Georgia courts interpreted those rights during the above time period. It also shows that Georgia struggles to determine what rights these individuals have and in determining what rights the fathers of these children have.

3. Laura Oren, Honor Thy Mother?: The Supreme Court's Jurisprudence of Motherhood, 17 Hastings Women's L.J. 187 (2006).

- This article does not deal with intestacy or probate, but deals with a matter that has important implications for intestate probate. The article analyzes the Supreme Court's response to state statutes requiring fathers of children born out of wedlock to legitimate the child in order to state a claim for wrongful death while not requiring the same from mothers. O.C.G.A. §§53-2-3 and 53- 2-4 list the requirements for legitimating a child born out of wedlock.

4. R. Brent Drake, Status or Contract? A Comparative Analysis of Inheritance Rights Under Equitable Adoption and Domestic Partnership Doctrines, 39 Ga. L. Rev. 675 (2005).

- This article addresses the topics of equitable adoption and domestic partnerships and their affects on intestate succession. Georgia courts have accepted the doctrine of equitable adoption. See Prince v. Black, 256 Ga. 79, 344 S.E.2d 411 (1986). At the time of the article, no courts allowed domestic partners to inherit from each other, however, Georgia and other states that recognize some form of common law marriage allow these spouses to inherit as though they were formally married.

American Law Reports

American Law Reports (ALR) are a very useful secondary source of research. ALR articles deal with specific, narrow topics of law and compile cases, statutes, and information from federal and state jurisdictions to analyze those topics. These are available in print in law libraries and can be found online through Westlaw and Lexis with a subscription.

1. Kristine Cordier Karnezis, Right to Probate Subsequently Discovered Will as Affected by Completed Prior Proceedings in Intestate Administration, 2 A.L.R.4th 1315 (1980). This article analyzes cases dealing with the issue of offering a will for probate on an estate that has already closed through intestate administration. There is a fair amount of Georgia coverage and is a good place to begin finding cases for research.

2. Michael G. Walsh, Homicide as Precluding Taking Under Will or by Intestacy, 25 A.L.R.4th 787 (1983).

This article analyzes the effect homicide has on the perpetrator's right to inherit either by the will of the victim or through intestacy. The Georgia references are not the current law on the subject of "slayer statutes," but it provides an interesting historical analysis of Georgia's position on the issue.

Books

1. Debra A. Robinson, Administration of the Estate in Georgia, (National Business Institute 1991). Call number: KFG147.A35 1991.

. Teresa E. Wise, Georgia Administration and Probate With Forms, (Harrison Co. 1998). Call number: KFG144.A65 G83 1998.

- This book has a good, easy to understand overview of Georgia's law on wills and estates. The forms are mostly up to date and all of the entries contain annotations with statutes and cases for supplemental research.

3. Marion Guess, A Layman's Guide to Probate Procedures in Georgia: Important Information About Georgia's Probate Courts and Estates of Deceased Individuals, (Chattahoochee Legal Press 2004). Call number: KFG144.G84 2004.

- I was unable to review this book as it was checked out or missing every time I tried to find it in the library.

4. Robert E. Hall & Brant Jackson, Jr., Georgia Probate, (Lawyers Co-operative Pub. Co. 1981). Call number: KFG144.H34

- This book had a very well organized body of Georgia wills and estate law, but the material was very difficult to disect and understand. Since it was published in 1981 all of the suggested forms are out of date due to the 1998 probate code revisions. A researcher should stay away from this title.

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Electronic Research

Internet Search Engines

A. Westlaw is a comprehensive online database for legal research. It has the full texts of federal and state cases, statutes, administrative materials, and much more. It also has many secondary sources such as law review articles, American Law Reports, and select treatises. It is a very expensive service to use and requires a subsciption.
(searching tips: to find many intestacy materials you can select any Georgia database such as statutes, cases, or secondary sources and use the following terms and connectors: intesta! /p probate)

B. Lexis is similar to westlaw but has slightly different content. Lexis does not have the West key digest, but it does have Shepard's to update cases and see if it is still good law. Lexis does not have as many treatises available online as Westlaw does

C. Loislaw is similar to Lexis and Westlaw but is not as comprehensive as those sources. It is less expensive, but it still requires a subscription.

D. Casemaker is another online database that contains Georgia state cases and federal cases, but does not have the headnotes that Westlaw and Lexis have. It also requires a subscription but is free to members of the Georgia Bar.

E. Georgia's Probate Courts' homepage gives information on the steps to take for probating an estate and also allows you to print standard probate forms for free. This is a really good resource for individulas who need to find quick information on what to do when a family member dies. The forms include instructions but can still be a little confusing to fill out without doing more research. This information is all available for free at www.gaprobate.org/ There is a link at the top of the web page to the probate court standard forms.

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