

Petition for Presumption of Death of Missing Individual Believed to be Dead

INSTRUCTIONS

I. Specific Instructions

1. This form is to be used for petition for presumption of death of missing individual believed to be dead pursuant to O.C.G.A. § 53-9-1 et seq.
2. The service requirements for this form are covered in O.C.G.A. § 53-9-2.
3. This form may be used in conjunction with a petition for letters of administration, a petition to probate will in common or solemn form, a petition for year's support or a petition for an order that no administration is necessary. Any of these other petitions may be granted at any time after the presumption of death is established, provided that all legal requirements for the granting of the other petition have been met.
4. Signatures of those who acknowledge service must be attested by a notary public or the clerk of any probate court of this state. An attorney at law may acknowledge service on behalf of his/her client; however, the attorney must certify that he or she currently represents that individual with regard to the pending matter and, in order to comply with O.C.G.A. §53-11-6, the attorney's signature must be attested as provided above. It is not necessary that all acknowledgements appear on the same page.
5. O.C.G.A. §53-11-2 provides that a party to a probate proceeding who is not sui juris must be represented by a guardian provided that the court may appoint a guardian ad litem or determine that the natural guardian, guardian of the person or property, or testamentary guardian has no conflict and may serve.
6. The final order includes language for both clear and convincing evidence and preponderance of the evidence. O.C.G.A. §53-9-1 dictates the burden required based on the circumstances of the case.
7. Paragraph 4 requires sufficient factual information for the Court to conclude that those listed in paragraph 3 constitute all of the would-be heirs of the missing decedent and that there are not additional heirs of the same or closer degree according to O.C.G.A. §53-2-1. These facts must allow the Court to rule out the possibility that there may be other heirs of similar or closer degree that have not been listed. Provide the date of death of any deceased heirs and the name of the Personal Representative if applicable. The Personal Representative of a deceased heir is authorized to consent on behalf of that heir. O.C.G.A. §53-6-30. NOTE: If you are uncertain how to determine the heirs of a decedent, refer to the "Heirs Determination Worksheet" available from the Probate Court or at www.gaprobate.org. Examples of such statement would be: (a) "decedent was or was not married at the time of his death and had no children born, adopted, living or deceased, other than listed herein"; (b) "decedent had no other siblings half or whole other than those listed herein"; (c) "the decedent's brother who died previously, had no other children born, adopted, living or deceased, other than listed herein."

II. General Instructions

General instructions applicable to all Georgia probate court standard forms are available in each probate court, labeled GPCSF 1.

IN THE PROBATE COURT
COUNTY OF _____
STATE OF GEORGIA

IN RE: ESTATE OF _____)
)
) **ESTATE NO.** _____
MISSING INDIVIDUAL)

PETITION FOR PRESUMPTION OF DEATH
OF MISSING INDIVIDUAL BELIEVED TO BE DEAD

The petition of _____,
whose physical address(es) is/are _____,
Street City County State Zip Code
and mailing address(es) is/are _____,
Street City County State Zip Code
shows to the Court the following:

1.

(Full name of missing individual) First Middle Last
hereinafter referred to as the “missing individual”, whose place of domicile was _____
_____ is missing.
Street City County State Zip Code

2.

(Initial one)

_____ (a) Petitioner has _____ (simultaneously filed) _____ (will file) a petition concerning this estate for:

(initial one)

- _____ 1. Administration of the estate.
- _____ 2. Probate of will in (common) (solemn) form.
- _____ 3. A year’s support.
- _____ 4. Order that no administration is necessary.

OR (b) _____ Petitioner does not presently intend to file any other proceedings

3.

Listed below are the names of all the missing individual's would-be heirs with the age or majority status, address, and relationship to the missing individual set opposite the name of each:

Name	Age (or over 18)	Address	Relationship

4.

Required: Provide sufficient factual information to enable the Court to conclude that all of the would-be heirs of the missing individual are included and that there are no heirs of similar or higher degree according to O.C.G.A. §53-2-1. Provide the names of any deceased heirs and include the date of death for each. (See instructions for further clarification.) Also, state here all pertinent facts which may govern the method of giving notice to any party and which may determine whether or not a guardian ad litem should be appointed for any party. If any persons listed above as heirs are cousins, grandchildren, nephews or nieces of the missing individual, indicate the deceased ancestor through whom they are related to the missing individual. If the propounder is not an heir or a beneficiary under the Will, state how the propounder is interested in the administration of the estate. If it is alleged that a nominated executor has failed to qualify, state here the name and address of such nominated executor:

5.

(Initial one)

- _____ (a) The missing individual has been missing from his/her last known place of domicile for a continuous period of four (4) years or longer.
- _____ (b) The missing individual has been missing from his/her last known place of domicile for a continuous period of twelve (12) months or longer.
- _____ (c) The missing individual was exposed to a specific peril or tragedy resulting in probable death under circumstances which may be proved by clear and convincing evidence. The specific peril or tragedy and the circumstances proving the death of the missing individual are fully explained in paragraph 8.

6.

The missing individual was last heard from on _____,
(Date)
at which time he/she was at _____.
(Location or Address)

7.

To the knowledge of the petitioner, no other proceedings with respect to this estate are pending, or have been completed, in any other probate court in this state.

8.

The petitioner shows the following facts in support of the belief that the missing individual is deceased **[If death is to be proved as a result of a specific peril or tragedy, fully describe the specific peril or tragedy and the circumstances proving the decedent's exposure thereto and death as a result thereof]:**

Wherefore petitioner prays:

1. That necessary notice be issued and served according to law; and
2. That an order establishing a presumption of death be entered.

Signature of Attorney
(or petitioner if pro se)

Signature of Attorney
(or petitioner if pro se)

Printed Name

Printed Name

Mailing Address

Mailing Address

Telephone Number

Telephone Number

State Bar #

State Bar #

VERIFICATION

GEORGIA, _____ COUNTY

Personally appeared before me the undersigned Petitioner(s) who, after being duly sworn, state(s) that the facts set forth in the foregoing petition (and the attached exhibits) are true.

Sworn to and subscribed before me this
_____ day of _____, 20____.

Signature of First Petitioner

NOTARY/CLERK OF PROBATE COURT
My Commission Expires _____

Printed Name of First Petitioner

Sworn to and subscribed before me this
_____ day of _____, 20____.

Signature of Second Petitioner

NOTARY/CLERK OF PROBATE COURT
My Commission Expires _____

Printed Name of Second Petitioner

**IN THE PROBATE COURT
COUNTY OF _____
STATE OF GEORGIA**

IN RE: ESTATE OF _____)
)
) **ESTATE NO.** _____
)
_____,)
MISSING INDIVIDUAL)

ACKNOWLEDGMENT OF SERVICE AND ASSENT TO PETITION

**PETITION OF _____ FOR THE
PRESUMPTION OF DEATH OF THE ABOVE NAMED MISSING INDIVIDUAL
BELIEVED TO BE DEAD**

We, the undersigned, being over 18 years of age, laboring under no legal disability and being those who would be heirs if the missing individual were known to be dead, hereby acknowledge service of a copy of the petition for presumption of death of missing individual believed to be dead and notice, waive copies of same, waive further service and notice, and hereby assent to the petition without further delay,

SIGNATURE(S) OF WOULD-BE HEIRS

Sworn to and subscribed before me this _____ day of _____, 20____. _____
Signature

NOTARY/CLERK OF PROBATE COURT Printed Name
My Commission Expires _____

Sworn to and subscribed before me this _____ day of _____, 20____. _____
Signature

NOTARY/CLERK OF PROBATE COURT Printed Name
My Commission Expires _____

Sworn to and subscribed before me this _____ day of _____, 20____. _____
Signature

NOTARY/CLERK OF PROBATE COURT Printed Name
My Commission Expires _____

**IN THE PROBATE COURT
COUNTY OF _____
STATE OF GEORGIA**

IN RE: ESTATE OF _____)
)
) **ESTATE NO.** _____
MISSING INDIVIDUAL)

**PETITION FOR PRESUMPTION OF MISSING INDIVIDUAL
BELIEVED TO BE DEAD**

ORDER FOR SERVICE OF NOTICE

[Note: If desired, the following Order for Service of Notice and Notice of Hearing may be combined with any other such Order and Notice required for the issuance of letters or an order for year's support or that no administration is necessary.]

_____ filed this petition to establish the presumption of death of the above-named missing individual believed to be dead (and a petition on the estate of such individual).

IT IS ORDERED that notice be published once a week for four (4) weeks, in the official newspaper in this county in which sheriffs advertisements are published, giving notice that on a day stated, which must be at least ninety (90) days after the first publication, evidence will be heard by this Court concerning the alleged absence of the missing individual and the circumstances and duration thereof.

IT IS FURTHER ORDERED that the notice be (initial any and all of the following which apply):

____ Served personally, together with a copy of the petition, upon the following individuals who would be heirs if the missing individual were known to be dead, who reside within this state, who have not acknowledged service:

____ Served by registered or certified mail, return receipt requested, together with a copy of the petition, upon nonresident individuals who would be heirs if the missing individual were known to be dead, whose current residence addresses are known and who have not acknowledged service:

_____ Served by publication upon the following individuals who would be heirs if the missing individuals were known to be dead, whose current residence addresses are unknown and who have not acknowledged service:

_____ (Optional) IT IS FURTHER ORDERED that the petitioner search for the missing individual in the following manner:

This _____ day of _____ 20_____.

Judge of the Probate Court

**IN THE PROBATE COURT
COUNTY OF _____
STATE OF GEORGIA**

IN RE: ESTATE OF _____)
)
) **ESTATE NO.** _____
MISSING INDIVIDUAL)

**PETITION FOR PRESUMPTION OF MISSING INDIVIDUAL
BELIEVED TO BE DEAD**

NOTICE OF HEARING

A petition for presumption of death of the above-named missing individual believed dead, has been filed by _____
_____ (in conjunction with a petition for _____
_____). Notice is hereby given that at _____ o'clock __.m.,
on the _____ day of _____, 20____, evidence will be heard by the probate court concerning the alleged absence of said missing individual and the circumstances and duration thereof. The missing individual, if alive, or any other individual having evidence that the missing individual is alive, is required to produce and present to the court evidence that the missing individual is still in life.

This ____ day of _____, 20_____.

Judge of the Probate Court

By: _____
Clerk/Deputy Clerk of the Probate Court

Publication dates: _____

IN THE PROBATE COURT
COUNTY OF _____
STATE OF GEORGIA

IN RE: ESTATE OF _____)
)
) **ESTATE NO.** _____
MISSING INDIVIDUAL)

CERTIFICATE OF SERVICE

I certify that I have on this date mailed, unless otherwise noted, in an envelope with the proper postage affixed thereto for first-class mail delivery copies of the _____
_____ to the following parties at the addresses below:

This _____ day of _____, 20_____.

Clerk/Deputy Clerk of the Probate Court

Address

Telephone Number

**IN THE PROBATE COURT
COUNTY OF _____
STATE OF GEORGIA**

IN RE: ESTATE OF _____)
)
) **ESTATE NO.** _____
MISSING INDIVIDUAL)

ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM

IT IS ORDERED that _____
Name Address Telephone Number

is appointed guardian ad litem for _____,
minor/unborn heir/the unknown heir, and that said guardian ad litem be duly served with a copy
of the foregoing Notice, petition, purported Will and notice of this appointment, and that upon
said guardian ad litem's acceptance of the same, said guardian ad litem shall make answer
hereto. This appointment is limited to this proceeding only, and it shall cease when a final order
is entered on this petition.

SO ORDERED this _____ day of _____, 20____.

Judge of the Probate Court

**IN THE PROBATE COURT
COUNTY OF _____
STATE OF GEORGIA**

IN RE: ESTATE OF _____)
)
) **ESTATE NO.** _____
MISSING INDIVIDUAL)

ANSWER OF GUARDIAN AD LITEM

I hereby accept the foregoing appointment, acknowledge service and notice of the proceedings as provided by law, and for answer say:

This _____ day of _____, 20____.

Signature of Guardian Ad Litem (GAL): _____

Typed/printed name of GAL: _____

Address: _____

Telephone Number: _____

**IN THE PROBATE COURT
COUNTY OF _____
STATE OF GEORGIA**

IN RE: ESTATE OF _____)
)
) **ESTATE NO.** _____
_____,)
MISSING INDIVIDUAL)

ORDER ESTABLISHING PRESUMPTION OF DEATH AND DATE THEREOF

The petition of _____,
for presumption of death of the above named missing individual believed to be dead, having
come before the Court for hearing on _____, 20____, and it appearing
that notice of such hearing was duly published and served as required by law, and after hearing
evidence in said case, it is the finding of the Court that a diligent and reasonable effort has been
made to locate the missing individual and that a legal presumption of death of said missing
individual has been established

____ by a preponderance of the evidence because the presumption of death has been
proved by showing that the at the individual has been missing from his or her last known place of
domicile for a continuous period of four (4) years,

OR

____ by a preponderance of the evidence because presumption of death has been proved
by showing that the individual has been missing from his or her last known place of domicile for
a continuous period of twelve (12) months or more,

OR

____ by clear and convincing evidence, because the presumption of death has been
proven by showing that the individual was exposed to a specific peril or tragedy resulting in
probable death, and this Court concludes that such missing individual is hereby declared to be
dead.

WHEREUPON, IT IS ORDERED that above named missing individual be and is hereby
declared dead and the date of death is hereby established as _____.

SO ORDERED this _____ day of _____, 20_____.

Judge of the Probate Court