

PETITION OF PERSONAL REPRESENTATIVE FOR LEAVE TO SELL PROPERTY

INSTRUCTIONS

I. Specific Instructions

1. This form is to be used when a Personal Representative or Temporary Administrator petitions for leave to sell real or personal property pursuant to O.C.G.A. § 53-8-13.
2. If the petition is by a Temporary Administrator, this form should be altered as follows: The term “Temporary Administrator” should be placed wherever the term “Personal Representative” or “Administrator” appears throughout the entire form. Also if the form is used for a Temporary Administrator, the Final Order may need to be amended, especially if the original order of appointment did not give the power to sell property.
3. With regard to Paragraph 6 of the petition, a recent appraisal should be used if available; otherwise, a copy of the most recent ad valorem tax statement should be provided. If the appraised value or tax value is higher than the selling price, explain the discrepancy on an additional sheet, and add a reference to this in Paragraph 4 of the Petition. In addition, if there is a sales contract, a copy of the contract should be attached as an exhibit, labeled appropriately.
4. Signatures of heirs who acknowledge service must be sworn to before a notary public or the Clerk of any Probate Court of this State. It is not necessary that all acknowledgments appear on the same page. An attorney at law may acknowledge service on behalf of an heir; however, the attorney must certify that he or she currently represents that heir 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 sworn to as provided above. With regard to a power of attorney, the attorney-in-fact may acknowledge service on behalf of the grantor of the power, provided that the power of attorney grants such authority, the signature of the attorney-in-fact is attested, a copy of the power of attorney is attached, and the attorney-in-fact certifies that the copy is a true copy and is still in effect. It is not necessary that all acknowledgments 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, conservator, or testamentary guardian has no conflict and may serve. Should a guardian ad litem be necessary because a party is not sui juris, use Supplement 1.
6. In the event the assets are to be distributed according to a Will, only the beneficiaries need to be listed in Paragraph 2. In the event the Decedent died intestate (without a Will), Paragraph 3 requires that a definitive statement be made to show to the court that the persons named in Paragraph 2 constitute all of the heirs of the Decedent and that there are no heirs of the same or closer degree according to O.C.G.A. § 53-2-1. Provide the date of death for any deceased heirs. The Personal Representative of a deceased heir is authorized to consent on behalf of that heir. [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.gov.] 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.”

7. The service of this petition is in accordance with Chapter 11 of Title 53 per O.C.G.A § 53-8-13 (b).
8. Use Supplement 2 if the Court determines it is appropriate to appoint a special process server.
9. Use Supplement 3 when an additional certificate of service is necessary.
10. Exhibits should be labeled at the bottom of each exhibit as Exhibit “A,” Exhibit “B,” etc. in consecutive order. The corresponding letter of each said exhibit should be inserted into the appropriate place in the form.
11. According to Uniform Probate Court Rule 5.6 (A), unless the Court specifically assumes the responsibility, it is the responsibility of the moving party to prepare the proper citation and deliver it properly so it can be served according to law. All pages after the Notice regarding Uniform Probate Court Rule 5.6 (A) are to be completed by the moving party, unless otherwise directed by the Court.

II. General Instructions

General instructions applicable to all Georgia Probate Court Standard Forms are available in each Probate Court or at www.gaprobate.gov, labeled GPCSF 1.

3.

[Initial one]

- (a) A Will has been probated so no definitive statement is required.
- (b) The Decedent died intestate [without a Will]; therefore, a definitive statement is made below.

Required: *[Provide sufficient factual information to enable the Court to conclude that all of the heirs of the Decedent are included and that there are no heirs of the same or closer degree according to O.C.G.A. § 53-2-1. Provide the names of any deceased heirs, the name and address of his or her Personal Representative, if any, and include the date of death for each. [See instructions for further clarification.] Also, state here all pertinent facts that may govern the method of giving notice to any party and that may determine whether or not a guardian ad litem should be appointed for any party. If any heirs listed above are cousins, grandchildren, nephews or nieces of the Decedent, indicate the deceased ancestor through whom they are related to the Decedent.]*

4.

Petitioner(s) desire(s) to sell certain real and/or personal property of said estate. The property and the estate's interest in said property are described as follows *[give metes and bounds description, and street address if known, if real property]*:

5.

The specific purpose of said sale of said property is *[check all which apply]*:

- (a) To pay the debts of the estate and/or
 - (b) To make distributions to the (heirs)(beneficiaries)
 - (c) Other: _____
-

6.

The Petitioner(s) desire(s) to sell said real and/or personal property upon the following terms and conditions *[explain the proposed date, place and method of sale, including any minimum sales prices, and attach and label copies of any applicable contracts]*:

- _____ (a) Attached hereto as “Exhibit ____” is a copy of the contract for sale of real estate.
- _____ (b) Attached hereto as “Exhibit ____” is a copy of the most recent ad valorem tax or appraisal showing the current value of the property to be \$_____.

7.

At present, the Petitioner(s) has/have a bond on file in this Court in the amount of \$_____. The net proceeds to the estate from the sale of the subject property will be approximately \$_____. An additional bond in the amount of \$_____ to cover the amount by which the net proceeds from the sale, plus the amount of personal property currently in the estate, will exceed the current bond amount will be posted prior to the deadline for objections set forth in the notice.

8.

Additional Data: *[Where full particulars are lacking, state here the reasons for any such omission.]*

WHEREFORE, petitioner(s) pray(s):

1. An order directing notice be issued and served as the law requires, and
2. If no cause be shown to the contrary, your petitioner(s) be granted leave to sell said property as set forth above.

Signature of Petitioner

Printed Name

Mailing Address

Telephone Number

Signature of Attorney _____

Printed Name of Attorney _____

Address _____

Telephone Number _____

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 of Personal Representative for Leave to Sell Property (and the attached exhibits) are true and correct.

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

Signature of Petitioner

NOTARY/CLERK OF PROBATE COURT
My Commission Expires _____

Printed Name of Petitioner

NOTICE

THE FOLLOWING PAGES ARE TO BE COMPLETED BY THE PETITIONER (MOVING PARTY) UNLESS OTHERWISE DIRECTED BY THE COURT.

SEE PROBATE COURT RULE 5.6 (A).

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

IN RE: ESTATE OF _____)
)
_____,) **ESTATE NO.** _____
DECEASED)

ORDER FOR SERVICE OF NOTICE

The foregoing Petition of Personal Representative for Leave to Sell Property having been filed, it is ordered that: *[Initial any and all of the following which apply]*

_____ Notice must be served personally, together with a copy of the Petition, or by registered or certified mail or statutory overnight delivery, as requested by the Petitioner(s) pursuant to O.C.G.A. § 53-11-3 at least ten (10) days before the deadline for objections on the following (heirs)(beneficiaries) who reside in Georgia and have not acknowledged service:

_____ Notice must be served by registered or certified mail, return receipt requested, together with a copy of the Petition, upon nonresident (heirs)(beneficiaries) whose current residence addresses are known:

_____ Notice must be published once a week for four (4) weeks in the legal organ of this County, before _____, 20____, in order to serve by publication the following (heirs)(beneficiaries) whose current residence addresses are unknown:

SO ORDERED this _____ day of _____, 20_____.

Judge of the Probate Court

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

IN RE: ESTATE OF _____)
)
) **ESTATE NO.** _____
DECEASED _____)

NOTICE

The Petition of Personal Representative for Leave to Sell Property in the above-referenced estate having been duly filed,

[Strike any paragraph if not applicable.]

TO: _____
[List here all interested parties who reside in Georgia to be served personally or by registered or certified mail or statutory overnight delivery with restricted delivery to the addressee, if specifically requested by the Petitioner(s)]

This is to notify you who are required to be served personally, to file objection, if there is any, to the Petition, in this Court on or before the tenth (10th) day after the date you are personally served or sign the return receipt.

TO: _____
[List here all heirs having known addresses outside the continental U.S. to be served by registered or certified mail or statutory overnight delivery with restricted delivery to the addressee, if specifically requested by the Petitioner(s)]

This is to notify you to file objection, if there is any, to the Petition, in this Court on or before the thirtieth (30th) day after _____, 20____ (the date of the mailing of this Notice to you by certified or registered mail, return receipt requested); provided, however, that if a return receipt for such Notice is actually received by the Court within such thirty (30) days, the deadline for the filing of any objection shall be ten (10) days from the date of receipt shown on such return receipt.

TO: _____
[List here all non-resident interested parties having known addresses in the continental U.S. to be served by registered or certified mail or statutory overnight delivery with restricted delivery to the addressee, if specifically requested by the Petitioner(s)]

This is to notify you to file objection, if there is any, to the above-referenced petition, in this Court on or before the thirteenth (13th) day after _____, 20____ (the date of the mailing of this Notice to you by certified or registered mail, return receipt requested); provided, however, that if a return receipt for such Notice is actually received by the Court within such thirteen (13) days, the deadline for the filing of any objection shall be ten (10) days from the date of receipt shown on such return receipt.

Address

Telephone Number

Judge of the Probate Court
By: _____
Clerk of the Probate Court

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

IN RE: ESTATE OF _____)
)
_____,) **ESTATE NO.** _____
DECEASED)

CERTIFICATE OF SERVICE

I certify that I have this date mailed (unless otherwise noted) in an envelope with the proper postage affixed thereto for first-class mail delivery copies of the Petition of Personal Representative for Leave to Sell Property, Order for Service of Notice, including any attached Exhibits and the Notice to the following parties at the addresses below:

This _____ day of _____, 20____.

Clerk of the Probate Court

Address

Telephone Number

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

IN RE: ESTATE OF _____)
_____,) **ESTATE NO.** _____
DECEASED)

**ACKNOWLEDGMENT OF SERVICE
AND CONSENT TO PETITION**

**RE: PETITION OF _____ FOR LEAVE
TO SELL PROPERTY OF ESTATE OF THE ABOVE-NAMED DECEDENT**

The undersigned, being over 18 years of age, laboring under no legal disability and being heirs or beneficiaries of the above-named Decedent, hereby acknowledge service of a copy of the Petition and notice, waive copies of same, waive further service and notice, and hereby consent to the Petition.

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

SIGNATURE(S) OF (HEIRS)(BENEFICIARIES)

Signature of Heir/Beneficiary

NOTARY/CLERK OF PROBATE COURT
My Commission Expires _____

Printed Name of Heir/Beneficiary

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

Signature of Heir/Beneficiary

NOTARY/CLERK OF PROBATE COURT
My Commission Expires _____

Printed Name of Heir/Beneficiary

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

Signature of Heir/Beneficiary

NOTARY/CLERK OF PROBATE COURT
My Commission Expires _____

Printed Name of Heir/Beneficiary

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

IN RE: ESTATE OF _____)
)
) **ESTATE NO.** _____
DECEASED _____)

FINAL ORDER

The Petition of _____, as Personal Representative(s) of the estate of the above-named Decedent, for Leave to Sell Property was filed. The Court finds that all of the (heirs) (beneficiaries) were served or acknowledged service. The Court further finds that no objection has been filed and all requirements of law have been fulfilled. The Court further finds that the purpose of the transaction is lawful and that the proposed transaction is fair and is in the best interest of the estate (and the guardian ad litem having filed an answer approving said transaction);

ACCORDINGLY, IT IS ORDERED that the said Petitioner, as Personal Representative(s) of said estate, is authorized to sell the property described in the Petition upon the terms set forth in said Petition.

_____ (initial if applicable:) Said authorization is conditioned upon the Personal Representative(s) having on file with this Court a surety bond in the amount of \$_____.

IT IS FURTHER ORDERED that a report of the sale authorized by this Order shall be furnished to this Court by the Petitioner. Said report shall specify the property sold, the purchasers, the amounts received, and the terms of the sale.

SO ORDERED this _____ day of _____, 20_____.

Judge of the Probate Court