West's Code of Georgia Annotated Currentness
Title 53. Wills, Trusts, and Administration of Estates (Refs & Annos)
Chapter 3. Year's Support (Refs & Annos)
§ 53-3-5. Petition for year's support; contents; filing

(a) Upon the death of any individual leaving an estate solvent or insolvent, the surviving spouse or a guardian or other person acting in behalf of the surviving spouse or in behalf of a minor child may file a petition for year's support in the probate court having jurisdiction over the decedent's estate. If the petition is brought by a guardian acting on behalf of a minor child, no additional guardian ad litem shall be appointed for such minor child unless ordered by the court.

(b) The petition shall set forth, as applicable, the full name of the surviving spouse, the full name and birthdate of each surviving minor child and a schedule of the property, including household furniture, which the petitioner proposes to have set aside. The petition shall fully and accurately describe any real property the petitioner proposes to have set aside with a legal description sufficient under the laws of this state to pass title to the real property.

(c) A petition for year's support shall be filed within 24 months of the date of death of the decedent.

CREDIT(S)

Laws 1996, p. 504, § 10; Laws 1998, p. 1586, § 13.

COMMENT

This section contains provisions from former OCGA Secs. 53-5-2 and 53-5-6. The time period for applying for year's support is shortened to the 24-month period following the decedent's death. The entitlement to year's support in subsequent years, which appeared in former OCGA Sec. 53-5-4, is repealed.

CROSS REFERENCES

Local government, urban redevelopment, eminent domain, see § 36-61-9.
Partnerships, incidents of tenancy, see § 14-8-25.

LAW REVIEW AND JOURNAL COMMENTARIES

Wills, Trusts, Guardianships, and Fiduciary Administration. Mary F. Radford, 55 Mercer L. Rev. 459 (2003).

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Petition for Year's Support

INSTRUCTIONS

I. Specific Instructions

1. This form is to be used for filing a petition for year's support pursuant to O.C.G.A. §53-3-1 et seq.

2. The amount set apart shall be an amount sufficient to maintain the standard of living that the surviving spouse and each minor child had prior to the death of the testator or intestate, for a period of 12 months, taking into consideration the following: (1) the support available to the individual for whom the property or money is to be set apart, from sources other than year's support, including but not limited to any separate estate and earning capacity of that individual; and (2) such other relevant criteria as the court deems equitable and proper, including the solvency of the estate.

3. This petition must be filed within 24 months after decedent's death.

4. The Petitioner or his/her/their attorney must prepare and file with the Court, no later than the date of the Final Order, a Georgia Department of Revenue Form PT-61 for each parcel of real property located in the State of Georgia shown on Exhibit "A.

5. Exhibit "B" requires that a definitive statement be made to show to the court that all of the heirs of the decedent are named herein 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. NOTE: If you are uncertain how to determine the heirs of a decedent, please refer to the "Heirs Determination Sheet" 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."

6. Exhibit "B" also requires that the Tax Commissioner be listed for each county in which there is real property owned by the decedent.

7. According to 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. Pages after 8 which are labeled "Court" 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.

IN THE PROBATE COURT OF _____ COUNTY

STATE OF GEORGIA

IN RE: ESTATE OF	)	**ESTATE NO. _____**
	)	
_____,	)	**PETITION FOR YEAR'S SUPPORT**
DECEASED	)	

TO THE HONORABLE JUDGE OF THE PROBATE COURT:

The Petition of _____,
First Middle Last Name
whose mailing address is_____, shows that:

1.

The petitioner is:

_____ A. The surviving spouse.
_____ B. A guardian or other individual acting on behalf of the surviving spouse or minor child(ren) (state specific relationship): _____
_____.

2.

The decedent, _____, whose domicile was
_____
(State full street address of decedent, including County of domicile)
departed this life on _____, 20 _____.

3.

(Initial one:)

_____ A. There is not a Will.
_____ B. There is a Will, which has been offered for probate.
_____ C. There is a Will, which will be offered for probate.
_____ D. There is a Will, which will not be offered for probate but is attached to this Petition or is on file with this Court.

4.

The decedent's estate consists of real and/or personal property of the probable value of _____ dollars.

5.

Petitioner shows that the following named minor child____ of said decedent , to wit:

_____,
Name of Minor Child D.O.B. Name, Address of Parent or Guardian

_____,
Name of Minor Child D.O.B. Name, Address of Parent or Guardian

_____,
Name of Minor Child D.O.B. Name, Address of Parent or Guardian

_____,
Name of Minor Child D.O.B. Name, Address of Parent or Guardian

_____,
Name of Minor Child D.O.B. Name, Address of Parent or Guardian

and_____(Full Name of Surviving Spouse, if applicable) (is) (are) entitled, before the payment of debts of the decedent, to an allowance called Year's Support, which petitioner hereby claims for the individual(s) named above.

6.

A schedule of the property or a statement of the amount of money or both which the petitioner proposes to have set aside to the individuals listed in paragraph 5. above as year's support is attached hereto as "Exhibit A" and made a part hereof.

7.

(Select "A" or "B", and strike inapplicable words:)

_____ A. (There is no executor or administrator of this estate) (The petitioner is the executor or administrator of this estate) and therefore petitioner has set forth below by affidavit marked "Exhibit B" and made a part hereof a list of all interested persons, who must be mailed a copy of the notice not less than 21 days prior to the deadline shown in the notice by which objections, if any, must be filed.

_____ B. _____ (is) (are) the acting executor(s) or administrator(s) of this estate and must receive 21 days' notice by mail as described above. Note: "Exhibit B" is not required.

8.

In addition to all taxes and tax liens on real property accrued for years prior to the year of the decedent's death, petitioner elects to have property taxes on any real property set apart as year's support divested as follows: (must select one)

_____ 1. Real property taxes accrued in the year of decedent's death;
_____ 2. Real property taxes accrued in the year in which this petition is filed; or
_____ 3. Real property taxes accrued in the year following the filing of this petition if this petition is filed in the year of the decedent's death.

9.

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

_____

_____

WHEREFORE, petitioner prays:

1. That this petition be accepted and filed.
2. That notice issue and be published and served as described above.
3. That any interested person who is a minor or an incapacitated adult have a guardian ad litem appointed for him or her, except for any minor child of decedent on whose behalf this petition has been filed by a guardian who is not the spouse of the decedent.
4. That this Court grant such other and further relief as it deems proper under the circumstances.

_____
Signature of petitioner

_____
Printed Name

_____
Address

_____

_____
Telephone Number

Signature of Attorney: _____

Typed/printed name of Attorney: _____
Address: _____
_____
Telephone: _____ State Bar #_____

VERIFICATION

GEORGIA, _____ COUNTY

Personally appeared before me the undersigned petitioner(s) who on oath state(s) that the facts set forth in the foregoing petition are true.

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

_____
Petitioner

_____
NOTARY/CLERK OF PROBATE COURT
My Commission Expires _____

_____
Printed Name

IN THE PROBATE COURT OF _____ COUNTY

STATE OF GEORGIA

IN RE: ESTATE OF	)	**ESTATE NO. _____**
	)	
	)	**PETITION FOR YEAR'S SUPPORT**
_____,	)	
DECEASED	)	

EXHIBIT A

SCHEDULE OF PROPERTY

[NOTE: If the petitioner proposes to have set aside any interest in real property, then the complete legal (metes and bounds) description of the real property and the interest therein must appear in full on this schedule and on the proposed Certificate of Order of Year's Support (page 8).]

The following is a schedule of the property or a statement of the amount of money or both which the petitioner proposes to have set aside as year's support:

_____
Petitioner

IN THE PROBATE COURT OF _____ COUNTY

STATE OF GEORGIA

IN RE: ESTATE OF	)	**ESTATE NO. _____**
	)	
_____,	)	**PETITION FOR YEAR'S SUPPORT**
DECEASED	)	

EXHIBIT B

LIST OF INTERESTED PERSONS

(To be completed if (1) there is no appointed executor or administrator of the estate, or (2) if the petitioner has been appointed the executor or administrator of the decedent's estate)

Petitioner hereby certifies that petitioner has made reasonable inquiry to ascertain the names, last known addresses, and ages (if under 18) of all the interested persons with respect to the within matter. Petitioner understands that, for purposes of this affidavit, the term "interested person" refers to the above-named decedent's children, spouse, other heirs, beneficiaries, creditors, and any others having a property right or claim against the estate which may be affected by the above Year's Support proceeding, including but not limited to the Tax Commissioner for each county in which there is real property owned by the decedent. Petitioner hereby certifies that the following are all of the interested persons known to Petitioner with respect to this matter and that any incapacitated adults are identified as such:

Provide a definitive statement to show to the court that all heirs of the decedent have been named herein 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.)

Name	Last Known Address	Age (or over 18)	Relationship to Decedent

_____
Petitioner

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

_____
Notary Public, or Clerk, Probate Court

ACKNOWLEDGMENT OF SERVICE
AND CONSENT TO
AWARD OF YEAR'S SUPPORT

GEORGIA, _____ COUNTY

IN RE: PETITION OF _____ FOR YEAR'S SUPPORT
ESTATE OF _____, DECEASED

We, the undersigned, being over 18 years of age, laboring under no legal disability and being interested persons with respect to the within matter, hereby acknowledge service of the petition for year's support and notice, waive copies of same, waive all further service and notice, and hereby consent to the award of year's support as proposed in the petition.

SIGNATURE(S) OF INTERESTED PARTIES

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

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

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

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

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

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

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

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

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

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

Probate Court Return Mailing Address:

_____

_____

CERTIFICATE OF ORDER OF YEAR'S SUPPORT
(Pursuant to O.C.G.A. §53-3-11)

GEORGIA, _____ COUNTY

DATE ORDER GRANTED: _____
GRANTOR: (NAME OF DECEDENT) _____

GRANTEE: (FULL NAME OF SURVIVING SPOUSE, AND EACH MINOR CHILD, AND DATE OF BIRTH OF EACH MINOR)

_____
_____
_____

ADDRESS OF GRANTEE: _____

Legal Description of Real Property and Interest Therein:

Also land in _____, Count(y)(ies).

Original Certificate delivered or mailed to Clerk of Superior Court of _____ _____ County on _____, 20_____.

Certificate prepared by:

_____
SIGNATURE OF ATTORNEY

State Bar #: _____

I do hereby certify that the above information is based on the order of the Probate Court issued on the date set out above and that the above information is true and correct.

By: _____
PROBATE CLERK/DEPUTY CLERK

Petition for Year's Support

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. _____**
	)	
_____,	)	**PETITION FOR YEAR'S SUPPORT**
DECEASED	)	

ORDER FOR NOTICE AND APPOINTMENT OF GUARDIAN AD LITEM, WHERE NECESSARY

The Petition for Year's Support having been filed in this office, let notice issue and be published once a week for four weeks as required by law.

Further, it appearing that the estate (is) (is not) represented by a person other than the petitioner, let the clerk of this Court mail a copy of the notice in this matter to (such representative other than the petitioner) (all interested persons listed in "Exhibit B" to the petition).

Further ordered that the clerk of this Court must mail a copy of the petition within five days of its filing to the tax commissioner or tax collector of any county in this state in which real property proposed to be set apart is located.

Further Ordered, that any minors or incapacitated adults included in the petition or on Exhibit B shall have a guardian ad litem appointed for them, except when a guardian files on behalf of a minor or incapacitated adult and the guardian is not the surviving spouse.

(Note: Appoint more than one guardian ad litem if necessary to represent parties who are not sui juris and who may have adverse interests).

Further Ordered, that_____ be appointed guardian ad litem for _____ and that said guardian ad litem be duly served with a copy of the foregoing petition, Notice and notice of this appointment, and upon said guardian ad litem's acceptance of same, said guardian ad litem 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____.

_____
Probate Judge

NOTICE

GEORGIA, _____ COUNTY PROBATE COURT

TO: _____

_____

The petition of _____, for a year's support from the estate of _____, deceased, for decedent's (surviving spouse) (and) (minor child_____), having been duly filed, all interested persons are hereby notified to show cause, if any they have, on or before _____ _____, 20_____, why said petition should not be granted.

All objections to the petition must be in writing, setting forth the grounds of any such objections, and must be filed on or before the time stated in the preceding sentence. All pleadings/objections must be signed before a notary public or before a probate court clerk, and filing fees must be tendered with your pleadings/objections, unless you qualify to file as an indigent party. Contact probate court personnel at the following address/telephone number for the required amount of filing fees. If any objections are filed, a hearing will be (held on _____ in the Probate Court of _____ _____ County, courtroom _____, (address) _____ _____, Georgia) (scheduled at a later date). If no objections are filed, the petition may be granted without a hearing.

_____
PROBATE JUDGE

By:_____
PROBATE CLERK/DEPUTY CLERK

_____
ADDRESS

_____

_____
TELEPHONE

IN THE PROBATE COURT OF _____ COUNTY

STATE OF GEORGIA

IN RE: ESTATE OF	)	**ESTATE NO. _____**
	)	
_____,	)	**PETITION FOR YEAR'S SUPPORT**
DECEASED	)	

CERTIFICATE OF MAILING

I do hereby certify that I have this day mailed a copy of the above notice in this matter to (initial one)

_____ the personal representative of the estate

_____ the tax commissioner of the following counties in which the decedent owed property:

_____

_____ (all interested persons as listed by the petitioner on "Exhibit B" attached to the petition,) as follows: _____

_____

_____

_____

_____

_____

in an envelope supplied by the petitioner for each person to be notified, properly addressed and with adequate postage thereon, and deposited in the United States Mail, with the return address of this Court thereon.

A copy was not sent to the following individuals or entities as they signed an acknowledgment and consent to the award of the Year's Support:

_____

_____

_____

_____

_____

_____ _____

DATE PROBATE CLERK/DEPUTY CLERK

IN THE PROBATE COURT OF _____ COUNTY

STATE OF GEORGIA

IN RE: ESTATE OF	)	**ESTATE NO. _____**
	)	
_____,	)	**PETITION FOR YEAR'S SUPPORT**
DECEASED	)	

ANSWER OF GUARDIAN AD LITEM

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

_____
DATE

_____
GUARDIAN AD LITEM

_____
ADDRESS

_____

_____
TELEPHONE

PROBATE COURT OF _____ COUNTY

STATE OF GEORGIA

IN RE: ESTATE OF	)	**ESTATE NO. _____**
	)	
_____,	)	**PETITION FOR YEAR'S SUPPORT**
DECEASED	)	

FINAL ORDER

The petition for a Year's Support for decedent's (surviving spouse) (minor child_____), setting forth the property sought to be set aside as a year's support, was filed; notice was issued, published, and served as required by law; and no objection was filed to the petition.

WHEREFORE IT IS ORDERED that the petition is granted and the schedule of property is made the award of this court, and further that property taxes on any real property awarded hereby shall be divested as elected in the petition.

SO ORDERED this _____ day of _____, 20____.

_____
Probate Judge