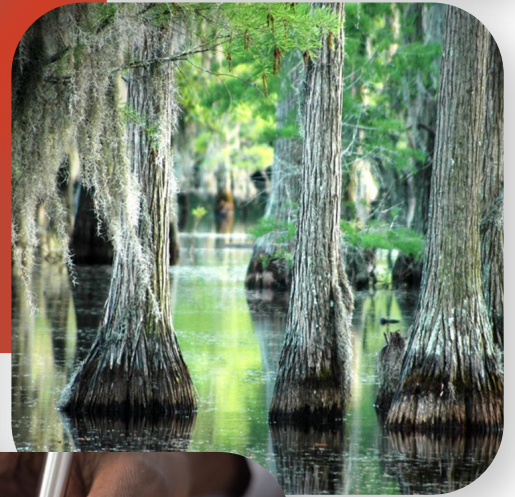




GEORGIA HEIRS PROPERTY
LAW CENTER



GEORGIA ESTATE PLANNING HANDBOOK FOR COMMUNITIES

VOLUME 1

2020

©2020 Georgia Heirs Property Law Center. All Rights Reserved. The information contained in this handbook is provided as a public service and does not constitute direct legal advice and is for informational purposes only. Non-lawyers should always consult a licensed attorney in all legal matters. The materials do not constitute an attorney-client relationship between the Georgia Heirs Property Law Center and you and/or your client. The Georgia Heirs Property Law Center, its employees, directors, officers, and agents will not be liable or responsible to you or your client for any claim, loss, injury, liability, or damages related to your use of the materials in this handbook.





INTRODUCTION

The 2020 Georgia Estate Planning Handbook for Communities is an effort by the Georgia Heirs Property Law Center, Inc. ("the Center") to provide a basic set of estate planning training materials available to community leaders, nonprofits, and cooperative extension agents working throughout Georgia.

Proper estate planning is critical to preventing heirs property, yet only 32% of individuals have an estate plan. This Handbook is a response to the need for consistent, high quality estate planning training materials in the State of Georgia. The goal of this document is not to provide estate planning, but to familiarize community leaders, non profits, and cooperative extension agents with estate planning terminology and what estate planning entails.

*To request a training or provide feedback and suggestions,
please email info@gaheirsproperty.org*

In addition to this Handbook, the center staff can provide webinars and training on the basics of estate planning and the prevention of heirs property from the Center.

Currently, this Handbook is maintained by the Center and staff of the Center will update it periodically and continue to develop educational outreach and webinars.

WHAT IS AN ESTATE PLAN AND WHY DO YOU NEED ONE?

A complete estate plan consists of a Last Will and Testament, Advance Directive for Health Care and a Financial Power of Attorney, but may also include documents nominating Guardians and/or Conservators for minor children and incapacitated adults and establishing various types of trusts. An estate is all of the real property (like a house or land), tangible property (like a car or furniture), and financial assets (like cash or stocks) belonging to a deceased individual. These are collectively referred to as assets. Estate planning is the process of anticipating and planning what will happen to you and your assets when you die or if you become incapacitated. Estate planning asks you to consider questions such as:

- How will you hold title to your real property while you are alive?
- Who will inherit your assets after you die?
- Who will make health care decisions for you if you are unable or unwilling to make them for yourself?
- Who will manage your assets if you become incapacitated?

Everyone needs an estate plan because it helps preserve the value of your assets and ensures the right person is making decisions for you in case you become incapacitated.

A valid and carefully considered estate plan leaves a road map for your loved ones to follow out of grief into a secure future.

WHAT IS HEIRS PROPERTY?

Heirs property is real property that has been passed down from generation to generation in such a way that multiple people own the same piece of real property. Typically, the last known deed for the real property is in the name of a deceased relative.

Heirs property is created when the owner dies without a Last Will and Testament and their real property passes to their heirs at law according to the Georgia Code or when the owner dies with a Last Will and Testament that leaves their real property to multiple Beneficiaries.

Heirs property is an unstable form of ownership, and this instability prevents building generational wealth that might otherwise occur through careful estate planning.

TABLE OF CONTENTS

LAST WILL AND TESTAMENT

WHAT IS A LAST WILL AND TESTAMENT?	1
WHY YOU NEED A LAST WILL AND TESTAMENT	1
STANDARD PROVISIONS IN A LAST WILL AND TESTAMENT	2
ASSETS THAT CANNOT BE DISTRIBUTED THROUGH A LAST WILL AND TESTAMENT	4
AVOIDING COMPLEX WAYS TO LEAVE REAL PROPERTY	5
HOW TO CHANGE YOUR LAST WILL AND TESTAMENT	7
WHAT HAPPENS IF I DIE WITHOUT A LAST WILL AND TESTAMENT?	8

WHAT IS HEIRS PROPERTY?

9

HOW TO PREVENT HEIRS PROPERTY THROUGH ESTATE PLANNING

WHAT IS AN ADVANCE DIRECTIVE FOR HEALTH CARE?	11
---	----

ADVANCE DIRECTIVE FOR HEALTH CARE

STATUTORY ADVANCE DIRECTIVE FOR HEALTH CARE FORM	12
--	----

FINANCIAL POWER OF ATTORNEY

STATUTORY FINANCIAL POWER OF ATTORNEY	20
STATUTORY FINANCIAL POWER OF ATTORNEY FORM	21

GUARDIANSHIPS & CONSERVATORSHIPS

TYPES OF GUARDIANSHIP OVER INCAPACITATED ADULTS	34
---	----

TRUSTS

WHAT IS A TRUST?	37
WHAT IS A TRUSTEE?	37
COMMON TYPES OF TRUSTS	38

SAFEGUARDING YOUR ESTATE PLANNING DOCUMENTS

SAFEGUARDING YOUR ESTATE PLANNING DOCUMENTS	39
REVIEWING YOUR DOCUMENTS AS NEEDED	40
STORING YOUR DOCUMENTS	40
FILING YOUR LAST WILL AND TESTAMENT WITH THE PROBATE COURT	40
ALTERING OR MARKING ON YOUR LAST WILL AND TESTAMENT	40

EXECUTION REQUIREMENTS

41

LAST WILL AND TESTAMENT

WHAT IS A LAST WILL AND TESTAMENT?

A Last Will and Testament is a legal document that allows you to decide and stipulate who should inherit your assets upon your death and appoint a personal representative called an Executor to carry out the instructions in your Last Will and Testament. The document can appoint a Guardian and Conservator for your minor children if necessary, and may also set up a Testamentary Trust to protect the inheritance of minor children or incapacitated adults. A Last Will and Testament only becomes effective after it has been probated with the Probate Court in the county in which you resided at your death.

WHY YOU NEED A LAST WILL AND TESTAMENT

Most people don't want to think about what happens when they pass away and widespread misconceptions exist that Last Wills and Testament are only for the wealthy. But in reality, everyone needs a Last Will and Testament.

A Last Will and Testament should clearly state your intention and what you want done with your assets after your death. If you own real property of any kind (even heirs property), and you do not have a deed that automatically passes your real property at the time of your death, then you need a Last Will and Testament. If you do not know whether your deed passes your real property at the time of your death, more likely than not, you need a Last Will and Testament.

Simply put, if you own real property or any interest in real property and you do not have a Last Will and Testament, you will probably create heirs property, which creates numerous issues and obstacles for your family to build generational wealth from the assets you left them.

A Last Will and Testament also allows you to nominate a Guardian to care for your children and to create a Testamentary Trust to protect assets left to minors or incapacitated adults. A Guardian nominated in a Last Will and Testament is more likely to be appointed by a Probate Judge than a Guardian nominated any other way. This ensures that the person you think is best capable of caring for your child or children is clearly identified to the Probate Court. If you have minor children, children with special needs or adult children who are incapacitated, you need a Last Will and Testament.

With an intentional, well-drafted Last Will and Testament that clearly states your wishes for your assets, clearly establishes who will be in charge, clearly protects the assets you leave for minors and incapacitated adults, and clearly states who you wish to care for your children, you reduce the occurrence of family discord, simplify the probate process for your family, ensure your wishes are followed, provide for your family and loved ones and secure any assets you have in real property for the next generation.

Please note that a Last Will and Testament can and often does still create heirs property by leaving real property to more than one person. You need to discuss with your attorney how you can avoid creating heirs property through your Last Will and Testament. See the section below on Preventing Heirs Property through Estate Planning for alternatives to leaving real property to multiple heirs.

STANDARD PROVISIONS IN A LAST WILL AND TESTAMENT

While everyone's Last Will and Testament is unique in the way they choose to leave their assets, typically Last Wills and Testament contain the standard provisions discussed below.

INTRODUCTION: This section identifies the Testator or Testatrix, who is the person making a Last Will and Testament, and revokes any prior Last Wills and Testament or codicils. Although a Testator denotes male gender and Testatrix female, it is common to see Testator used interchangeably for either gender.

BACKGROUND: This section defines your marital status and your descendants.

BURIAL AND CREMATION: This section states your desires about burial and cremation. While it is traditional to include this information in your Last Will and Testament, please note, however, that because a Last Will and Testament may not be read until after your funeral, you should make sure that your loved ones know your desires while you are still living, to ensure your wishes are followed. If you have an Advance Directive for Health Care, your Agent under the Advance Directive for Health Care has authority to decide what happens to your remains.

DEBTS AND EXPENSES: This section gives instructions for dealing with any of your debts and funeral expenses.

REAL PROPERTY: This section addresses the transfer of real property, which is defined as land and anything growing or built upon that land. You are able to convey any real property of which you are the sole owner or your interest in any real property of which you are a Tenant in Common. In this section thoughtful bequests can prevent the creation of heirs property.

TANGIBLE PERSONAL PROPERTY: This section devises your tangible personal property, which includes things like furniture, clothes, cars, mobile homes, collectable items, jewelry, electronics, knick-knacks, and so forth. Tangible personal property is not money, bank accounts, stocks, bonds, etc.

CASH, BANK ACCOUNTS, AND INVESTMENTS: This section addresses the transfer of cash, stocks, bonds, and other investment vehicles.

REMAINDER OF PROPERTY (AKA RESIDUE OR RESIDUAL ESTATE): Despite its name, this section of your Last Will and Testament is very important. This section deals with any assets that have not already been addressed in earlier sections of your Last Will and Testament, as well as any assets you may not have considered or even owned at the time of writing your Last Will and Testament. This section also addresses what happens to your assets if several of your Beneficiaries unexpectedly pass away before you. The assets that could pass under this section could include unknown inheritances, wrongful death or insurance settlements, a winning lottery ticket you never cashed in, heirs property you did not know you owned an interest in or assets you acquire after executing your Last Will and Testament.

TESTAMENTARY TRUST: This section creates a Testamentary Trust, if necessary. A Testamentary Trust is used to hold assets gifted to any Beneficiary under age 18, until the Beneficiary attains an age established by you in your Last Will and Testament. Any incapacitated adult who cannot manage their own affairs may also need a Testamentary Trust. Although a Testamentary Trust is typically created for minor children and incapacitated adults, it can also conserve or restrict the use of any testamentary gift. If you create a Testamentary Trust, you also need to appoint a Trustee, who will manage the assets in the Trust.

SPECIAL NEEDS TRUST: This section creates a Special Needs Trust, if necessary. A Special Needs Trust is used to preserve and protect the ability of a minor child or incapacitated adult to collect public or private financial assistance (i.e. Medicaid, Social Security, etc.). Most of the financial assistance available through public and private programs is means-tested, and the Beneficiary will not qualify for financial assistance unless they are deemed indigent. Whereas a standard Testamentary Trust requires the distribution of the principal and income of the Trust to provide for the health and support of the Beneficiary, thereby eliminating the possibility of indigence, a Special Needs Trust limits the ways in which the principal and income from the Trust can be used, allowing the Beneficiary to remain indigent and thereby satisfying the means-tested requirements of many public and private programs. The Special Needs Trust restricts the use of the trust property to debts and expenditures that are not covered by public or private assistance programs, but that improves the quality of life of the special needs Beneficiary. The assets held in such a Trust are not included within the means-testing used by most public and private programs.

EXECUTOR AND TRUSTEE: This section allows you to nominate an Executor, who is the person that will carry out the instructions in your Last Will and Testament. Your Executor only has the power to carry out the instructions in your Last Will and Testament after they probate your Last Will and Testament and are appointed by the Probate Court. Your Executor must be a person over 18 years of age. Your spouse is permitted to serve as Executor. An Executor does not have to live in the same state as you, but it is much easier for a local Executor to administer your estate than an Executor who lives someplace else. Many banks are willing to serve as Executor, but they charge a fee for doing so. Your Executor does not have to be a lawyer or a financial expert, but your Executor has very broad powers with regard to your assets and should be someone who is prudent enough to ask for help from professionals when needed (accountants, lawyers, investment advisors, etc.). Your Executor should also be honest, completely trustworthy and responsible enough to “get things done” and see them through to completion. If you establish any Trusts in your Last Will and Testament, this section also allows you to nominate a Trustee.

REPORTS AND BONDS: The law requires your Executor to file periodic reports to the Probate Court showing the assets in your estate, income to the estate, distributions, etc., so the Probate Court can supervise the Executor’s activities. This section allows you to direct in your Last Will and Testament that reports are not necessary. The law also requires an Executor post a bond (a type of insurance policy) with the Probate Court to protect the estate from theft or mismanagement by the Executor, unless you direct in your Last Will and Testament that a bond is not necessary. Reports and bonds provide extra protection against a dishonest or careless Executor, but they also significantly increase the work of and cost to the Executor to do what your Last Will and Testament instructs. In most cases, where the Executor is a trusted relative or friend, people choose not to require the Executor to file reports and post bonds.

POWERS OF EXECUTORS AND TRUSTEES: This section defines the powers given to your Executor(s) or Trustee(s).

SURVIVORSHIP: This section deals with what happens if you and any of your Beneficiaries die at or about the same time.

GUARDIANS AND CONSERVATORS: This section allows you to nominate Testamentary Guardians and Testamentary Conservators for your minor children.

ASSETS THAT CANNOT BE DISTRIBUTED THROUGH A LAST WILL AND TESTAMENT

While you can leave most types of your assets to your Beneficiaries through your Last Will and Testament, as noted in the prior section, certain types of assets pass to Beneficiaries outside of your Last Will and Testament and without the need for probate.

JOINT TENANCY WITH RIGHT OF SURVIVORSHIP: Joint Tenancy with Right of Survivorship is a type of joint ownership of real property. If two or more people own real property as Joint Tenants with Right of Survivorship, when one of the co-owners dies, the surviving co-owner(s), automatically and by operation of law, own the deceased co-owner's interest in the real property, without regard to any provisions in the deceased co-owner's Last Will and Testament. A Joint Tenancy with Right of Survivorship will be indicated on a deed with specific language like: "as joint tenants with right of survivorship," "jointly," "as joint tenants," or "with survivorship."

JOINTLY-HELD BANK ACCOUNTS: Any joint owner of a jointly-held bank account will automatically be entitled to the assets in the account upon their joint ownership and at your death, regardless of the provisions of your Last Will and Testament. If joint ownership is your goal, such as with a spouse or another person whom you want to inherit your money, that method of ownership is acceptable. However, if you only want to grant someone the power to write checks, make withdrawals, etc. without making them an owner of the account, you must be very specific in requesting a "power of attorney" from the bank. If you simply ask that someone be "added to" or "put on" your account, that person may be added as a joint owner and not just an agent.

BANK OR INVESTMENT ACCOUNTS WITH PAYABLE-ON-DEATH (POD) OR TRANSFER-ON-DEATH (TOD) BENEFICIARIES NAMED: Assets you own in your sole name, but have a payable-on-death or transfer-on-death designated beneficiary can be transferred to the named beneficiaries upon your death, without the need to probate a Last Will and Testament. However, if your designated beneficiary predeceases you, the account will still need to go through probate.

LIFE INSURANCE AND RETIREMENT FUNDS: Life insurance and retirement accounts pass according to a beneficiary designation form. For all types of insurance policies and retirement accounts (like pensions, profit sharing, 401(k)s, IRA plans), it is a good idea to ask the insurance or retirement account company or your employer or employee benefits director for a copy of your insurance benefits and your beneficiary designation, in order to ensure the Beneficiaries you have designated align with your wishes. If you want to make any changes to your beneficiary form, you can call the company and request a form to change your beneficiary.

ASSETS HELD IN A TRUST: Assets that have been placed in a Trust, whether it is a Revocable or Irrevocable Trust, pass automatically to the Trustee named in the Trust for the benefit of the Beneficiaries of the Trust.

AVOIDING COMPLEX WAYS TO LEAVE REAL PROPERTY

Maintaining a home or land is a big responsibility as there is typically a mortgage, taxes and utilities to be paid, repairs to be made, and insurance to maintain. If your home is in your name only, it is fairly clear who is responsible for such expenditures and labor. However, if the real property is owned by multiple people simultaneously, or if multiple people have different rights to the real property, the responsible party is not as clear. This confusion often leads to conflict, so it is not recommended that you leave your real property in any one of the ways described below.

TENANTS IN COMMON: Multiple people who own real property concurrently are called Tenants in Common. This is the form of ownership for owners of heirs property. Tenants in Common have equal rights to full use and possession of the real property and cannot exclude another Tenant in Common from living on or using the real property. Each owner is legally responsible for taxes and other real property-related expenses and is jointly and severally liable for personal injuries on the real property, putting all owners' assets at risk. Every owner must be in agreement to sell or mortgage the real property. Any owner can convey their interest to another person or seek a partition action forcing a court-ordered sale of the real property.

When multiple people own a home together, it often occurs that some will want to sell and some will want to keep. Or one will want to live in the home and the others will not. The one who lives in the home will expect the others to pay their fair share of the upkeep and expenses since ultimately if the home is ever sold, the nonresidents are still entitled to receive their share of the proceeds. The nonresidents may not understand why they should have to pay a share of the upkeep and taxes for real property where they do not reside. In a worst-case scenario the disagreement over these expenses leads to no one paying anything and the real property being lost to a tax sale or partitioned.

Please see the section below on Preventing Heirs Property through Estate Planning for alternatives to leaving real property to multiple heirs as Tenants in Common.

LIFE ESTATE: A Life Estate is when a person (called the Life Tenant) owns real property for their life and full ownership of the real property transfers to someone else (called the Remainderman) upon the Life Tenant's death.

The challenge with Life Estates lies in the contrary interests of the Life Tenant and the Remainderman. These interests can be especially contrary when expensive, large repairs or improvements are necessary. A Life Tenant typically is not incentivized to improve the real property since the Life Tenant will never reap the financial benefits of their investment. Similarly, the Remainderman has little incentive to invest for the indefinite benefit of Life Tenant.

A thorough Last Will and Testament that creates a Life Estate should attempt to spell out which person is responsible for which costs. A wealthier individual may even be able to endow the real property so expenditures towards the real property do not become a source of disagreement between the Life Tenant and the Remainderman. However, issues remain. Who ensures everyone does their part and enforces the instructions? Who determines what repairs are necessary to prevent "waste" of the real property (which would impair the Remainderman's interest)?

While not technically a Life Estate, some individuals may wish to leave someone a right to live in a house "for as long as they want." But who decides what qualifies as no longer "wants to?" This is an especially ill-advised way to leave real property to your Beneficiaries.



AVOIDING COMPLEX WAYS TO LEAVE REAL PROPERTY, con't.

Some Last Wills and Testament have attempted to create a Life Estate without Remainderman, instructing that the real property to be sold upon the death of the Life Tenant and the proceeds be distributed accordingly. However, it is not possible to draft a deed corresponding to those wishes. Instead, the real property would need to remain an estate asset and be managed by the Executor. This creates a challenge for the Life Tenant, as they likely could not qualify for homestead exemptions and will have difficulty insuring their real property. A Life Estate of any of variety is a complex way to leave real property and not recommended.

REAL PROPERTY LEFT TO A MINOR OR ADULT CHILD UNABLE TO MAINTAIN THE REAL PROPERTY: Parents often want to ensure that their children always have a place to live. These children may be a minor child or even an adult child who has difficulty holding a job or maybe still lives with their parents. The greatest challenge with leaving real property to any of these Beneficiaries is that they likely do not have the means to maintain the home and pay the taxes.

In the case of a minor child, the question arises of whether the Guardian is willing to live in the home with the child and provide for the upkeep of the real property. A conflict of interest arises if the Guardian is permitted to live there and is responsible for any of the maintenance. Because the Guardian does not actually have an interest in the real property, the Guardian may be hesitant to spend any of the Guardian's own money on the upkeep. Additionally, any of the Guardian's funds or funds that were left by the Testator that are spent on the house are funds that are not spent on the support and education of the child. Children are also still liable for injuries on the real property and can be sued.

In the case of an adult child who has trouble maintaining a job, the question arises of whether they have the capacity to maintain the real property and pay the expenses. It is disappointing to see when a valuable asset, often mortgage free at the time of the Testator's death, is sold for pennies at a tax sale.

The better solution when the parent wants to provide for their children is to ensure both that the Executor has the power to sell the real property, and that the children receive the proceeds.

HOW TO CHANGE YOUR LAST WILL AND TESTAMENT

Life changes, such as marriage, divorce, birth of a child, death of an Agent or heirs, or a change in your state of residence, are good opportunities to review your estate planning documents. These life changes could revoke or change your documents. You should consult with an attorney if you have one of these life changes and ask the attorney whether you need to prepare new documents. If your relationship with family, Agents, Executors, and others changes, the relationship could cause you to change your mind about the instructions and appointments you previously made in your documents. If there is a dramatic increase in your wealth, you may require tax and estate planning advice that will require you to change your Last Will and Testament.

Do not make any changes to your Last Will and Testament by writing on the document itself, crossing out sections, changing names of Beneficiaries, etc. Not only might the changes you make be ineffective, marking your original Last Will and Testament might cause your entire Last Will and Testament to be invalid, even if the changes are initialed, witnessed, or notarized. If you want to make changes to your Last Will and Testament, the best thing to do is make a new Last Will and Testament. Another alternative is to make a codicil, the term for an amendment to a Last Will and Testament, but this should only be done with the assistance of an experienced estate planning attorney and is not generally recommended.



WHAT HAPPENS IF I DIE WITH A LAST WILL AND TESTAMENT?

If you die with a Last Will and Testament, you have died testate. After your Last Will and Testament is probated and an Executor is appointed, your assets pass according to the terms of your Last Will and Testament.

- You nominate the Executor of your estate.
- You decide who becomes the Guardian of your minor children or the Conservator for incapacitated adults.
- You decide who your Beneficiaries are and who inherits from your estate.
- If you own real property and leave it to more than one person, your real property becomes heirs property.

WHAT HAPPENS IF I DIE WITHOUT A LAST WILL AND TESTAMENT?

If you die without a Last Will and Testament, you have died intestate. The Georgia Code's statutes on intestacy prescribe how your assets are distributed.

- A probate judge decides who becomes the administrator of your estate.
- A probate judge decides who becomes the Guardian of minor children or the Conservator for incapacitated adults.
- If you own real property and have more than one heir, your real property becomes heirs property.
- Your heirs, or the people who will receive from your estate, are determined according to the intestacy statute in the Georgia Code. Which is as follows:
 - If you are married with no children, your entire estate goes to your spouse. This is true even if you are separated or have a divorce action that is pending but not yet final.
 - If you are married and have children, your estate is shared equally among your spouse and your children, with your spouse never receiving less than 1/3 of your estate. If one of your children dies before you, the child's decedents take per stirpes the share they would have received if alive.
 - If you have children but are not married, your estate is shared equally among your children. If one of your children dies before you, the child's decedents take per stirpes the share they would have received if alive.
 - If you are not survived by a spouse, child or other descendants, your estate is shared equally among your surviving parents.
 - If you have no surviving spouse, children or parents, then your estate is shared equally by your siblings. If one of your siblings dies before you, their descendants take per stirpes the share they would have received if alive.
 - If you have no surviving spouse, children, parents or siblings, then your estate is shared equally by your nieces and nephews. If one of your nieces or nephews has predeceased you, their decedents take per stirpes the share they would have received if alive.
 - If you have no surviving spouse, children, parents, siblings, nieces, nephews or closer relatives, your estate is shared equally between your surviving grandparents.
 - If you have no surviving spouse, children, parents, siblings, nieces, nephews, grandparents or closer relatives, then your estate is shared equally by your aunts and uncles. If one of your aunts or uncles dies before you, their descendants take per stirpes the share they would have received if alive.
 - If you have no surviving spouse, children, parents, siblings, nieces, nephews, grandparents, aunts, uncles or closer relatives, then your estate is shared equally by your first cousins. If one of your first cousins dies before you, their descendants take per stirpes the share they would have received if alive.
 - If you have no surviving relatives, then your estate becomes the property of the State of Georgia.

WHAT IS HEIRS PROPERTY?

Heirs property is real property that has been passed down from generation to generation in such a way that multiple people own the same piece of real property. Typically, the last known deed for the real property is in the name of a deceased relative.

Heirs property is created when the owner dies without a Last Will and Testament and their real property passes to their heirs at law according to the Georgia Code or when the owner dies with a Last Will and Testament leaving the real property to multiple Beneficiaries.

Heirs property is an unstable form of ownership because:

- Individuals living on heirs property face an increased risk of forced sale and eviction.
- Heirs cannot sell, mortgage or lease the heirs property without agreement of all heirs.
- Heirs have more difficulty farming, qualifying for agriculture loans and selling agriculture products on heirs property.
- Heirs cannot qualify for most rehab programs or secure financing for needed repairs for their heirs property.
- Heirs may not be able to participate in government programs offered by USDA, HUD, FEMA, and other federal and state agencies.
- Heirs cannot qualify for loan modifications and other loss mitigation programs for their heirs property when facing foreclosure.
- Heirs may not be able to qualify for conservation tax reductions, homestead or other property tax exemptions.
- Heirs property increases the likelihood of family disputes and discord, as heirs property can sometimes lead otherwise rational family members to act unreasonably which has the potential to permanently ruin family relationships.
- Heirs lose a connection to farming, family history, and community.
- Heirs lose the sense of independence associated with ownership.

Under the law, owners of heirs property are Tenants in Common. Tenancy in Common is a type of joint ownership. This means that:

- Each heir co-owner has equal rights to full use and possession of the real property.
- Each heir co-owner is legally responsible for taxes and other real property-related expenses.
- Each heir co-owner may transfer their interest in the real property to another heir or outsider.
- Each heir co-owner may seek a partition of the real property.
- Each heir co-owner must agree to any major decisions about the real property.
- At their death, each heir co-owner's interest in the real property passes according to their Last Will and Testament or Georgia law if they did not have a Last Will and Testament, which likely compounds the number of heirs who own an interest in the real property.



HOW TO PREVENT HEIRS PROPERTY THROUGH ESTATE PLANNING

The negative consequences of heirs property can be avoided through the estate planning process. First, spouses and other joint owners of real property should consider conveying the real property to themselves as Joint Tenants with Right of Survivorship. This type of ownership allows the real property to pass to the surviving co-owner without going through the probate process and ensures that the surviving co-owner can enjoy the full benefits of sole ownership.

SINGLE BENEFICIARY: The simplest way to avoid creating heirs property is to leave your real property to a single Beneficiary. Individuals, especially those with large families, are often reluctant to leave their real property to a single person. Before ruling out this option, you should speak to potential Beneficiaries to determine their interest in receiving the real property after your death. Often people assume that their family members want to keep the real property in the family, but some of the potential Beneficiaries may have no interest in doing so. If only one family member expresses an interest in keeping the property, your choice of Beneficiary becomes easier. However, even if multiple family members express interest in the real property, you should still strongly consider leaving the real property to a single Beneficiary to avoid placing the burden of heirs property ownership on their family.

Importantly, even individuals with fractional interests in heirs property should consider devising their fractional interest in the heirs property to a specific Beneficiary. Left unaddressed, the heirs property owner's passing could compound the number of heirs with ownership interests in the real property and make it even more difficult to resolve in the future.

SELL AND DIVIDE THE PROCEEDS: You can instruct your Executor to sell real property and divide the proceeds between the Beneficiaries. You can also require that before the real property is sold, Beneficiaries be given the opportunity to purchase the real property from the estate, so any Beneficiary wanting to keep the real property in the family has the option to do so.

DIVIDE LAND: For larger tracts of land, your Last Will and Testament could give the Executor permission to divide the real property among the Beneficiaries. If you choose this approach, the Executor could have discretion to determine the most equitable division of the real property between the Beneficiaries.

PUT LAND INTO LLC OR TRUST: If you have larger, more complex, or revenue-generating real properties, you could also consider whether to place the real property into a limited liability company or Trust.



ADVANCE DIRECTIVE FOR HEALTH CARE

WHAT IS AN ADVANCE DIRECTIVE FOR HEALTH CARE?

On July 1, 2007, Georgia's Durable Medical Power of Attorney for Health Care and Living Will were combined into the Advance Directive for Health Care. Any Durable Medical Power of Attorney for Health Care or Living Will signed before July 1, 2007 is still valid, but it is recommended to replace it with a standard Advance Directive for Health Care (ADHC).

The Advance Directive for Health Care has three parts.

PART ONE allows you to name an Agent to make all health care decisions for you when you cannot or do not want to make them for yourself. Your Agent can admit you to a hospital, consent to medications or surgery, admit you to a nursing home, or make any health care decisions you normally would make. Your Agent can also make your final arrangements, such as burial or cremation. Your Agent under an Advance Directive for Health Care is authorized to access all of your medical records and other "protected health information" and has the authority to disclose that information to others, even if you are not suffering under any disability. Your Agent should be someone with whom you are comfortable having access to that information and who can be trusted not to abuse that authority.

PART TWO allows you to express wishes about your treatment preferences, such as medications, machines, or other medical procedures, when you have a Terminal Condition or are in a State of Permanent Unconsciousness.

PART THREE allows you to nominate a person to be your Guardian in the event that a Probate Court decides you need a Guardian. A Probate Court will appoint a Guardian for you if the court finds you are not able to make significant responsible decisions for yourself regarding your personal support, safety, or welfare. A Probate Court will appoint the person nominated by you if the Probate Court finds that the appointment will serve your best interests and welfare. If you have selected a Health Care Agent, you may nominate the same person to be your Guardian or you can choose someone else. If your Health Care Agent and Guardian are not the same person, your Health Care Agent will have priority over your Guardian in making your health care decisions, unless a Probate Court determines otherwise.

STATUTORY ADVANCE DIRECTIVE FOR HEALTH CARE FORM

GEORGIA ADVANCE DIRECTIVE FOR HEALTH CARE

By: _____ Date of Birth: _____
(Print Name) (Month/Day/Year)

This advance directive for health care has four parts:

PART ONE — Health Care Agent. This part allows you to choose someone to make health care decisions for you when you cannot (or do not want to) make health care decisions for yourself. The person you choose is called a health care agent. You may also have your health care agent make decisions for you after your death with respect to an autopsy, organ donation, body donation, and final disposition of your body. You should talk to your health care agent about this important role.

PART TWO — Treatment Preferences. This part allows you to state your treatment preferences if you have a terminal condition or if you are in a state of permanent unconsciousness. PART TWO will become effective only if you are unable to communicate your treatment preferences. Reasonable and appropriate efforts will be made to communicate with you about your treatment preferences before PART TWO becomes effective. You should talk to your family and others close to you about your treatment preferences.

PART THREE — Guardianship. This part allows you to nominate a person to be your guardian should one ever be needed.

PART FOUR — Effectiveness and Signatures. This part requires your signature and the signatures of two witnesses. You must complete PART FOUR if you have filled out any other part of this form.

You may fill out any or all of the first three parts listed above. You must fill out PART FOUR of this form in order for this form to be effective.

You should give a copy of this completed form to people who might need it, such as your health care agent, your family, and your physician. Keep a copy of this completed form at home in a place where it can easily be found if it is needed. Review this completed form periodically to make sure it still reflects your preferences. If your preferences change, complete a new advance directive for health care.

Using this form of advance directive for health care is completely optional. Other forms of advance directives for health care may be used in Georgia.

You may revoke this completed form at any time. This completed form will replace any advance directive for health care, durable power of attorney for health care, health care proxy, or living will that you have completed before completing this form.

PART ONE — Health Care Agent

PART ONE will be effective even if PART TWO is not completed. A physician or health care provider who is directly involved in your health care may not serve as your health care agent. If you are married, a future divorce or annulment of your marriage will revoke the selection of your current spouse as your health care agent. If you are not married, a future marriage will revoke the selection of your health care agent unless the person you selected as your health care agent is your new spouse.

1. Health Care Agent

I select the following person as my health care agent to make health care decisions for me:

Name: _____

Address: _____

Telephone Numbers: _____

(Home, Work, and Mobile)

2. Back-Up Health Care Agent

This section is optional. PART ONE will be effective even if this section is left blank.

If my health care agent cannot be contacted in a reasonable time period and cannot be located with reasonable efforts or for any reason my health care agent is unavailable or unable or unwilling to act as my health care agent, then I select the following, each to act successively in the order named, as my back-up health care agent(s):

Name: _____

Address: _____

Telephone Numbers: _____

(Home, Work, and Mobile)

Name: _____

Address: _____

Telephone Numbers: _____

(Home, Work, and Mobile)

3. General Powers of Health Care Agent

My health care agent will make health care decisions for me when I am unable to communicate my health care decisions or I choose to have my health care agent communicate my health care decisions.

- My health care agent will have the same authority to make any health care decision that I could make. My health care agent's authority includes, for example, the power to:
- Admit me to or discharge me from any hospital, skilled nursing facility, hospice, or other health care facility or service;
- Request, consent to, withhold, or withdraw any type of health care; and
- Contract for any health care facility or service for me, and to obligate me to pay for these services (and my health care agent will not be financially liable for any services or care contracted for me or on my behalf).

In addition to the other powers granted in this Georgia Advance Directive for Health Care, I grant to my health care agent the power and authority to serve as my personal representative for all purposes of the federal or state law related to privacy medical records, including the Health Insurance Portability and Accountability Act of 1996 and its regulations ("HIPAA"), during any time my health care agent is exercising authority under this document. Pursuant to HIPAA, I specifically authorize my health care agent as my HIPAA personal representative to request, receive and review any information regarding my physical or mental health, including, without limitation all HIPAA protected health information, medical and hospital records; to execute on my behalf any authorizations, releases or other documents that may be required in order to obtain this information; and to consent to the disclosure of this information. I further authorize my health care agent to execute on my behalf any documents necessary or desirable to implement the health care decisions that my health care agent is authorized to make under this document. By signing this document, I specifically empower and authorize my physician, hospital or health care provider to release any and all medical records to my health agent or my health care agent's designee. Further, I waive any liability to any physician, hospital or any health care provider who releases any and all of my medical records to my health care agent.

My health care agent may accompany me in an ambulance or air ambulance if in the opinion of the ambulance personnel protocol permits a passenger and my health care agent may visit or consult with me in person while I am in a hospital, skilled nursing facility, hospice, or other health care facility or service if its protocol permits visitation.

My health care agent may present a copy of this advance directive for health care in lieu of the original and the copy will have the same meaning and effect as the original.

I understand that under Georgia law:

- My health care agent may refuse to act as my health care agent;
- A court can take away the powers of my health care agent if it finds that my health care agent is not acting properly; and
- My health care agent does not have the power to make health care decisions for me regarding psychosurgery, sterilization, or treatment or involuntary hospitalization for mental or emotional illness, mental retardation, or addictive disease.

4. Guidance for Health Care Agent

When making health care decisions for me, my health care agent should think about what action would be consistent with past conversations we have had, my treatment preferences as expressed in PART TWO (if I have filled out PART TWO), my religious and other beliefs and values, and how I have handled medical and other important issues in the past. If what I would decide is still unclear, then my health care agent should make decisions for me that my health care agent believes are in my best interest, considering the benefits, burdens, and risks of my current circumstances and treatment options.

5. Powers of Health Care Agent after Death

(A) AUTOPSY

My health care agent will have the power to authorize an autopsy of my body unless I have limited my health care agent's power by initialing below.

_____ (Initials) My health care agent will not have the power to authorize an autopsy of my body (unless an autopsy is required by law).

(B) ORGAN DONATION AND DONATION OF BODY

My health care agent will have the power to make a disposition of any part or all of my body for medical purposes pursuant to the Georgia Anatomical Gift Act, unless I have limited my health care agent's power by initialing below.

Initial each statement that you want to apply.

_____ (Initials) My health care agent will not have the power to make a disposition of my body for use in a medical study program.

_____ (Initials) My health care agent will not have the power to donate any of my organs.

(C) FINAL DISPOSITION OF BODY

My health care agent will have the power to make decisions about the final disposition of my body unless I have initialed below.

_____ (Initials) I want the following person to make decisions about the final disposition of my body:

Name: _____

Address: _____

Telephone Numbers: _____
(Home, Work, and Mobile)

I wish for my body to be:

_____ (Initials) Buried

OR

_____ (Initials) Cremated

PART TWO — Treatment Preferences

PART TWO will be effective only if you are unable to communicate your treatment preferences after reasonable and appropriate efforts have been made to communicate with you about your treatment preferences. PART TWO will be effective even if PART ONE is not completed. If you have not selected a health care agent in PART ONE, or if your health care agent is not available, then PART TWO will provide your physician and other health care providers with your treatment preferences. If you have selected a health care agent in PART ONE, then your health care agent will have the authority to make all health care decisions for you regarding matters covered by PART TWO. Your health care agent will be guided by your treatment preferences and other factors described in Section (4) of PART ONE.

6. Conditions

PART TWO will be effective if I am in any of the following conditions:

Initial each condition in which you want PART TWO to be effective.

_____ (Initials) A terminal condition, which means I have an incurable or irreversible condition that will result in my death in a relatively short period of time.

_____ (Initials) A state of permanent unconsciousness, which means I am in an incurable or irreversible condition in which I am not aware of myself or my environment and I show no behavioral response to my environment.

My condition will be determined in writing after personal examination by my attending physician and a second physician in accordance with currently accepted medical standards.

7. Treatment Preferences

State your treatment preference by initialing (A), (B), or (C). If you choose (C), state your additional treatment preferences by initialing one or more of the statements following (C). You may provide additional instructions about your treatment preferences in the next section. You will be provided with comfort care, including pain relief, but you may also want to state your specific preferences regarding pain relief in the next section.

If I am in any condition that I initialed in Section (6) above and I can no longer communicate my treatment preferences after reasonable and appropriate efforts have been made to communicate with me about my treatment preferences, then:

(A) _____ (Initials) Try to extend my life for as long as possible, using all medications, machines, or other medical procedures that in reasonable medical judgment could keep me alive. If I am unable to take nutrition or fluids by mouth, then I want to receive nutrition or fluids by tube or other medical means.

OR

(B) _____ (Initials) Allow my natural death to occur. I do not want any medications, machines, or other medical procedures that in reasonable medical judgment could keep me alive but cannot cure me. I do not want to receive nutrition or fluids by tube or other medical means except as needed to provide pain medication.

OR

(C) _____ (Initials) I do not want any medications, machines, or other medical procedures that in reasonable medical judgment could keep me alive but cannot cure me, except as follows:

Initial each statement that you want to apply to option (C).

_____ (Initials) If I am unable to take nutrition by mouth, I want to receive nutrition by tube or other medical means.

_____ (Initials) If I am unable to take fluids by mouth, I want to receive fluids by tube or other medical means.

_____ (Initials) If I need assistance to breathe, I want to have a ventilator used.

_____ (Initials) If my heart or pulse has stopped, I want to have cardiopulmonary resuscitation (CPR) used.

8. Additional Statements

This section is optional. PART TWO will be effective even if this section is left blank. This section allows you to state additional treatment preferences, to provide additional guidance to your health care agent (if you have selected a health care agent in PART ONE), or to provide information about your personal and religious values about your medical treatment. For example, you may want to state your treatment preferences regarding medications to fight infection, surgery, amputation, blood transfusion, or kidney dialysis. Understanding that you cannot foresee everything that could happen to you after you can no longer communicate your treatment preferences, you may want to provide guidance to your health care agent (if you have selected a health care agent in PART ONE) about following your treatment preferences. You may want to state your specific preferences regarding pain relief.

9. In Case of Pregnancy

PART TWO will be effective even if this section is left blank.

I understand that under Georgia law, PART TWO generally will have no force and effect if I am pregnant unless the fetus is not viable and I indicate by initialing below that I want PART TWO to be carried out.

_____ (Initials) I want PART TWO to be carried out if my fetus is not viable.

PART THREE — Guardianship

10. Guardianship

PART THREE is optional. This advance directive for health care will be effective even if PART THREE is left blank. If you wish to nominate a person to be your guardian in the event a court decides that a guardian should be appointed, complete PART THREE. A court will appoint a guardian for you if the court finds that you are not able to make significant responsible decisions for yourself regarding your personal support, safety, or welfare. A court will appoint the person nominated by you if the court finds that the appointment will serve your best interest and welfare. If you have selected a health care agent in PART ONE, you may (but are not required to) nominate the same person to be your guardian. If your health care agent and guardian are not the same person, your health care agent will have priority over your guardian in making your health care decisions, unless a court determines otherwise.

State your preference by initialing (A) or (B). Choose (A) only if you have also completed PART ONE.

(A) _____ (Initials) I nominate the person serving as my health care agent under PART ONE to serve as my guardian.

OR

(B) _____ (Initials) I nominate the following person to serve as my guardian:

Name: _____

Address: _____

Telephone Numbers: _____
(Home, Work, and Mobile)

PART FOUR—Effectiveness and Signatures

This advance directive for health care will become effective only if I am unable or choose not to make or communicate my own health care decisions.

This form revokes any advance directive for health care, durable power of attorney for health care, health care proxy, or living will that I have completed before this date.

Unless I have initialed below and have provided alternative future dates or events, this advance directive for health care will become effective at the time I sign it and will remain effective until my death (and after my death to the extent authorized in Section (5) of PART ONE).

_____ (Initials) This advance directive for health care will become effective on or upon _____ and will terminate on or upon _____.

You must sign and date or acknowledge signing and dating this form in the presence of two witnesses. Both witnesses must be of sound mind and must be at least 18 years of age, but the witnesses do not have to be together or present with you when you sign this form.

A witness:

- Cannot be a person who was selected to be your health care agent or back-up health care agent in PART ONE;
- Cannot be a person who will knowingly inherit anything from you or otherwise knowingly gain a financial benefit from your death; or
- Cannot be a person who is directly involved in your health care.

Only one of the witnesses may be an employee, agent, or medical staff member of the hospital, skilled nursing facility, hospice, or other health care facility in which you are receiving health care (but this witness cannot be directly involved in your health care).

By signing below, I state that I am emotionally and mentally capable of making this advance directive for health care and that I understand its purpose and effect.

(Signature of Declarant)

(Date)

The declarant signed this form in my presence or acknowledged signing this form to me. Based upon my personal observation, the declarant appeared to be emotionally and mentally capable of making this advance directive for health care and signed this form willingly and voluntarily.

(Signature of First Witness)

(Date)

Print Name: _____

Address: _____

(Signature of Second Witness)

(Date)

Print Name:

Address:

This form does not need to be notarized.



FINANCIAL POWER OF ATTORNEY

STATUTORY FINANCIAL POWER OF ATTORNEY

The Statutory Form Financial Power of Attorney authorizes another person (your Agent) to make decisions concerning your assets for you (the Principal). Whether or not you are able to act for yourself, your Agent will be able to make decisions and take almost any action you can with regard to your assets, including your money. You can pick and choose the powers you give your Agent, but it is recommended to give your Agent all of the customary powers. You should select someone you trust immensely to serve as your Agent. Unless you specify otherwise, the Agent's authority will continue until you die, revoke the Power of Attorney, the Agent resigns, or is unable to act for you. It is a good idea to pick someone who lives in the same city, so they are available to act quickly on your behalf if necessary. Your Agent may be the same person as your Executor and/or Trustee or Guardian for your children, but it is not required.

If nobody exists whom you trust completely to manage your affairs, you may choose not to execute a Statutory Power of Attorney. If you are incapacitated and do not have a Statutory Power of Attorney, the Probate Court could appoint a Conservator to manage your affairs under Probate Court supervision. The Conservatorship process can be time-consuming, expensive, and potentially embarrassing, so that process should be relied upon as a last resort. You can also nominate a Conservator in a Statutory Power of Attorney.

A Financial Power of Attorney typically takes effect upon signing, but in order to exercise their power, the Agent must have the Financial Power of Attorney document in their possession. A Financial Power of Attorney ends upon the death of the Principal, revocation of the Power of Attorney by the Principal or upon the appointment of a Guardian or Conservator for the Principal.

A Power of Attorney must be in writing, signed by you and attested to by one adult witness and a notary.

STATUTORY FINANCIAL POWER OF ATTORNEY FORM

STATUTORY FINANCIAL POWER OF ATTORNEY FORM

(updated as of November 1, 2018)

A financial power of attorney allows an individual (known as the principal) to appoint another individual (known as the agent) to conduct financial affairs on behalf of or in place of the principal for the principal's convenience or if the principal is unable to do so. A principal can give his or her agent complete or limited powers to act on his or her behalf.

Any individual over 18 years of age who has the capacity to enter into a contract can execute a financial power of attorney as the principal and appoint an agent to act on his or her behalf. A principal can still legally make decisions about his or her own financial affairs after signing a power of attorney for as long as he or she chooses or is able to do so. The principal may cancel or revoke the power of attorney at any time and end the agent's power to act on behalf of the principal. A power of attorney automatically terminates upon the death of the principal, at which time the executor or administrator of the principal's estate assumes power over the principal's assets.

To be valid, a financial power of attorney must be in writing, must be signed by the principal, must be witnessed by one competent individual, must be notarized, and must appoint an agent to conduct financial affairs on behalf of the principal.

A financial power of attorney does not allow someone to make medical or personal health decisions for the principal. Instead, an advance directive for healthcare should be used.

The Georgia General Assembly enacted the Uniform Power of Attorney Act (the "Uniform Act") in 2017 and amended it in 2018. The Uniform Act provides a standardized "Statutory Power of Attorney Form" to serve as a template for financial powers of attorney. The Statutory Power of Attorney Form creates a durable power of attorney that cannot be terminated by the principal's incapacity. The Uniform Act went into effect on July 1, 2017 but does not affect or invalidate any previously executed financial power of attorney.

Other forms or variations of the "Statutory Power of Attorney Form" may be used.

STATE OF GEORGIA)
COUNTY OF [COUNTY])

STATUTORY FORM POWER OF ATTORNEY

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in O.C.G.A. Chapter 6B of Title 10.

This power of attorney does not authorize the agent to make health care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise in the Special Instructions, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is not entitled to any compensation unless you state otherwise in the Special Instructions. Your agent shall be entitled to reimbursement of reasonable expenses incurred in performing the acts required by you in your power of attorney.

This form provides for designation of one agent. If you wish to name more than one agent, you may name a successor agent or name a co-agent in the Special Instructions. Co-agents will not be required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney shall be durable unless you state otherwise in the Special Instructions.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

DESIGNATION OF AGENT

I, [Client Full Name] also known as _____,] (name of principal), name the following person as my Agent:

Name of Agent: [Agent Name]

Agent's address: [Agent Address]

Agent's telephone number: [Agent Phone]

Agent's e-mail address: [Agent Email]

DESIGNATION OF SUCCESSOR AGENT(S)

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of successor Agent: [Successor Name]

Successor Agent's address: [Successor Address]

Successor Agent's telephone number: [Successor Phone]

Successor Agent's e-mail address: [Successor Email]

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of second successor Agent: [2nd Successor Name]

Second successor Agent's address: [2nd Successor Address]

Second successor Agent's telephone number: [2nd Successor Phone]

Second successor Agent's e-mail address: [2nd Successor Email]

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent(s) general authority to act for me with respect to the following subjects as defined in O.C.G.A. Chapter 6B of Title 10:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "all preceding subjects" instead of initialing each subject.)

- Real property
- Tangible personal property
- Stocks and bonds
- Commodities and options
- Banks and other financial institutions
- Operation of entity or business
- Insurance and annuities
- Estates, trusts, and other beneficial interests
- Claims and litigation
- Personal and family maintenance
- Benefits from governmental programs or civil or military service
- Retirement plans
- Taxes
- All preceding subjects

GRANT OF SPECIFIC AUTHORITY

My agent SHALL NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent. You should give your agent specific instructions in the Special Instructions when you authorize your agent to make gifts.)

- Create, fund, amend, revoke, or terminate an inter vivos trust
- Make a gift, subject to the limitations of O.C.G.A. § 10-6B-56 and any Special Instructions in this power of attorney
- Create or change rights of survivorship
- Create or change a beneficiary designation
- Authorize another person to exercise the authority granted under this power of attorney
- Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- Exercise authority over the content of electronic communications sent or received by the principal
- Exercise fiduciary powers that the principal has authority to delegate and that are expressly and clearly identified (including the persons for which the principal acts as a fiduciary) in the Special Instructions
- Renounce an interest in property, including a power of appointment

LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse, or descendant SHALL NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

SPECIAL INSTRUCTIONS

You may give special instructions on the following lines (you may add lines or place your special instructions in a separate document and attach it to the power of attorney):

(a) This is not a transaction specific form, and it substantially complies with the statutory power of attorney that has the meaning and effect prescribed by O.C.G.A. Chapter 6B of Title 10.

(b) My agent is authorized to have access to all of my digital assets, including the content of electronic communications sent or received by me, and to provide any custodian of digital assets with a written request for disclosure, a copy of this power of attorney, a certification by my agent that this power of attorney is in effect, and the number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify my account or evidence linking the account to me..

(c) I revoke all powers of attorney previously executed by me other than (i) a power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction; (ii) a durable power of attorney for health care, advance directive for health care, or other power to make health-care decisions; (iii) a proxy or other delegation to exercise voting rights or management rights with respect to an entity; or (iv) a power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

(d) My Agent may (i) create and fund a sole-benefit trust in accordance with United States Code, Title 42, § 1396p(c)(2)(B); (ii) create and fund a self-settled special needs trust in accordance with United States Code, Title 42, § 1396p(d)(4)(A); (iii) create and fund a qualified income trust in accordance with United States Code Title 42, § 1396p(d)(4)(B) if such a trust should be deemed necessary to qualify me for Medicaid benefits, and make arrangements for the diversion of my income to such a trust as necessary to comply with applicable Medicaid rules and regulations; and (iv) sign all necessary documents to allow me to join any trust qualifying under United States Code, Title 42, § 1396p(d)(4)(C) and transfer any portion of my assets to such trust.

(e) My agent has the authority to expend my funds for family maintenance as set forth in O.C.G.A. § 10-6B-52, but my agent is not required to do so. As such, neither a family member nor a creditor of a family member shall have the right to force my Agent to make any such expenditures.

EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

NOMINATION OF CONSERVATOR

(Initial your selection below).

() If it becomes necessary for a court to appoint a Conservator of my estate, I nominate the person named as my agent to serve.

() If it becomes necessary for a court to appoint a Conservator of my estate, I nominate the following person(s) for appointment:

Name of nominee for Conservator of my estate: [Nominee Name]

Nominee’s address: [Nominee Address]

Nominee’s telephone number: [Nominee Phone]

Nominee’s e-mail address: [Email or N/A if Nominee doesn’t have an email address]

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person has actual knowledge it has terminated or is invalid.

SIGNATURE AND ACKNOWLEDGMENT

Principal’s signature Date

Principal’s name printed: _____

Principal’s address: _____

Principal’s address: _____

Principal’s telephone number: _____

Principal’s e-mail address: _____

This document was signed or acknowledged in my presence on _____
(date) by [Client Full Name] (name of principal).

Witness’s signature: _____

Witness’s name printed: _____

Witness’s address: _____

Witness’s telephone number: _____

Witness’s e-mail address: _____

STATE OF GEORGIA)
COUNTY OF [COUNTY])

This document was signed in my presence on _____ (date) by
[Client Full Name] (name of principal) _____

NOTARY PUBLIC

(NOTARY SEAL OR STAMP)

My Commission Expires:

This document prepared by: [Preparer]

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:

- (1) Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;
- (2) Act in good faith;
- (3) Do nothing beyond the authority granted in this power of attorney; and
- (4) Disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:

[Client Full Name] by (Your signature) as agent

Unless the Special Instructions in this power of attorney state otherwise, you must also:

- (1) Act loyally for the principal's benefit;
- (2) Avoid conflicts that would impair your ability to act in the principal's best interest;
- (3) Act with care, competence, and diligence;
- (4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
- (5) Cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and
- (6) Attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

- (1) Death of the principal;
- (2) The principal's revocation of your authority or the power of attorney;
- (3) The occurrence of a termination event stated in the power of attorney;
- (4) The purpose of the power of attorney is fully accomplished; or
- (5) If you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

Liability of Agent

The meaning of the authority granted to you is defined in O.C.G.A. Chapter 6B of Title 10. If you violate O.C.G.A. Chapter 6B of Title 10 or act outside the authority granted, you may be liable for any damages caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice.

AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND AGENT'S AUTHORITY

STATE OF GEORGIA
COUNTY OF _____

I, _____ (name of agent), certify under penalty of perjury that [Client Full Name] (name of principal) granted me authority as an agent or successor agent in a power of attorney dated _____.

I further certify that to my knowledge:

- (1) The principal is alive and has not revoked the power of attorney or my authority to act under the power of attorney and the power of attorney and my authority to act under the power of attorney have not terminated;
- (2) If the power of attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;
- (3) If I were named as a successor agent, the prior agent is no longer able or willing to serve; and
- (4) _____

_____ (Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

Agent's signature _____ Date _____

Agent's name printed: _____

Agent's address: _____

Agent's telephone number: _____

Agent's e-mail address: _____

This document was signed or acknowledged in my presence on _____
____ (date) by _____ (name of agent).

NOTARY PUBLIC

(NOTARY SEAL OR STAMP)

My commission expires: _____

ADDENDUM TO STATUTORY FORM POWER OF ATTORNEY

DEFINITIONS OF AUTHORITY FOR SUBJECTS LISTED IN GRANT OF GENERAL AUTHORITY

O.C.G.A. Chapter 6B of Title 10 defines the authority for the subjects listed in the Statutory Form Power of Attorney's Grant of General Authority section as follows:

1. **Real Property:** to (i) demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property; (ii) sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property; (iii) pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the Principal or a debt guaranteed by the Principal; (iv) release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property which exists or is asserted; (v) manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the Principal, including: insuring against liability or casualty or other loss; obtaining or regaining possession of or protecting the interest or right by litigation or otherwise; paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with such taxes or assessments; and purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property; (vi) use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the Principal has, or claims to have, an interest or right; (vii) participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, and hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including: selling or otherwise disposing of them; exercising or selling an option, right of conversion, or similar right with respect to them; and exercising any voting rights in person or by proxy; (viii) change the form of title of an interest in or right incident to real property; and dedicate to public use, with or without consideration, easements or other real property in which the Principal has, or claims to have, an interest.

2. **Tangible Personal Property:** to (i) demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property; (ii) sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or otherwise dispose of tangible personal property or an interest in tangible personal property; (iii) grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the Principal or a debt guaranteed by the Principal; (iv) release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien, or other claim on behalf of the Principal, with respect to tangible personal property or an interest in tangible personal property; (v) manage or conserve tangible personal property or an interest in tangible personal property on behalf of the Principal, including: insuring against liability or casualty or other loss; obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise; paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with such taxes or assessments; moving the property from place to place; storing the property for hire or on a gratuitous bailment; and using and making repairs, alterations, or improvements to the property; and (vi) change the form of title of an interest in tangible personal property.

3. **Stocks and Bonds:** to (i) buy, sell, and exchange stocks and bonds; (ii) establish, continue, modify, or terminate an account with respect to stocks and bonds; (iii) pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the Principal; (iv) receive certificates and other evidences of ownership with respect to stocks and bonds; and (v) exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.
4. **Commodities and Options:** to (i) buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and (ii) establish, continue, modify, and terminate option accounts.
5. **Banks and Other Financial Institutions:** to (i) continue, modify, and terminate an account or other banking arrangement made by or on behalf of the Principal; (ii) establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent; (iii) contract for services available from a financial institution, including renting a safe deposit box or space in a vault; (iv) withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the Principal deposited with or left in the custody of a financial institution; (v) receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them; (vi) enter a safe deposit box or vault and withdraw or add to the contents; (vii) borrow money and pledge as security personal property of the Principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the Principal or a debt guaranteed by the Principal; (viii) make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the Principal or payable to the Principal or the Principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the Principal and pay it when due; (ix) receive for the Principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument; (x) apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and (xi) consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.
6. **Operation of Entity or Business:** to (i) operate, buy, sell, enlarge, reduce, or terminate an ownership interest; (ii) perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the Principal has, may have, or claims to have; (iii) enforce the terms of an ownership agreement; (iv) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the Principal is a party because of an ownership interest; (v) exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the Principal has or claims to have as the holder of stocks and bonds; (vi) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the Principal is a party concerning stocks and bonds; (vii) with respect to an entity or business owned solely by the Principal: continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the Principal with respect to the entity or business before execution of the power of attorney; determine: the location of its operation, the nature and extent of its business, the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation, the amount and types of insurance carried, and the mode of engaging, compensating, and dealing with its employees and accountants, attorneys, or other advisors; change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and demand and receive money due or claimed by the Principal or on the Principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business; (viii) put additional capital into an entity or business in which the Principal has an interest; (ix) join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business; (x) sell or liquidate all or part of an entity or business; (xi) establish the value of an entity or business under a buy-out agreement to which the Principal is a party; (xii) prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to an entity or business and make related payments; (xiii) pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the Principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney; and (iv) exercise the principal's fiduciary powers associated with an ownership interest.

7. **Insurance and Annuities:** to (i) continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the Principal which insures or provides an annuity to either the Principal or another person, whether or not the Principal is a beneficiary under the contract; (ii) procure new, different, and additional contracts of insurance and annuities for the Principal and the Principal's spouse, children, and other dependents, and select the amount, type of insurance or annuity, and mode of payment; (iii) pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent; (iv) apply for and receive a loan secured by a contract of insurance or annuity; (v) surrender and receive the cash surrender value on a contract of insurance or annuity; (vi) exercise an election; (vii) exercise investment powers available under a contract of insurance or annuity; (viii) change the manner of paying premiums on a contract of insurance or annuity; (ix) change or convert the type of insurance or annuity with respect to which the Principal has or claims to have authority described in this Code section; (x) apply for and procure a benefit or assistance under a law or regulation to guarantee or pay premiums of a contract of insurance on the life of the Principal; (xi) collect, sell, assign, hypothecate, borrow against, or pledge the interest of the Principal in a contract of insurance or annuity; (xii) select the form and timing of the payment of proceeds from a contract of insurance or annuity; and (xiii) pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of such tax or assessment.

8. **Estates, Trusts, and Other Beneficial Interests (defined by O.C.G.A. § 10-6B-50(a)):** to (i) accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from an estate, trust, or other beneficial interest; (ii) demand or obtain money or any other thing of value to which the Principal is, may become, or claims to be, entitled by reason of an estate, trust, or other beneficial interest, by litigation or otherwise; (iii) exercise for the benefit of the Principal a presently exercisable general power of appointment held by the Principal; (iv) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the Principal; (v) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary; (vi) conserve, invest, disburse, or use anything received for an authorized purpose; (vii) create, amend, and revoke a revocable trust so long as the terms of the trust only authorize distributions that would be allowable under the power of attorney if the principal held the trust assets outright and provide for the distribution of all trust assets to the principal's estate upon the principal's death; (viii) transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor or as described in (vii); and (ix) with respect to a bona fide dispute, consent to a reduction in or modification of a share in or payment from an estate, trust, or other beneficial interest.

9. **Claims and Litigation:** to (i) assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or any other thing of value, recover damages sustained by the Principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief; (ii) bring an action to determine adverse claims or intervene or otherwise participate in litigation; (iii) seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree; (iv) make or accept a tender, offer of judgment, or admission of facts, submit a controversy on an agreed statement of facts, consent to examination, and bind the Principal in litigation; (v) submit to alternative dispute resolution, settle, and propose or accept a compromise; (vi) waive the issuance and service of process upon the Principal, accept service of process, appear for the Principal, designate persons upon which process directed to the Principal may be served, execute and file or deliver stipulations on the Principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation; (vii) act for the Principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the Principal or some other person, or with respect to a reorganization, receivership, or application for the appointment of a receiver or trustee which affects an interest of the Principal in property or any other thing of value; (viii) pay a judgment, award, or order against the Principal or a settlement made in connection with a claim or litigation; and (ix) receive money or any other thing of value paid in settlement of or as proceeds of a claim or litigation.

10. **Personal and Family Maintenance:** to (1) perform the acts necessary to maintain the customary standard of living of the Principal, the Principal's spouse, and the following individuals, whether living when the power of attorney is executed or later born: the Principal's minor children; the Principal's adult children who are pursuing a postsecondary school education and are under 25 years of age; the Principal's parents or the parents of the Principal's spouse, if the Principal had established a pattern of such payments or indicated a clear intent to make such payments; the Principal's minor dependents who are not also the Principal's children, if the Principal had established a pattern of such payments or indicated a clear intent to make such payments; the Principal's adult descendants who are under 25 years of age, not the Principal's children, and pursuing a postsecondary school education, if the Principal had established a pattern of such payments or indicated a clear intent to make such payments; and any other individuals legally entitled to be supported by the Principal; (ii) make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the Principal is a party; (iii) provide living quarters for the individuals described in subparagraph (i) above by: purchase, lease, or other contract; or paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the Principal or occupied by those individuals; (iv) provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for individuals described in subparagraph (i) above to enable such individuals to maintain their customary standard of living; (v) pay expenses for necessary health care and custodial care on behalf of the individuals described in subparagraph (i) above; (vi) act as the Principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, §§ 1171 through 1179 of the Social Security Act, 42 U.S.C. § 1320d, in effect on February 1, 2017, and applicable regulations in effect on February 1, 2017, in making decisions related to the past, present, or future payment for the provision of health care consented to by the Principal or anyone authorized under the laws of this state to consent to health care on behalf of the Principal; (vii) continue any provision made by the Principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described in subparagraph (i) above; (viii) maintain credit and debit accounts for the convenience of the individuals described in subparagraph (i) above and open new accounts; and (ix) continue payments incidental to the membership or affiliation of the Principal in a religious institution, club, society, order, or other organization or to continue contributions to those organizations.

11. **Benefits from Governmental Programs or Civil or Military Service (as defined by defined by O.C.G.A. § 10-6B-53(a)):** to (i) execute vouchers in the name of the Principal for allowances and reimbursements payable by the United States or a foreign government or by a state or political subdivision of a state to the Principal, including allowances and reimbursements for transportation of the individuals described in paragraph (1) of subsection (a) of O.C.G.A. § 10-6B-52, and for shipment of their household effects; (ii) take possession and order the removal and shipment of property of the Principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for such purpose; (iii) enroll in, apply for, select, reject, change, amend, or discontinue, on the Principal's behalf, a benefit or program; (iv) prepare, file, and maintain a claim of the Principal for a benefit or assistance, financial or otherwise, to which such Principal may be entitled under a law or regulation; (v) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the Principal may be entitled to receive under a law or regulation; and (vi) receive the financial proceeds of a claim described in paragraph (4) of this subsection and conserve, invest, disburse, or use for a lawful purpose anything so received.

12. **Retirement Plans (as defined by O.C.G.A. § 10-6B-54(a)):** to (i) select the form and timing of payments under a retirement plan and withdraw benefits from a plan; (ii) make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another; (iii) establish a retirement plan in the Principal's name; (iv) make contributions to a retirement plan; (v) exercise investment powers available under a retirement plan; and (vi) borrow from, sell assets to, or purchase assets from a retirement plan.

13. **Taxes:** to (i) prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under Internal Revenue Code § 2032A, 26 U.S.C. § 2032A, in effect on February 1, 2017, closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years; (ii) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority; (iii) exercise any election available to the Principal under federal, state, local, or foreign tax law; and (iv) act for the Principal in all tax matters for all periods before the Internal Revenue Service, or other taxing authority.

GUARDIANSHIPS & CONSERVATORSHIPS

TYPES OF GUARDIANSHIP OVER INCAPACITATED ADULTS

Testamentary Guardian and/or Conservator: A parent, in their Last Will and Testament, may nominate a Testamentary Guardian for a minor child or children. In this instance, upon the probate of the deceased parent's Last Will and Testament, provided there is no other living parent, the nominated person receives Letters of Guardianship and/or Conservatorship without notice or hearing. A Testamentary Guardian holds the same powers as a Permanent Guardian appointed by the Probate Court but is not required to give bond. If the child's other parent is alive and you name someone else as Guardian, the other parent can override your choice as long as his or her parental rights have not been terminated. Nevertheless, if you desire to name someone else as Guardian, you should still do so, because the other parent might not object to your choice, and in the event of a dispute over Guardianship of the child, the Probate Court deciding the issue will have the benefit of knowing your choice for Guardian.

The Guardian and Conservator may be the same person as your Executor or Trustee, but may also be someone different. You should choose a Guardian on the basis of who will provide the best home and environment for your children. You have the right to name a Conservator to manage any assets your child inherits from you. You should choose a Conservator based on who is best qualified to take care of the child's assets and money. If the child's other parent is alive and you name someone else as Conservator, the other parent cannot override your choice.

Standby Guardianship: A Designation of Standby Guardian form permits you to designate in advance who should be responsible for the care of your children (under age 18) in the event that you are still living but cannot care for them yourself, as might be the case if you get sick or are in a serious accident. The Designation of Standby Guardian allows the named Standby Guardian, for a limited period, to exercise all of the authority over your children as a Permanent Guardian.

This document is effective only if and when your doctor states in writing that you are unable to care for the children and the Designation of Standby Guardian and health determination are filed with the Probate Court. This form of Guardianship is only valid for 120 days, and if you are still unable to care for the children after that time, a permanent or longer-term Guardian must be appointed by the Probate Court.

The purpose of this document is not to take children away, but to give legal authority to someone else to care for the child, seek medical attention for the child if needed, register the child for school, etc. When you get better and are able to take care of your children again, you can revoke the Standby Guardianship.

You must obtain the other parent's consent to the designation, unless the other parent is dead, has had their parental rights terminated, or cannot be found.

Nomination of Guardian, Conservator, and Trustee: Georgia law permits you to designate, in advance, a Guardian, Conservator, and Trustee for your children (under age 18) in the event that you are still living AND you are found to be mentally or physically incapacitated pursuant to the laws of Georgia or any other judicial or administrative provision or procedure. A nomination of Guardian, Conservator or Trustee is not effective until it is approved by the Probate Court, and the nomination does not expire until the emancipation of the minor child, the disability of the adult is overcome, the death of the incapacitated adult, or the Guardianship, Conservatorship or Trusteeship has been cancelled by the Probate Court. If the child's other parent is alive and you name someone other than the other parent as Guardian, the other parent can override your choice as long as their parental rights have not been terminated. Nevertheless, if you desire to name someone else as Guardian, you should still do so, because the other parent might not object to your choice, and in the event of a dispute over Guardianship of the child, the Probate Court deciding the issue will have the benefit of knowing your choice for Guardian. The Guardian, Conservator, and Trustee can be the same person, but they do not have to be the same person. It is recommended that they are the same person so that the two individuals are not at odds, opening the door to the Conservator or Trustee refusing a Guardian's request for funds for the minor child and leading to expensive litigation and tense relationships.

Temporary Guardianships: Sometimes parents are temporarily unable to care for their minor children and must place them with a friend or relative who can care for the children until the custodial parent(s) can do so again. In these situations, a Temporary Guardianship of the minor can be useful to the parties, so that the Temporary Guardian can enroll the child in school, authorize medical treatment, etc.

The Probate Court will not grant Temporary Letters of Guardianship from one custodial parent to another. A custody change or temporary agreement must be filed in the appropriate court having jurisdiction, usually the Superior Court but sometimes the Juvenile Court.

Permanent Guardianships: Permanent Guardianships of minor children are not authorized unless both parents are deceased or the parental rights of any living parent have been terminated by a Probate Court. Termination of parental rights is not the same thing as a loss of custody. Termination is permanent. A custody order may be modified at a later date.

Conservatorship of Property: A Conservatorship of the assets of a minor is required in order for any person who is not the child's natural Guardian to receive, on the minor's behalf, money or real property. A natural Guardian may receive money or real property for their child without becoming a Conservator if the assets are worth less than \$15,000, provided no other person has been appointed Conservator of the child's assets.

The Guardian and Conservator can be the same person.

A Guardianship or Conservatorship typically terminates when it is revoked or terminated, the minor becomes an adult or is emancipated, or upon the death of the minor child.

Guardianship: Permanent Guardianships of an adult may be granted by the Probate Court if the Probate Court finds the adult lacks sufficient capacity to make or communicate significant responsible decisions concerning their health or safety. A Guardianship of an adult ward ends when the ward dies.

Conservatorship: Conservatorship of an adult may be granted by the Probate Court if the Probate Court finds the adult lacks sufficient capacity to make or communicate significant decisions concerning the management of their assets. A Conservatorship of an adult ward ends when the ward dies, a ward's rights are restored or when the ward's assets no longer justify management by a Conservator. In order to close a Conservatorship and be relieved from liability under the bond, the Conservator must file a petition for discharge.

Nomination of Guardian and/or Conservator: Georgia law permits designation, in advance, of a Guardian and/or Conservator for yourself or an incapacitated adult family member in the event that person is still living AND found to be mentally or physically incapacitated pursuant to the laws of Georgia or any other judicial or administrative provision or procedure. A nomination of Guardian and/or Conservator is not effective until it is approved by the Probate Court, and the nomination does not expire until the death of the adult ward, the disability of the adult ward is overcome, or the Guardianship and/or Conservatorship has been cancelled by the Probate Court. The Guardian and Conservator can be the same person, but they do not have to be the same person. It is recommended that they are the same person so that the two individuals are not at odds, leading to expensive litigation and tense relationships.





TRUSTS

WHAT IS A TRUST?

A Trust is an entity created by a party known as the Grantor that holds assets for the benefit of one or more parties known as Beneficiaries. The Trustee is the party designated to manage the assets in the Trust. It is important to consult with an attorney to determine if a Trust is right for your circumstances. Since a Trust can last 360 years, it is critical that it is drafted by an attorney experienced in Trusts. Keep in mind that a poorly drafted Trust can sometimes be worse than no Trust at all. Several types of Trusts exist, some of which are described in this section.

WHAT IS A TRUSTEE?

A Trustee is the person who will be responsible for any assets held in trust until it is all distributed to the Beneficiary. The Trustee may be the same person as your Executor, which is probably the most efficient, but they do not need to be the same person. The Trustee should be someone like the Executor -- intelligent, trustworthy, and responsible. In accordance with the provisions of the Trust, the Trustee will make decisions about when, and in what amounts, distributions of income and principal will be made to the Beneficiary. The Trustee is required to give reports to the Probate Court about the Trust and post a bond. You can require the reports and bonds or you can choose to waive this requirement.

COMMON TYPES OF TRUSTS

Testamentary Trust: A Testamentary Trust is used to hold assets gifted to any Beneficiary under age 18, until the Beneficiary attains an age established by you in your Last Will and Testament. Any incapacitated adult who cannot manage their own affairs may also need a Testamentary Trust. Although a Testamentary Trust is typically created for minor children and incapacitated or irresponsible adults, it can also conserve or restrict the use of any testamentary gift. If you create a Testamentary Trust, you also need to appoint a Trustee, who will manage the assets in the Trust.

Revocable Living (AKA Inter Vivos) Trust: A Revocable Trust is one in which the Grantor can cancel or revoke the Trust at any time. If the Trust is revoked, ownership of the assets transfers back to the Grantor. If a Grantor passes away without ever revoking the Trust, the Trust becomes irrevocable upon their death. A Living Trust, also sometimes called an Inter Vivos Trust, is simply a Trust that is created and goes into effect during the lifetime of the Grantor, rather than at death of the Grantor.

A properly written and funded Living Trust can offer advantages both before and after death. During your lifetime, you can continue to live in your home and spend your assets as you normally would. If you become incapacitated, the Trust provides for the management of your assets. After your death, your Beneficiaries receive your assets according to the Trust and under the management of the Trustee without going through probate. Avoiding probate is the main reason why living trusts are popular. However, in a state like Georgia that has a fairly simple probate process, depending on the type and value of your assets and your estate planning goals, a living trust may not be a good fit for you.

One of the drawbacks to using a Living Trust is that even if you have created a Living Trust, you will still need a Last Will and Testament. A Last Will and Testament provides a backup plan for any of your assets that were not transferred into your Trust. For example, if you have a Living Trust, but do not have a Last Will and Testament and you acquire new real property, but forget to add it to your Trust before you die, that real property will not pass under the Terms of the Trust and would be distributed by the Probate Court according to Georgia intestacy law without taking your wishes into consideration. Another drawback is that funding a Living Trust can be cumbersome and difficult. You will need to contact your banks, investment and insurance companies, and real estate attorneys to change the title of ownership and update Beneficiaries.

Special Needs Trust: This section creates a Special Needs Trust, if necessary. A Special Needs Trust is used to preserve and protect the ability of a minor child or incapacitated adult to collect public or private financial assistance (i.e. Medicaid, Social Security, etc.). Most of the financial assistance available through public and private programs is means-tested, and the Beneficiary will not qualify for financial assistance unless they are deemed indigent. Whereas a standard Testamentary Trust requires the distribution of the principal and income of the Trust to provide for the health and support of the Beneficiary, thereby eliminating the possibility of indigence, a Special Needs Trust limits the ways in which the principal and income from the Trust can be used, allowing the Beneficiary to remain indigent and thereby satisfying the means-tested requirements of many public and private programs. The Special Needs Trust restricts the use of the trust property to debts and expenditures that are not covered by public or private assistance programs, but that improves the quality of life of the special needs Beneficiary. The assets held in such a Trust are not included within the means-testing used by most public and private programs.



SAFEGUARDING YOUR ESTATE PLANNING DOCUMENTS

SAFEGUARDING YOUR ESTATE PLANNING DOCUMENTS

Keep your original estate planning documents in a place where they will be safe from theft, destruction, or alteration. Let your Executor and Agent know where to find the original documents, if needed. Be sure to keep copies of the documents for your records. Do not depend on your attorney to keep copies of your documents.

Last Will and Testament: Be very careful to safeguard your Last Will and Testament. While you can probate a copy of a Last Will and Testament, your Executor will have to overcome a presumption by the Probate Court that the original Last Will and Testament is missing because it was purposefully destroyed by the Testator.

Advance Directive for Health Care: If you have an Advance Directive for Health Care, you should make sure your primary care provider and all of your named Agents have a copy of it. You may wish to file a copy of your Advance Directive for Health Care in your medical records with your doctors and any hospital where you receive medical services.

Statutory Power of Attorney: Your Statutory Power of Attorney gives your Agent broad authority with regard to your financial affairs and a dishonest Agent could always take advantage of your trust. Your Agent's ability to take advantage of the Power of Attorney is limited as long as you retain the original document and all of the copies. Your Agent should, however, know where the original is kept and your Agent should have access to the document in the event of your temporary or permanent disability. You may revoke your Power of Attorney by written revocation or by destroying the original and all copies.

Standby Designation of Guardianship: If the non-custodial parent of your child is living and their parental rights have not been terminated, you must obtain their written consent on the document before the designation of Guardian will be effective. The Guardian must also sign the form accepting the responsibility. Ideally, you should give the original form to the Guardian, since they are the person who will need the document should the appropriate circumstances arise. If you are not comfortable doing that, then you should at least make sure the designated Guardian can access the document.

REVIEWING YOUR DOCUMENTS AS NEEDED

Life changes such as marriage, divorce, birth of a child, death of an Agent or heirs, or a change in your state of residence are good opportunities to review your estate planning documents. These life changes could revoke or change your documents. You should consult with an attorney if you have one of these life changes and ask the attorney whether you need to prepare new documents. If your relationship with family, Agents, Executors, and others changes, that relationship could cause you to change your mind about the instructions and appointments you made in your documents. If there is a dramatic increase in your wealth, you may require tax and estate planning advice that will require you to change your Last Will and Testament.

STORING YOUR DOCUMENTS

It is recommended that you keep your original documents at home. It is best to keep them in a fire-proof box or a similar safe place. However, home storage is not advised if a person with bad intentions has access to your home and would benefit from stealing, misplacing, or losing your documents. It is not recommended to keep your original documents in a safe deposit box. If you choose to put your documents in a safe deposit box, (a) make sure your Executor and Agents know where the box and key is located and (b) confer with the bank to make sure your Executor or Agents can access your documents when they need them. Banks have rules about how someone can access your safe deposit box without you being there. You should ask your bank what its rules are before you place the documents in a safe deposit box.

FILING YOUR LAST WILL AND TESTAMENT WITH THE PROBATE COURT

If you would like, you can pre-file your original Last Will and Testament with the Probate Court in the county where you live. They will charge a small fee. Tell your Executor if you pre-file your Last Will and Testament. Pre-filing protects your Last Will and Testament from theft or destruction. Probate Court seals a pre-filed Last Will and Testament so your Last Will and Testament is kept confidential before your death. The Probate Court will store only your Last Will and Testament – it will not store your other documents.

ALTERING OR MARKING ON YOUR LAST WILL AND TESTAMENT

Do not make any changes to your Last Will and Testament by writing on the document itself, crossing out sections, changing names of Beneficiaries, etc. Not only might the changes you make be ineffective, marking your original Last Will and Testament might cause your entire Last Will and Testament to be invalid, even if the changes are initialed, witnessed, or notarized. If you want to make changes to your Last Will and Testament, the best thing to do is make a new Last Will and Testament. Another alternative is to make a codicil, but this should only be done with the assistance of an experienced estate planning attorney, and is not generally recommended.



EXECUTION REQUIREMENTS

Last Will and Testament: A Last Will and Testament must:

- be in writing;
- transfer assets upon the Testator's death;
- be freely and voluntarily signed by the Testator (or a disinterested person in the Testator's presence and at the Testator's direction) in the presence of two disinterested witnesses over the age of 14.

No particular form or words are necessary so long as the document makes the Testator's intentions clear. Georgia does not recognize oral or unwitnessed Last Wills and Testament.

It is recommended that the Last Will and Testament also contain a self-proving affidavit, although it is not necessary for the Last Will and Testament to be deemed valid. Under a self-proving affidavit, the Testator and the witnesses swear before the notary that they properly executed the Last Will and Testament. The self-proving affidavit must be signed by the Testator, the same two disinterested witnesses and the notary. The self-proving affidavit streamlines the probate process by eliminating the needs for the witnesses to later testify to the Probate Court that the Last Will and Testament was properly executed.

Advance Directive for Health Care: An Advance Directive for Health Care must be signed by the principal in the presence of two disinterested witnesses, both of whom must also sign. It does not need to be notarized.

Financial Power of Attorney: A Financial Power of Attorney must be in writing, signed by the principal in the presence of one disinterested witness and a notary, both of whom must also sign.

Standby Designation of Guardian: A Standby Designation of Guardian must be in writing, signed by the principal in the presence of two disinterested witnesses over the age of 18, both of whom must also sign.



GEORGIA HEIRS PROPERTY
LAW CENTER

Georgia Heirs Property Law Center is a not-for-profit law firm that helps heirs property owners, nonprofits and local governments remediate fractured title, increase equity and transfer wealth to the next generation through title clearing, wills creation, estate planning and facilitating access to government, private sector, and nonprofit land management and home improvement programs.

APPLYING FOR LEGAL ASSISTANCE WITH HEIRS PROPERTY ISSUES

Who Does the Center Serve?

The Center works throughout Georgia but, due to limited resources, cannot accept every case. The Center gives priority to potential clients with properties located in Atlanta and South Georgia. The Center's services are either free or discounted depending on a client's qualifications.

How Do I Apply for Assistance?

To apply for assistance, contact the Center at (706) 424-7557, Ext. 1 for a free initial telephone interview. To fully evaluate your case for representation and best serve you, please plan to provide the following documents:

- A rough draft family tree, beginning with the person on the last deed for the property, and showing the names of all heirs and their spouses (if presently known), how they are related, and whether they are living or deceased;
- Copies of any deeds for the property;
- Copies of wills or probate documents for the original owner and deceased heirs;
- Copies of written agreements among family members or with third parties regarding the property;
- Copies of any legal notices relating to the property, such as tax sale, foreclosure, pending or threatened lawsuits, and code violation notices;
- Copies of recent tax bills and other tax records for the property;
- Copies of other documents relating to the property or your heirs property issue; and
- A completed income worksheet for your household.

Following the telephone interview, you may be asked to provide additional information. Upon receiving all requested information and documents, the Center will review your matter and make an initial determination regarding whether to move forward with you as a "Pending Applicant" and what legal fees, if any, you would be required to pay if your case is formally accepted. Pending Applicants are required to complete an Heirs Determination packet and may be asked to find additional documents. Once the Center receives your completed information, we will make a final determination regarding your case.

Please bear in mind throughout the process that the Center has not yet agreed to represent you and has not established an attorney-client relationship with you. You will only become a client if the Center formally accepts your matter and you sign an engagement agreement.

GEORGIA HEIRS PROPERTY LAW CENTER
(706) 424-7557 • INFO@GAHEIRSPROPERTY.ORG • WWW.GAHEIRSPROPERTY.ORG



Georgia Heirs Property Law Center is a not-for-profit law firm that helps heirs property owners, nonprofits, and local governments remediate fractured title, increase equity and transfer wealth to the next generation through title clearing, wills creation, estate planning and facilitating access to government, private sector, and nonprofit land management or home improvement programs.

Building Generational Wealth and Strengthening Communities by Securing and Preserving Property Rights.

WHAT WE DO



LEGAL SUPPORT

Georgia Heirs Property Law Center provides legal support for families, individuals, nonprofits and municipalities. Title-clearing services include title audits, family meetings, probate, quiet title actions, and legal tools like management agreements; powers of attorneys; consolidation of title into single ownership, LLC, or trust.



LAND LOSS PREVENTION

Georgia Heirs Property Law Center develops estate plans and prepares last wills and testaments for individuals to foster generational wealth transfer and prevent land loss. Services may include advanced directive for healthcare, financial power of attorney, and establishing a trust or LLC. In addition, the Center provides educational materials for nonprofits through its Estate Planning Forms Project.



ASSET EDUCATION

Georgia Heirs Property Law Center provides financial education on home and land ownership to grow assets for the next generation. The Center engages nonprofit and governmental partners to help clients develop land/timber management plans, qualify for USDA programs, and access home repair, Disaster Recovery and Resilience programs.

WHO WE ARE



Center attorneys, support staff, and a network of pro bono volunteers and grassroots organizational partners



Statewide work with geographic outreach in Atlanta and South Georgia



Serving families, individuals, nonprofits, and municipalities with legal support, prevention, and asset education services.



Offices in Atlanta, Athens, Fitzgerald, and Valdosta.

Heirs Property is the hidden story behind blight and generational poverty in Georgia.

Heirs property refers to a home or land that passes from generation to generation without a legally designated owner resulting in ownership divided among all living descendants in a family. This unstable form of ownership limits a family's ability to build generational wealth and hampers the efforts of nonprofits and cities to revitalize neighborhoods.

CONTACT US

-  www.gaheirsproperty.org
-  info@gaheirsproperty.org
-  706-424-7557