

YEAR'S SUPPORT IN GEORGIA

a) Transfer of Entire Estate in Lieu of probating the will.

One of the simplest ways to ensure that you receive the entirety of your spouse's estate is to file for a year's support. If you have a minor child, this petition must be joint between the yourself and the minor child(ren). If there is a will, the will must be filed with the court, but it does not have to be offered for probate. You should complete Ga. Probate Form No. 10. You must be specific in requesting the property that you want the court to award you. You may ask for real estate or personal property. The law requires you to value the property you are seeking. You also must serve the petition on all persons who would be affected by the granting of the petition. This includes all creditors of the estate, beneficiaries under the will and all heirs at law.

The standard for an award of year's support, if there is an objection, is that the "award must be reasonably related to the amount needed by the surviving spouse for a period of 12 months after the decedent's death to maintain the standard of living enjoyed prior to the death. Such award is not intended to compensate the surviving spouse for the death, support the spouse for many years to come, or provide a method for distributing the estate. As we have found, a claim for year's support is not analogous to a tort claim where general damages can be awarded based on the enlightened consciences of impartial jurors. Nor is it a claim for loss of consortium where damages are not capable of exact pecuniary measure and are left to the enlightened conscience of impartial jurors." Taylor v. Taylor, 288 Ga.App. 334, 337, 654 S.E.2d 146, 149 (2007).

The court will grant a petition for year's support as filed if there are no objections filed to the petition. The success of the filing requires that any person who files an

objection be dealt with appropriately. Many times, there will not be any objections filed by creditors. If a creditor files an objection, you should contact that creditor and resolve that creditor's claim. Your goal is to convince the creditor to withdraw its claim. If an heir or beneficiary files an objection to the petition, you should attempt to resolve the issue with the objector. You can then enter into a settlement agreement with the objector withdrawing its objection.

If you cannot resolve the objection, there will be a hearing where you will be required to present evidence of the amount that is reasonably related to the amount needed by the surviving spouse for a period of 12 months after the decedent's death to maintain the standard of living enjoyed prior to the death. The court's have held that the trier of fact must "take into consideration the following: (1)the support available to the person, for whom the property or money is to be set apart, from sources other than year's support, including but not limited to the principal of any separate estate and the income and earning capacity of that person; and (2)such other relevant criteria as the court deems equitable and proper. Holland v. Holland, 267 Ga.App. 251, 254, 599 S.E.2d 242, 245 (2004). If you have received insurance proceeds or property by way of a joint tenancy, the value of these transfers is included the above calculation.

There are several purposes in asking for an award of year's support. The first reason to file a petition for year's support is that it allows you to take the assets of the estate before the payment of any of the debts of the estate. This includes general creditors, but excludes the final expenses and expenses of administration, which come before an award of year's support.

The second reason to file a petition for year's support is that it allows you to claim the real estate free of any ad valorem taxes in the year of the decedent's death or the following year, whichever you choose. This can be of significant benefit if the property you wish to transfer is located in a county with high ad valorem taxes.

Finally, filing a petition for year's support allows you, and usually your children to ensure that you take full control of all of the assets of the decedent in lieu of provisions to the contrary in the will. This subverts the will of the testator and therefore, requires complete consent by all persons affected by the petition.

b) Renunciation of joint tenancy in order to utilize year' support.

If the decedent dies owning real estate as a joint tenant with right of survivorship, the survivor can renounce the property she would have taken by operation of law. You can then file for year's support to obtain the property without the payment of ad valorem taxes during the year of the transfer.

IRC § 25.2518(c)(4)(i), states that the surviving joint tenant may disclaim the one-half survivorship interest in real property held in a joint tenancy with right of survivorship within nine months of the date of the first joint tenant to die. O.C.G.A. § 53-1-20(b), provides that "any person . . . who succeeds to property by contract or by operation of law may renounce the property in whole or in part as provided in this Code Section." The fees and costs incurred in filing for year's support should be much less than the amount of money saved in not paying the ad valorem taxes for one year. This is a significant benefit to your clients.