

**PETITION FOR DECLARATION OF DEATH
OF MISSING INDIVIDUAL BELIEVED TO BE DEAD**

INSTRUCTIONS

I. Specific Instructions

1. This form is to be used for petition for declaration of death of missing individual believed to be dead pursuant to O.C.G.A. § 53-9-1 et seq.
2. The service requirements for this form are covered in O.C.G.A. § 53-9-2.
3. This form may be used in conjunction with a petition for letters of administration, a petition to probate will in common or solemn form, a petition for year's support or a petition for an order that no administration is necessary. Any of these other petitions may be granted at any time after the death is established, provided that all legal requirements for the granting of the other petition have been met.
4. Signatures of those who acknowledge service must be sworn to before a notary public or the clerk of any probate court of this state. An attorney at law may acknowledge service on behalf of his or her client; however, the attorney must certify that he or she currently represents that individual with regard to the pending matter and, in order to comply with O.C.G.A. § 53-11-6, the attorney's signature must be sworn to as provided above. It is not necessary that all acknowledgments appear on the same page.
5. O.C.G.A. § 53-11-2 provides that a party to a probate proceeding who is not sui juris must be represented by a guardian provided that the Court may appoint a guardian ad litem or determine that the natural guardian, guardian, conservator, or testamentary guardian has no conflict and may serve. Should a guardian ad litem be necessary because a party is not sui juris, use Georgia Probate Court Standard Form Supplement 1.
6. The final order includes language for both clear and convincing evidence and preponderance of the evidence. O.C.G.A. § 53-9-1 dictates the burden required based on the circumstances of the case.
7. Paragraph 4 of this form requires sufficient factual information for the Court to conclude that those listed in paragraph 3 of this form constitute all of the would-be heirs of the missing individual and that there are not additional heirs of the same or closer degree according to O.C.G.A. § 53-2-1. These facts must allow the Court to rule out the possibility that there may be other heirs of the same or closer degree who have not been listed. Provide the date of death of any post deceased heirs and the name of the personal representative if applicable. The personal representative of a post deceased heir is authorized to consent on behalf of that heir. O.C.G.A. § 53-7-1. When a party to a proceeding in probate court is a post deceased heir whose estate has no personal representative, such deceased heir's estate may be represented in the proceeding by a guardian ad litem. A person's heirs are determined at the time of that person's death. A close relative must be alive at the time the decedent dies to be an heir. If an heir who outlived the decedent subsequently dies, that post deceased heir must be represented by the personal representative of his or her estate or by a guardian ad litem. *[Note: If you are uncertain how to determine the heirs of a decedent, refer to the "Heirs*

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Determination Worksheet” available from the Probate Court or at www.gaprobate.gov.] Examples of such statement would be: (a) “Decedent was or was not married at the time of his death and had no children born, adopted, living, or deceased, other than listed herein”; (b) “Decedent had no other siblings half or whole other than those listed herein”; (c) “Decedent’s brother who died previously had no other children born, adopted, living, or deceased, other than listed herein.”

II. General Instructions

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

UNOFFICIAL VERSION – PENDING SUPREME COURT APPROVAL

IN THE PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA

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

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

The petition of _____,
[Full name(s) of petitioner(s)] First Middle Last
whose physical address(es) is/are _____,
Street City County State Zip Code
and mailing address(es) is/are _____,
Street City County State Zip Code
shows to the Court the following:

1.

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

2.

[Initial one]

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

[Initial one]

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

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

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3.

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

<i>Name</i>	<i>Age (or over 18)</i>	<i>Address</i>	<i>Relationship</i>

4.

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

5.

[Initial one]

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

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6.

The missing individual was last heard from on _____, [Date]
at which time he/she was at _____ [Location or address].

7.

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

8.

The petitioner shows the following facts in support of the belief that the missing individual is deceased: *[Note: If death is to be proved as a result of a specific peril or tragedy, fully describe the specific peril or tragedy and the circumstances proving the decedent’s exposure thereto and death as a result thereof.]* See O.C.G.A. § 53-9-2 (b) for the facts which must be stated.

WHEREFORE, petitioner prays:

- 1. That necessary notice be issued and served according to law; and
- 2. That an order declaring death be entered.

Signature of Petitioner

Printed Name

Mailing Address

Telephone Number

Signature of Attorney: _____

Printed Name of Attorney: _____

Address: _____

Telephone Number: _____ State Bar # _____

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VERIFICATION

GEORGIA, _____ COUNTY

Personally appeared before me the undersigned petitioner who, after being duly sworn, states that the facts set forth in the foregoing petition for declaration of death of missing individual believed to be dead (and the attached exhibit(s)) are true and correct.

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

Signature of Petitioner

NOTARY/CLERK OF PROBATE COURT
My Commission Expires: _____

Printed Name of Petitioner

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IN THE PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA

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

ACKNOWLEDGMENT OF SERVICE AND ASSENT TO PETITION

PETITION OF _____ FOR THE
DECLARATION OF DEATH OF THE ABOVE-NAMED MISSING INDIVIDUAL
BELIEVED TO BE DEAD

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

SIGNATURE(S) OF WOULD-BE HEIRS

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

Signature

NOTARY/CLERK OF PROBATE COURT

Printed Name

My Commission Expires: _____

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

Signature

NOTARY/CLERK OF PROBATE COURT

Printed Name

My Commission Expires: _____

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

Signature

NOTARY/CLERK OF PROBATE COURT

Printed Name

My Commission Expires: _____

NOTICE

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

SEE UNIFORM PROBATE COURT RULE 5.6 (A).

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IN THE PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA

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

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

ORDER FOR CITATION

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

IT IS ORDERED that citation issue and be published once a week for four weeks, in the official newspaper in this county, giving notice that on a day certain, which must be at least 90 days after the first publication, evidence will be heard by this Court concerning the alleged absence of the missing individual believed to be dead and the circumstances and duration thereof.

[Initial if applicable]

_____ IT IS FURTHER ORDERED that one or more petitions for the appointment of a personal representative, a petition for year’s support, or a petition for order declaring no administration necessary, has/have also been filed, and notice(s) of such petition(s) shall issue as set forth in orders pertaining to such petitions entered contemporaneously herewith.

_____ IT IS FURTHER ORDERED that a copy of the citation shall be forwarded by First Class Mail to the following individuals who would be heirs if the missing individual were known to be dead and who have not acknowledged service of the petition.

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

This _____ day of _____, 20_____.

Judge of the Probate Court

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CITATION

PROBATE COURT OF _____ COUNTY

RE: ESTATE OF _____, MISSING INDIVIDUAL

Dates of publication: _____

TO WHOM IT MAY CONCERN AND: _____:

A petition for declaration of death of the above-named missing individual believed dead has been filed by _____ (in conjunction with a petition for _____).

Notice is hereby given that at ____m., on the _____ day of _____, 20 ____, at _____

Evidence will be heard by the probate court concerning the alleged absence of said missing individual and the circumstances and duration thereof. The missing individual, if alive, or any other individual having evidence that the missing individual is alive, is required to produce and present to the court evidence at the hearing that the missing individual is still in life.

Judge of the Probate Court

By: _____
Probate Clerk/Deputy Clerk

Address

Telephone

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

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

CERTIFICATE OF SERVICE

I certify that I have this date mailed (unless otherwise noted) in an envelope with the proper postage affixed thereto for First-Class Mail delivery copies of the _____

_____ to the following parties at the addresses below:

This _____ day of _____, 20____.

Clerk of the Probate Court

Address

Telephone Number

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IN THE PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA

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

ORDER DECLARING DEATH AND DATE THEREOF

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

[Initial the applicable provision]

_____ A showing has been made that the above-named individual has been missing from his or
her last known place of domicile for a continuous period of 4 years, and therefore a
presumption of death has been established and has not been rebutted by a preponderance
of the evidence.

OR

_____ A showing has been made that the above-named individual has been missing from his or
her last known place of domicile for a continuous period of twelve months or more, and
the death of the above-named individual has been proved by a preponderance of the
evidence.

OR

_____ A showing has been made that the above-named individual was exposed to a specific peril
or tragedy resulting in probable death, and the death of the above-named individual has
been proved by clear and convincing evidence.

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

SO ORDERED this _____ day of _____, 20_____.

Judge of the Probate Court

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IN THE PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA

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

ORDER DENYING PETITION

The petition of _____,
for declaration of death of the above-named missing individual believed to be dead, having come
before the Court for hearing on _____, 20____, and it appearing that notice of
such hearing was duly published and served as required by law, and after hearing evidence in said
case, the Court finds:

[Initial one]

_____ that a diligent and reasonable effort has not been made to locate the missing individual.

OR

_____ that a diligent and reasonable effort has been made to locate the missing individual but that
the death of said missing individual has not been established as required by law.

ACCORDINGLY, the petition for declaration of death of missing individual believed to
be dead is hereby DENIED.

SO ORDERED this _____ day of _____, 20_____.

Judge of the Probate Court