**YEAR’S SUPPORT**

**YEAR’S SUPPORT-GENERALLY**

1. Year’s Support is designed to provide maintenance and support from the estate of the decedent for the surviving spouse and any minor children.
2. Purpose is to put the surviving spouse and minor children at the front of the line to receive property from the estate
3. Such an award become a debt of the estate of the highest priority (§53-3-1(b))
4. Petition must be filed within 2 years of the date of death
5. Spouse must be alive and not have remarried and children must still be minors at the time of filing of Petition
   1. **Dependent** – not having turned 18 or married prior to filing of petition
   2. Adopted children treated same as biological children
   3. Children who are “virtually adopted” also entitled to Year’s Support
   4. Born out of wedlock children are treated the same as “legitimate” children
6. If decedent was a nonresident who owned property in Georgia, the petition may be filed in any county in which property is located

**WHAT MUST BE INCLUDED IN PETITION**

1. A “complete” **schedule of property** sought to be set aside must be included
   1. This means include VINs for vehicles; account numbers for bank accounts, brokerage accounts, etc.; name of corporation, # of shares and certificate numbers for stocks
2. A **legal description of any real property** sought to be set aside must be included
   1. Language used is “petition must fully and accurately describe the real property with a legal description that would be sufficient to pass title to the property under the laws of this state”
3. Petition must state the **tax election** Petitioner is seeking.
   1. 3 choices – real property taxes accrued in year of Decedent’s death;
   2. real property taxes accrued in the year Petition is filed; or
   3. real property taxes accrued in the year following the filing of the Petition **if the Petition is filed in the year of Decedent’s death**
4. Taxes may be “waived” on the “homestead” of the decedent, if said homestead is awarded as a year’s support. Homestead is defined in O.C.G.A. §48-5-40. If the homestead is not awarded, then the waiver of taxes is applied to any and all other real property granted in the year’s support.
   1. This waiver covers all taxes or liens for taxes accrued against the property for all years prior to the year of death and the election listed above.
5. All “**interested persons**” must be listed – this includes decedent’s children, spouse, other heirs, personal representative of the estate, beneficiaries, creditors, and any others having a property right in or claim against the estate
   1. This can be a problem for the court because we have no way of knowing if it fully completed – there are sometimes clues – ex. Decedent is John R. Smith, Sr. but there is no John R. Smith, Jr. listed as an heir.
6. All Petitions must be published in the legal organ once a week for 4 weeks, all interested parties who have not acknowledged service must be mailed a copy of the Notice. Currently notice is mailed not less than 21 days prior to the date and time shown in the citation but this may be changing to 30 days in 2020-2021.
7. The Tax Commissioner of any county in this state in which real property is located must receive a copy of the Petition within **5 days** of its filing
8. If there are no objections to the Petition, the Probate Judge is to sign the order. There is no need for a hearing. The judge of the probate court has no authority to modify the request and must enter the order setting aside the property as applied for in the petition.

**OBJECTIONS AND HEARING**

1. **Objections to Year’s Support** - typically the objection is based on the amount of the award, but it could also be that the spouse or child is not the legal spouse or child of decedent, the spouse has remarried or the petition was not filed within 24 months of the date of death
2. Petitioner has the burden of proving the amount requested is the amount necessary for a year’s support. Petitioner also has the burden of proving the validity of the marriage or child of deceased, if those matters are at issue
3. Typically, the amount of support requested is the issue.
4. The final determination of the amount and nature of the property awarded will be made by the judge or jury (in Article 6 courts)
5. The court must consider support available from sources other than year’s support, including but not limited to any separate estate and the income and earning capacity of the individual seeking the year’s support; the solvency of the estate; and other such relevant criteria as the court deems equitable and proper
   1. *Allgood v. Allgood*, 263 Ga App. 177 (2003) wife received $126,000 outside of probate from her husband’s assets; she testified that her expenses during the year after his death were much less that this amount and that “didn’t go lacking for anything.” The probate court’s award of $91,500 as year’s support was reversed.
   2. *Hiers v. Estate of Hiers*, 278 Ga app. 242 (2006) prenuptial agreement precluded award of year’s support.
   3. *In Re: Estate of Emmett Taylor Boyd*, 340 Ga. App. 744 (2017), the Court of Appeals found that wife waived her rights to a year’s support in a post-nuptial agreement, but remanded the case back to the trial court to determine if it was “made with knowledge of her rights and of the condition of the estate” as required by the Supreme Court. The trial court order did not address this issue.
   4. *Holland v. Holland*, 267 Ga. App. 251 (2004), a year’s support award is not intended to support the spouse for many years to come. Such an award is intended to protect a surviving spouse “from a reduction in their standard of living while the estate is being settle.”

**AWARDS OF REAL ESTATE**

1. The probate court may award any type of interest in real property located in the state of Georgia. Examples: fee simple interest, a life estate, an estate of a certain number of years
2. An award of real estate can only be made in real property in which decedent had an interest. An attempted award of property no longer owned or never owned by the decedent is void. *Kirksey v. Teachers’ Retirement System of Georgia*, 250 Ga. 884 (1983)
3. When property is awarded to spouse and minor children, it is held as tenants in common. It is intended for their joint support and maintenance. The surviving spouse is entitled to control the property until it is consumed or until there are no longer any minor children and the spouse dies. The children who are co-owners retain their respective interest in the property even after reaching majority but cannot force a partition of the property.

**CERTIFICATE OF AWARD OF REAL PROPERTY**

1. The probate court must, within 30 days after granting such order, cause a certificate of the order be filed with the clerk of superior court in any county of this state where real property awarded is located. If the decedent owned property is several counties in Georgia that were awarded as year’s support, a separate certificate must be prepared for each county. Either the attorney of the petitioner or the self-represented petitioner must also prepare the PT-16 form. Said PT-61 should be presented to the court to be filed with the clerk of superior court.
2. The year’s support award constitutes a first claim against the estate of the decedent. It has priority over funeral expenses, costs of administration, expense of last illness, unpaid taxes due the State or the United States, judgments and liens and all other debts. O.C.G.A. §53-3-1(b) and §53-7-40. **However**, federal law will control whether taxes due the US are subordinate to an year’s support award.

**SALE OR ENCUMBRANCE OF YEAR’S SUPPORT PROPERTY**

1. When property is set aside for spouse and minor children and property is sold or encumbered by the surviving spouse, it only conveys or encumbers the title and interest of the spouse and is binding and conclusive upon the spouse
2. The only time a conveyance or encumbrance is binding on the minor child or children is when it is approved by the probate court. (Standard Form 17)
3. A child who reaches the age of majority may join the surviving spouse in the execution of sale or encumbrance.

**APPEAL**

1. Year’s Support awards are appealable in the same manner as all other final judgments. (i.e. in non-Article 6 courts, de novo appeal to Superior Court) (In Article 6 courts, appeal is to Court of Appeals)
   1. *Booker v. Booker*, 286 Ga App. 6 (2007) held that an appeal may only be filed by one have standing to do so. Someone having a direct interest in the estate of the decedent and/or in the property awarded. In this case, decedent’s mother did not have standing to appeal.

**AMENDMENTS**

1. There are no provisions on Chapter 3 of Title 53 allowing for an amendment. However, the situation arise quite often where something was left off.
   1. ***Before*** a final order is entered, a petition may be amended with new notice, etc.
2. ***After*** a final order is entered, it is less clear. If it is still in the same term of court, the judgment can be set aside by motion of a party or on the court’s own motion. Then a whole new petition would be processed with notice, publication, etc.
   1. If it is outside the term of court, it is my opinion that it cannot be amended.