PETITION FOR LEAVE TO CONVEY OR ENCUMBER PROPERTY PREVIOUSLY SET ASIDE AS YEAR'S SUPPORT

INSTRUCTIONS

I. Specific Instructions

1. This form is to be used when petitioning for leave to convey or encumber property set aside as year's support, pursuant to O.C.G.A. § 53-3-20.

2. This form is prepared on the assumption that the surviving spouse is the Petitioner. If this is not the case, modify the form accordingly. The Petition may be brought either by a surviving spouse who participated in the award or by the guardian of the property of a minor child who participated in the award.

3. A recent appraisal should be used if available; otherwise, a copy of the most recent ad valorem tax statement should be provided. If the appraised value or tax value is higher than the selling price, explain the discrepancy on an additional sheet, and add a reference to this in Paragraph 5 of the petition. In addition, if there is a sales contract, a copy of the contract should be attached to this Petition as an exhibit.

4. According to Probate Court Rule 5.6 (A), unless the Court specifically assumes the responsibility, it is the responsibility of the moving party to prepare the proper citation and deliver it properly so it may be served according to law. All pages after the Notice regarding Uniform Probate Court Rule 5.6 (A) are to be completed by the moving party, unless otherwise directed by the Court.

5. Use Supplement 3 when an additional certificate of service is necessary.

6. Exhibits should be labeled at the bottom of each exhibit as Exhibit "A," Exhibit "B," etc. in consecutive order. The corresponding letter of each said exhibit should be inserted into the appropriate place in the form.

7. Necessity for Filing; Venue

    a. Pursuant to O.C.G.A. § 53-3-19, it is not necessary to obtain Probate Court approval if the children for whom the award was made who are now sui juris will join in the conveyance or encumbrance, unless at least one of the children for whom the award was made is still a minor.

    b. Venue: The petition must be filed in the county where the year's support award was originally granted. O.C.G.A. § 53-3-19 (b).

8. Method of Service pursuant to O.C.G.A. § 53-3-20 is required.

    a. Adult children for whose benefit the year's support was set apart with known addresses in this state who do not acknowledge service shall be served personally not less than ten (10) days prior to the date set for hearing.

b. 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/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

c. Adult children for whose benefit the year's support was set apart with unknown addresses or residing out of state who do not acknowledge service shall be served by:

   i. Publication of notice in the legal organ one (1) time not less than ten (10) days prior to the date set for hearing;

   ii. Posting of notice at the courthouse not less than ten (10) days prior to the date set for hearing; and

   iii. Mailing by first-class mail a copy of the notice to the last known address not less than ten (10) days prior to the date set for hearing.

d. 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 Supplement 1.

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.

IN THE PROBATE COURT OF _____COUNTY
STATE OF GEORGIA

IN RE: ESTATE OF	**)**	
	)	
_____,	**)**	**ESTATE NO. _____**
DECEASED	**)**	

PETITION FOR LEAVE TO CONVEY OR ENCUMBER
PROPERTY PREVIOUSLY SET ASIDE AS YEAR'S SUPPORT

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
and being the _____ of the above-named decedent, shows to the Court the following:
Relationship

[Note: The petition may be brought either by a surviving spouse who participated in the award or by the guardian of the property of a minor child who participated in the award.]

1.

_____,
[Full name of decedent] First Middle Last
whose place of domicile was _____,
Street City County State Zip Code
departed this life on _____, 20_____.

2.

On _____, 20_____, the Probate Court of this County awarded a year's support to the Petitioner and the following child(ren) of said decedent:

Name	*Current Address*	*Last Known Address (if current unknown)*	*Present Age*

3.

The year's support award included the following described real estate located in _____ County, Georgia (the same being recorded in _____ County Probate Court). A complete legal description of such real property is:

4.

It is necessary for Petitioner to (convey) (encumber) said property for the purpose of:

_____

_____

_____

5.

The nature and terms of said (conveyance) (encumbrance) are as follows:

[Initial (a) or (b)]

_____ (a) Sale according to the conditions and terms of the contract.

_____ (b) Encumbrance of the real property to secure a loan in the principal amount of $_____, the interest rate being _____% per annum, and to be repaid at the rate of $_____ per month for ____ months; if needed, Petitioner will execute a deed to secure debt for the purpose of securing the loan.

Attached hereto as Exhibit __ is a copy of the contract for, sale, lien, or encumbrance of real estate.

Attached hereto as Exhibit __ is a copy of the most recent ad valorem tax or appraisal showing the current value of the property to be $_____.

6.

With respect to any child named in Paragraph 2 above whose current address is shown as "unknown," Petitioner certifies that the current address is unknown to Petitioner and cannot be easily ascertained, and that the last known address for any such person is listed in Paragraph 2.

7.

Of the children named in Paragraph 2 above, _____

_____

is/are still under the age of 18, and must have a guardian ad litem appointed to represent him/her/them.

WHEREFORE the petitioner prays in accordance with O.C.G.A. § 53-3-20:

1. That a hearing be set on this petition;
2. That a guardian ad litem be appointed to represent the minor children concerned; and
3. That the petition be granted after notice as required by law.

_____
Signature of Petitioner

_____
Printed Name

_____

_____
Mailing Address

_____
Telephone Number

Signature of Attorney _____

Printed Name of Attorney _____

Address _____

_____

Telephone Number _____ State Bar # _____

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 Leave to Convey or Encumber Property Previously Set Aside as Year's Support heretofore awarded from the estate of the above decedent as year's support (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

NOTICE

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

SEE PROBATE COURT RULE 5.6 (A).

IN THE PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA

IN RE: ESTATE OF	)	
	)	
_____,	)	**ESTATE NO. _____**
DECEASED	)	

PETITION FOR LEAVE TO CONVEY OR ENCUMBER PROPERTY PREVIOUSLY SET ASIDE AS YEAR'S SUPPORT

ORDER FOR SERVICE OF NOTICE

The foregoing Petition having been read and considered, let notice issue and be served personally pursuant to O.C.G.A. § 53-11-3 upon all children with known addresses who are age 18 or over and have not acknowledged service. If there are any children whose current addresses are unknown who are age 18 or over and have not acknowledged service, then the following notice shall be published one (1) time at least ten (10) days prior to the hearing, and a copy of the notice shall be posted at the Courthouse and mailed by first-class mail to the last known addresses of any such children at least ten (10) days prior to the date set for the hearing.

This _____ day of _____, 20____.

_____
Judge of the Probate Court

IN THE PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA

IN RE: ESTATE OF	**)**	
	)	
_____,	**)**	**ESTATE NO. _____**
DECEASED	**)**	

PETITION FOR LEAVE TO CONVEY OR ENCUMBER PROPERTY PREVIOUSLY SET ASIDE AS YEAR'S SUPPORT

NOTICE

To: _____

_____ and to whom it may concern:

A Petition has been filed seeking an Order of this Court granting leave to (convey) (encumber) certain property heretofore set apart from the estate of the above-named decedent as year's support. This is to notify those persons named above who are not required to be personally served that they must file their response to the Petition with the Court on _____ _____, 20____, and the persons who are required to be personally served are:

_____

[List children with known addresses.]

and they must file their response by the above date or the tenth (10^{th}) day after they are personally served, whichever is later.

BE NOTIFIED FURTHER: All objections to the Petition must be in writing, setting forth the grounds of any such objections. All objections should be sworn to before a notary public or before a Probate Court Clerk, and filing fees must be tendered with your objections, unless you qualify to file as an indigent party. Contact Probate Court personnel for the required amount of filing fees. If any objections are filed, a hearing will be (held on _____, 20_____) (scheduled at a later date). If no objections are filed, the Petition may be granted without a hearing.

_____
Judge of the Probate Court
By: _____
Clerk of the Probate Court

IN THE PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA

IN RE: ESTATE OF	**)**	
	)	
_____,	**)**	**ESTATE NO. _____**
DECEASED	**)**	

CERTIFICATE OF SERVICE

[Notice should be given to all interested parties and the Personal Representative, if one has been appointed, of the Decedent's estate and the Tax Commissioner for any County in which the Decedent owned property must be listed here.]

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

IN THE PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA

IN RE: ESTATE OF	)	
	)	
_____,	)	**ESTATE NO.** _____
DECEASED	)	

ACKNOWLEDGMENT OF SERVICE AND CONSENT BY ADULT CHILDREN

I hereby acknowledge service of the Petition of _____ for leave to sell or encumber the property set apart as year's support to the persons shown in the petition. I am over 18 years of age and suffer no mental disability. I hereby consent to the granting of the petition, and I agree the Petitioner should be allowed to make the (encumbrance) (conveyance).

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 _____

IN THE PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA

IN RE: ESTATE OF	**)**	
	)	
_____,	**)**	**ESTATE NO. _____**
DECEASED	**)**	

ORDER

The Petition of _____, praying for leave to (convey) (encumber) certain real property heretofore awarded from the estate of the above decedent as year's support, having been read and considered, and it appearing to the Court that notice was duly issued and served as required by law; it further appearing that a guardian ad litem was duly appointed to represent the interests of the minor child(ren) _____ _____ who are still under the age of 18, who has made answer thereto approving the proposed transaction; it also appearing that no objections have been filed in this matter, and that it is necessary and in the best interests of the minor child(ren) _____ still under the age of 18 that said real property be (conveyed) (encumbered) as set forth in the petition;

IT IS ORDERED that said petition to (convey) (encumber) be, and the same is hereby, GRANTED.

This ____ day of _____, 20____.

_____
Judge of the Probate Court