

Re: 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. 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.
 2. 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).
4. Method of Service
 1. 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 days prior to the date set for hearing.
 2. 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:
 1. Publication of notice in the legal organ one time not less than ten days prior to the date set for hearing;
 2. Posting of notice at the courthouse not less than ten days prior to the date set for hearing; and
 3. Mailing by first-class mail a copy of the notice to the last known address not less than ten days prior to the date set for hearing.
 - a. A guardian ad litem, who shall accept the appointment in writing, must be appointed to represent any child for whose benefit the year's support was set apart who remains a minor at the time of filing this petition.
5. The attached form consists of 5 pages.

II. General Instructions

General instructions applicable to all Georgia probate court standard forms are available in each probate court.

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

GEORGIA, _____ COUNTY

TO THE HONORABLE JUDGE OF THE PROBATE COURT:

The petition of _____, surviving spouse of _____, deceased, late of _____ County, respectfully shows the Court the following:

1.

On _____, _____, the Probate Court of this County awarded to the (petitioner) (and) (the following child ____) of said decedent:

<u>Name</u>	<u>Current Address</u>	<u>Last Known Address (if current unknown)</u>	<u>Present Age</u>

as Year's Support from the estate of said decedent, the following described real estate located in _____ County, Georgia (the same being recorded in County Probate Court Minute Book _____, Page _____). A complete legal description of such real property is:

***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.**

2.

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

3.

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

- _____ Sale according to the conditions and terms of the contract, a copy of which is attached hereto marked "Exhibit A" and made a part hereof.
- _____ Encumbrance of the real property to secure a loan in the principal amount of _____ Dollars, the interest rate being _____% per annum, and to be repaid at the rate of _____ Dollars per month for _____ months. Petitioner will execute a deed to secure debt for the purpose of securing said loan.

4.

With respect to any child named in Paragraph "1" 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 "1".

5.

Of the children named in Paragraph "1" 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:

- (a) that a hearing be set on this petition.
- (b) that a guardian ad litem be appointed to represent the minor children concerned; and
- (c) that the petition be granted after notice as required by law has been given.

Signature of Attorney (or Petitioner if pro se)
Attorney's Address

Telephone

State Bar #:

VERIFICATION

Personally appeared before me the undersigned petitioner who on oath states that the facts set forth in the foregoing petition are true.

Petitioner
Residence Address

Telephone

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

Clerk, Probate Court/Notary Public

ORDER FOR SERVICE OF NOTICE

The foregoing petition having been read and considered, let notice issue and be served personally upon all children with known addresses in Georgia who are age 18 or over and have not acknowledged service. If there are any children whose current addresses are unknown or outside Georgia who are age 18 or over and have not acknowledged service, then the following notice shall be published one time at least ten 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 days prior to the date set for the hearing. Further, _____ is hereby appointed as guardian ad litem in this matter to represent the interests of the children named in the petition who are still under the age of 18, and to make answer as such to this Court; this appointment is limited to this proceeding only and it shall cease when a final order is entered on this petition.

Date

Judge of the Probate Court

NOTICE

GEORGIA, _____ COUNTY PROBATE COURT

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 _____, deceased 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 _____, _____, and the persons who are required to be personally served (namely " _____) that they must file their response by the above date or the tenth day after they are personally served, whichever is later.

All objections to the petition must be in writing, setting forth the grounds of any such objections. If any objections are filed a hearing will be (held on _____) (scheduled for 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

Publication date, if necessary: _____

*List children with known current addresses in this state.

CERTIFICATE OF MAILING

I do hereby certify that I have this day mailed, by first-class mail, a copy of the petition and notice herein to each child for whose benefit the year's support was set aside, whose current address is outside Georgia or is unknown, by placing same in an envelope for each, addressed and stamped by the petitioner with the return address of this Court thereon, and causing same to be placed in the United States Mail.

Date

Clerk, Probate Court

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 will join with the petitioner in making the (encumbrance) (conveyance).

SIGNATURE(S) OF ADULT CHILDREN

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

NOTARY/CLERK OF PROBATE COURT

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

NOTARY/CLERK OF PROBATE COURT

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

NOTARY/CLERK OF PROBATE COURT

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

NOTARY/CLERK OF PROBATE COURT

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

NOTARY/CLERK OF PROBATE COURT

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

NOTARY/CLERK OF PROBATE COURT

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

NOTARY/CLERK OF PROBATE COURT

RETURN OF SHERIFF

I have this day served _____ personally with a copy of the foregoing petition and notice.

Date Deputy Sheriff, _____ County

ACCEPTANCE AND ANSWER OF GUARDIAN AD LITEM

Having been appointed by the Court to represent the interests of the child _____ interested herein who are still minor(s), I hereby accept my appointment as such, acknowledge service and notice of said proceeding as provided by law, and for answer say: I have made a careful investigation into this matter, find that the proceeding appears (to be) (not to be) regular, and I am of the opinion that it (would be) (would not be) in the best interests of the minor child _____ to consummate the proposed (conveyance) (encumbrance) and I (do not object) (object) to the granting of the petition.

Date Guardian ad Litem

STATE OF GEORGIA

ESTATE OF)	ESTATE NO. _____
)	
)	RE: PETITION FOR LEAVE TO CONVEY
_____,)	OR ENCUMBER PROPERTY
DECEASED)	PREVIOUSLY SET ASIDE AS YEAR'S
)	SUPPORT

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 _____ 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 _____ 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.

Date

Judge of the Probate Court

**CERTIFICATE IN ACCORDANCE WITH
UNIFORM PROBATE COURT RULE 21(F)**

I certify that the content of the foregoing is identical in all material respects with Georgia probate court standard form entitled **Petition for Leave to Convey or Encumber Property Previously Set Aside as Year's Support**, except for additions or deletions indicated as required by the Uniform Probate Court Rules.

Date

Signature of Attorney
Address:

Telephone Number:
State Bar#: