ADOPTION OF MINORS

WHAT IS AN ADOPTION?

Adoption is the legal procedure through which a minor is recognized by law as being the son or daughter of the adopting adult(s) and as having all of the rights and duties of such relationship including the right of inheritance. The adoptee takes the name designated by the petitioner.

WHAT STEPS ARE USUALLY INVOLVED IN AN ADOPTION?

a. Preplacement investigation.
b. All necessary consents and/or relinquishments concerning the adoption are obtained.
c. Guardian ad litem is appointed when either natural parent of the adoptee is a minor or in case of a contested hearing.
d. Petition court for authority to pay fees or expenses.
e. Placement of child with petitioners.
f. File petition for adoption 30 days after placement.
g. Serve notice or obtain waiver of notice on or from all parties entitled to notice of the adoption.
h. Post placement investigation.
i. Hearings.
j. Affidavits of non-payment.
k. Accounting of disbursements.

WHAT IS THE DIFFERENCE BETWEEN AN ADOPTION BY A STEPPARENT OR A CLOSE FAMILY MEMBER AND OTHER ADOPTIONS?

Unlike all other adoptions, usually no preplacement or postplacement investigation, nor accounting of the cost relating to the adoption are required.

In order to be exempt from these requirements, the adoptee must have lived with the petitioner for at least one year.

DEEDS AND RECORDS

MAINTAINING RECORDS

The probate judge is required to preserve all documents, files, papers, and orders, together with all attachments required by law to be recorded and filed in his office. These records must be kept in a manner to permit convenient reference.

INSTRUMENTS TO BE RECORDED

Probate judges must keep large and well-bound books for recording, word for word, deeds and mortgages and all other instruments authorized to be recorded.

The following records when executed in accordance with law shall be admitted to record in the office of the probate judge: (1) Plats or maps; (2) Judgments and liens; (3) Deeds, mortgages, deeds of trust, bills of sale, contracts or other documents purporting to convey any right, title, easement, or interest in any real estate or personal property, all assignments of mortgages, (4) Petitions, decrees, or orders of bankruptcy; (5) Corporations and other forms of business organizations; (6) Lis pendens; (7) Marriage licenses and military discharges; (8) Documents and instruments concerning condominiums; (9) Mortgages on personal property.

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THIS PAMPHLET, WHICH IS BASED ON ALABAMA LAW, IS TO INFORM AND NOT TO ADVISE. NO PERSON SHOULD EVER APPLY OR INTERPRET ANY LAW WITHOUT THE AID OF A LAWYER WHO ANALYZES THE FACTS, BECAUSE THE FACTS MAY CHANGE THE APPLICATION OF THE LAW.

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Alabama Law Institute
for
Alabama Probate Judges' Association

DUTIES OF THE

PROBATE OFFICE

JUDGE VICTOR MANNING
Probate Office
Jackson County
Post Office Box 128
Scottsboro, Alabama 35768
256-574-9290
Toll Free 1-800-617-8408

ESTATES

WHAT IS A WILL?

A will is a document which provides the manner in which a person's property will be distributed when he dies. A person who dies after writing a Will is said to have died testate.

WHO MAY MAKE A WILL?

In Alabama, the maker of a Will must be: (1) be at least 18 years old; (2) of sound mind; and (3) free from improper influences by other people.

HOW DO I MAKE A WILL?

A Will must meet certain requirements set by the State to be considered valid. The Will must be written, signed by the maker, and witnessed by two people in the manner required by the law.

WHAT HAPPENS TO MY PROPERTY IF I DO NOT WRITE A WILL?

If someone dies without writing a Will, they have died intestate. Each state has specific laws governing the distribution of property when a person dies intestate, and most laws are generally the same.

STEPS IN PROBATE OF AN ESTATE:

1. File petition
2. Take immediate control of the estate
3. * Inventory of the estate within 2 months
4. * Bond
5. Notice must be given to all heirs
6. Letters of Testamentary (administration) granted
7. Notice to file claims must be published and individual notice given to anyone known to have a claim against the deceased
8. Claims must be filed generally within 6 months
9. Generally the estate cannot be divided until all claims and expenses have been paid which is at least six months
10. Court must approve administrator's fees

* May be waived in a Will

GUARDIANS AND CONSERVATORSHIPS

WHAT IS A CONSERVATOR AND A WARD?

A conservator is a person who is appointed by the court to manage the property of a minor or incapacitated person. A ward is the legal name for a person for whom a guardian has been appointed.

WHO IS AN INCAPACITATED PERSON?

A person who is unable to manage property and business affairs because of: mental illness, mental deficiency, physical illness, infirmities accompanying advanced age, chronic use of drugs or alcohol, confinement, detention by foreign power or disappearance.

WHEN CAN A CONSERVATOR BE APPOINTED?

A conservator may be appointed when an incapacitated person is unable to manage property and business affairs, and (a) has property that will be wasted without proper management or (b) funds are needed to support the incapacitated person or one entitled to support from the incapacitated person.

WHAT IS THE DIFFERENCE BETWEEN A GUARDIAN AND A CONSERVATOR?

The guardian looks after the person and their welfare while a conservator looks after their estate.

WHAT IS A GUARDIAN?

The parent of a minor or someone who has been appointed by the court to be responsible for the personal care of an individual.

CAN A PARENT OR SPOUSE APPOINT A GUARDIAN?

Yes, in a Will or other document properly signed and witnessed, a parent may appoint a guardian for a minor child or for an unmarried incapacitated child. Also, a person may appoint a guardian for his or her incapacitated spouse in a Will or other document properly signed and witnessed.

INVOLUNTARY COMMITMENTS

WHAT IS AN INVOLUNTARY COMMITMENT?

A procedure whereby a person is involuntarily placed in the custody of the State Department of Mental Health for treatment.

WHAT PROCEDURE IS USED TO INITIATE AN INVOLUNTARY COMMITMENT?

Any person may seek to have another person committed by filing a petition with the Probate Court. The petition must contain the following:

a. name and address of the petitioner; and
b. name and location of defendant's spouse, attorney or next of kin; and
c. that petitioner has reason to believe defendant is mentally ill; and
d. petitioner's beliefs are based on specific behavior, acts, attempts or threats which are described in detail; and
e. names and addresses of other people with knowledge of the defendant's illness or who observed the person's overt acts and who may be called as his witnesses.

MUST THERE BE A HEARING?

Yes, a hearing is to be held by probate judge without a jury and it is open to the public unless requested otherwise by the defendant. Commitment is granted only if the elements required are established by clear, unequivocal and convincing evidence.

WHAT ARE THE RESULTS OF THE HEARING?

If commitment is granted, the order shall be entered for outpatient or inpatient treatment. The least restrictive alternative necessary and available for the treatment of the defendant's mental illness shall be ordered. Inpatient treatment may be ordered at a state or a designated mental health facility. Outpatient treatment may be ordered at a designated mental health facility if said facility consents to treat the defendant on an outpatient basis.