

Common Errors With Paragraph 4



Chief Judge Kelli L. Wolk

The purpose of Paragraph 4 is to provide a factual statement so the court can determine who the heirs of the decedent are.

NOT SURE WHO THE HEIRS ARE?

review the [Heirs Determination Worksheet](#).

They may be unknown, but there are **NEVER**, "No Heirs" !

KNOW THE DIFFERENCE

Heir

Those who are entitled to inherit when there is NO WILL. **NOTE:** Heirs are determined at time of death

Beneficiary

Those people or entities named in a Will to receive gifts.

HEIRS

PREDECEASED = DIED BEFORE

POST-DECEASED = DIED AFTER

1

The court needs to know if there are any post-deceased or predeceased heirs. A common deficiency is "her son died."

2

Do not simply state that an heir is "deceased." This does not provide the court, or you, the information needed to determine heirs.

3

If an heir is post-deceased, you must state who the personal representative of that heir is, and also list them in paragraph 3. If there is not a personal representative for a post-deceased heir, the court will appoint a Guardian Ad Litem (GAL). Appointing a GAL will end up costing the Estate.

4

If there is a predeceased heir such as a child of the decedent, the court needs to know if they had any children born or adopted, living or deceased. We do not need to know if the predeceased child had a spouse. That spouse of an heir is not an heir of the decedent.

5

Many paragraph 4's just state "Decedent had three children who survived her Leslie, April and Ron and one child, Jerry, who passed away on 1/2/2014," without telling the court if Jerry had any children.

6

A conclusory statement such as, "there are no other heirs," is not sufficient. This statement must be supported by facts.

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Avoid Using Qualifying Language

Examples:

1

"She had three **biological** children" unless you clarify that there are "no other children born or adopted, living or deceased."

2

"She had two children who **survived** her" unless you clarify that there are "no other children born or adopted, living or deceased."

3

"Decedent was married to George Jones, they had four children **of the marriage**."

These statements do not allow the court to conclude that all children, or other heirs of the decedent, are included.

A better way to say this would be:

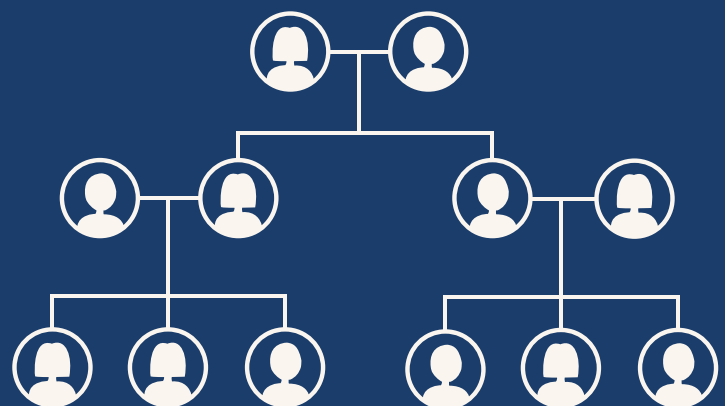
"Decedent was not married at the time of death and she/he/they had the two children listed in paragraph 3. She/he/they had no other children born or adopted, living or deceased."

Never Skip Lines of Succession

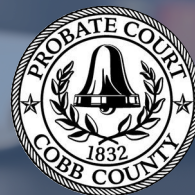
Example:

"Decedent was not married at the time of death, she had no children born, adopted, living or deceased. She had four siblings listed in paragraph 3. They are her heirs."

In this example, the petitioner completely **skipped over parents** and went right to siblings. This petitioner also did not tell the court whether the decedent had any deceased siblings. This would get a deficiency order from the court and the court would have to stop processing the petition until the deficiency is corrected.



Examples of Sufficient Responses to Paragraph 4



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IF THE DECEDENT DIED SURVIVED BY A SPOUSE AND A CHILD OR CHILDREN:

1

Decedent was married at the time of death to Jane Smith, he had the four children listed in paragraph 3. He had no other children born, adopted, living or deceased.

IF DECEDENT WAS SURVIVED BY A SPOUSE AND NO CHILDREN:

2

Decedent was married at the time of death to Jane Smith. He had no children born, adopted, living or deceased.

**Petitioner does not need to list all of the decedents marriages. It is only important to state whether the decedent was married at the time of death and to list that person in paragraph 3.*

IF DECEDENT WAS NOT MARRIED WHEN HE DIED AND HAD NO CHILDREN:

3

Decedent was not married at the time of death and had no children born, adopted, living or deceased. He was survived by his mother listed in paragraph 3 and his father predeceased him in 1995.

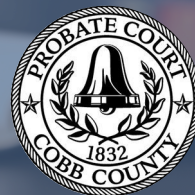
**If someone dies with no spouse or children, their heirs would be both of their parents (siblings are not heirs in this circumstances unless both parents are predeceased).*

IF DECEDENT WAS NOT MARRIED, HAD NO CHILDREN AND BOTH PARENTS HAVE DIED BEFORE THE DECEDENT:

4

Decedent was not married at the time of death, had no children born, adopted, living or deceased. Decedent's mother predeceased (died before) the decedent in 1987 and Decedent's father predeceased the Decedent in 1989. Decedent had three siblings who are listed in paragraph 3. He had no other siblings born, adopted, living or deceased.

Examples of Sufficient Responses to Paragraph 4



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IF DECEDENT WAS MARRIED AT DEATH BUT THE SPOUSE IS POST-DECEASED (DIED AFTER THE DECEDENT) :

5

Decedent was married at the time of death to Jane Smith. John Smith is the personal representative of Jane Smith's estate. The estate is listed in paragraph 3. Decedent was also survived by the three children listed in paragraph 3. He had no other children born, adopted, living or deceased.

**Be sure to note that heirs are established at the moment of death. Therefore, if an heir dies after the decedent ("a post-deceased heir"), that person's estate (represented by the personal representative appointed by a court) is still one of the heirs. If no personal representative has been appointed, the court will appoint a guardian ad litem for that estate. This applies to any post-deceased heir, not only a spouse. Be sure to include the post-deceased spouse's death (or that the spouse died after the Decedent's date of death). Be sure to also include a copy of the Letters of that person's personal representative if the estate is not in Cobb County.*

IF ONE OR MORE OF DECEDENT'S CHILDREN IS PREDECEASED (DIED BEFORE DECEDENT) :

6

Decedent was not married at the time of death. She had two children: John Smith and Mary Smith. Decedent had no other children born, adopted, living or deceased. John Smith died before the decedent in 2004. John Smith had 3 children who are listed in paragraph 3. John Smith had no other children born, adopted, living or deceased.

**If someone has predeceased the decedent, you must list the children of that person. Grandchildren of the decedent are not heirs of the decedent unless their parent has predeceased the decedent. A spouse of a predeceased child or grandchild is not an heir.*