

# Where There's a Will, There's a Probate

## United States Probate Research

When searching for probate records, many genealogists quit after searching for a will. But a will (or the lack of a will) is just the beginning of probate research. In this class, we will introduce probate records, how they are created, what information they contain, and where they can be found.

### Probate Basics

#### What is Probate?

Probate is the process whereby the property and assets of a deceased individual are distributed among his or her heirs. Probate records date from when a colony or state was founded. Currently, probate is mandated and probate law is set by each individual state, meaning probate law differs from state to state. Most states have assigned the duties of settling probate to either a county or a district court, usually called a Probate Court, an Orphans' Court (PA and MD), or a Surrogate Court (NY)

#### Genealogical Value of Probate Records

Probate records may include a variety of information about your ancestors, including:

- Relatives (spouse, children, grandchildren, siblings, nieces, nephews)
- Date and place of death (sometimes implied)
- Property ownership
- Socioeconomic status
- Religious affiliation
- Possible relatives (executors, administrators, guardians, witnesses, and bondsmen)

#### Probate Terminology

- **Administrator/Administratrix:** individual named by the court to administer the settlement of an estate according to law; administratrix is female
- **Administrator with will annexed:** individual named by the court to administer a testate estate when the executor is unable to fill the role
- **Bequeath:** to will personal (movable) property
- **Bondsman:** individual(s) who provide security on the signing of a bond (**Surety**)
- **Codicil:** an addendum to an existing will; must be signed, sealed, dated, and witnessed
- **Decedent:** individual whose estate is being settled
- **Devise:** to will real property (unmovable) property
- **Executor/Executrix:** individual named by testator to execute the terms of a will; executrix is female
- **Guardian:** individual named by the court (or by a minor child age 14+) to guard the financial interest of a minor or incompetent individual in an estate
- **Intestate Estate:** an estate without a valid will
- **Personal Property:** property that is movable (cupboards, bedding, books)
- **Real Property:** property that is not movable (house, land, fences)
- **Surety:** see **Bondsman**
- **Testate Estate:** an estate with a valid will
- **Valid Will:** a will that has been proven in court as having been written by someone of legal age, of sound mind, and without restraint

## The Probate Process

### Testate Estates

1. A dated, signed, witnessed, and sometimes sealed will is written, naming heirs and an executor
2. The testator dies
3. The executor(s) files a petition with the probate court to begin the probate process; court date is set
4. Notice of the probate and court date are published in a local paper (or heirs are otherwise notified)
5. In court, will is presented in court; witnesses provide evidence and heirs and potential heirs are given the opportunity to contest the will (see **Valid Will** under Terminology)
6. If the will is proven, the judge issues Letters Testamentary, giving the executor(s) the legal authority to act on behalf of the estate; the executor(s) signs a bond (with sureties or bondsmen)
7. If the will is considered invalid, the will is thrown out and the estate is now considered intestate

### Intestate Estates

1. An individual dies without leaving a valid will
2. Someone interested in the estate (usually a potential heir or a creditor) files a petition or an application for administration to begin the probate process; a court date is set
3. Notice of the probate and court date are published in a local paper (or heirs are otherwise notified)
4. In court, the probate judge appoints an administrator and issues Letters of Administration, which gives the administrator the legal authority to act on behalf of the estate; the administrator signs a bond (with sureties or bondsmen)

### Settling the Estate

1. Executor or administrator hires three appraisers to inventory the estate; part of the estate, referred to as the dower, may be set aside for use by the widow; the inventory is filed with the court
2. If an heir (or potential heir) is incompetent or under legal age, a guardian is appointed
3. Part of the estate may be sold to pay creditors, settle the estate's assets, or provide support for the widow and minor heirs; the bill of sale is filed with the court
4. The executor or administrator may be required to file regular, yearly accountings with the court detailing the payments to and from the estate
5. The executor, heirs, or creditors may instigate a court case at any point during the probate process

### Finalizing the Probate

1. The executor or administrator files a petition with the court to end probate; a court date is set
2. Notice the probate is being finalized is published in a local paper (or heirs are otherwise notified)
3. The administrator or executor files a last accounting (final settlement) with the court listing the final distribution of the estate's assets
4. A decree of distribution, detailing the final transfer of property ownership to the heirs, is filed with the recorder's office (more common in the twentieth century)

### Probate Records

Throughout the probate process, paperwork was filed with the court. The court clerk either transcribed documents into court books word-for-word or referenced the documents in the probate journals and orders. The original documents were collected together in a probate packet or estate file. Probate records can be found in two forms: books and packets. Probate books are more likely to have been microfilmed or digitized. However, more documents can be found in the probate packets (including the original copy of the will). Probate books and packets include several different types of probate records:

- **Wills.** A will is a document written by an individual outlining who should inherit their assets following their death. There are three major types of wills: attested wills (signed, sealed, dated, and witnessed), holographic wills (wills without witnesses), and nuncupative wills (spoken wills). Wills

contain a variety of genealogical information, including relationships, property ownership, clues to religious affiliation, and more. There are some limitations to wills. Testators were not required to name all their children as heirs. Older children may have previously received their inheritance and may not be named in a will. Also, testators may not indicate their relationship to heirs.

- **Petitions.** There are several different petitions filed during the probate process. The petition to begin probate often has the most information of interest to genealogists. In some states and time periods, the initial petition included the names of all the heirs and potential heirs including their relationship to the decedent and their current residence (regardless of whether they were named in the will).
- **Proving of the Will.** After a will was proven valid, the probate clerk copied it into the probate books followed by a statement indicating the date it was presented in court. Notice the will was proved may also be included in the probate packet. When no other death date exists, the date the will was proved can be used as an approximate death date.
- **Letters.** Letters Testamentary or Letters of Administration were issued by the probate judge and gave the executor or administrator the legal authority to act on behalf of the estate.
- **Bonds.** Most states require that executors, administrators, and guardians sign a bond. A bond is a guarantee that if the executor, administrator, or guardian does not fulfill their duties, they will pay a sum to the court (usually equal to the estimated worth of the estate). Bonds are signed by bondsmen or sureties, who are oftentimes related to the person signing the bond.
- **Guardianships.** When a decedent left minor or incompetent heirs, a guardian was appointed to protect the financial interest of heirs in the estate. The court chose guardians for minors under 14 years of age and minors age 14+ chose their own guardian. Note that the appointment of a guardian does not mean that both a child's parents were deceased. Because a guardian was responsible for the financial interest of a child until they reached legal age, guardianship records may cover longer periods of time.
- **Inventories and Appraisements.** The value of an estate had to be determined before it could be settled. Three appraisers inventoried the estate. The resulting inventory was filed with the court. Inventories can provide details about the decedent's socioeconomic status and life. (Note: In most states, a widow was entitled to one-third of her husband's estate. A widow named in a will could claim dower in lieu of her inheritance or vice versa. Dower may be set off during the appraisal and detailed in the inventory.)
- **Bills of Sale.** In order to pay the debts, provide support for the widow and children, and distribute the assets, some of the deceased's property may have been sold, usually at public or private auction. Those who purchased property (as well as a list of the items they purchased) was recorded on a bill of sale, which was filed with the court. People purchasing items from an estate sale were often family, friends, or neighbors.
- **Annual Accountings.** Administrators (and sometimes executors) were required to annually inform the court of the payments and income from the estate. These accountings often list early distributions to heirs, payments to support the widow and children, names of creditors with whom the deceased did business, and more.
- **Estate Settlements.** The final settlement is the final accounting filed by the administrator or executor. The final settlement details the final distribution of property from the estate. In an intestate estate, the final settlement is one of the most valuable documents as it will name all of the heirs-at-law. Those receiving an equal share of the estate will have the same relationship to the deceased.
- **Decrees of Distribution.** A decree of distribution is the official document transferring property from the decedent to his or her heirs. Decrees are filed in the recorder's office and only became common in the twentieth century. Decrees are valuable as they name all of the heirs on one document.

- **Receipts.** As an executor or administrator paid money out of the estate, they collected receipts. Receipts fall into two categories: creditor receipts and heir receipts. Creditor receipts identify business relationships. Heir receipts may include information about the heirs including married names, spouses, current residences, and more.
- **Court Cases.** The attempt to settle an estate may result in one party taking others to court. Some examples include an executor attempting to clarify the terms of the will, an heir suing an executor over actions (or lack of actions) taken by the executor, an heir suing an administrator when a bondsman becomes insolvent, and more. Each court case can produce additional paperwork and may be filed with the civil cases.
- **Partitions.** Partition is the process of surveying and dividing a piece of land owned jointly by multiple owners. Though not an official part of the probate process, partition oftentimes resulted from probate (when several heirs inherited the same, undivided land). Partition is started when one owner of a piece of property sues the others. Partition may happen years or even decades after an estate was settled.

## Research Strategies

- Probate is usually tied to property ownership. Check census, land, and tax records to see if your ancestor owned property. (The 1850-70 censuses asked for the value of real estate, 1860-1870 asked for value of personal estate, 1900-20 asked if the home was owned or rented, 1930-40 asked for value of home, if owned)
- If a man left everything to his widow, his widow's probate may name all the heirs.
- If your ancestor owned property in multiple locations, search for probate records in all those locations.
- Don't limit your probate searches to only direct ancestors. Single or childless family members may have named your ancestors as their heirs.

## Finding Probate Records

### Probate Records Online

- **Ancestry.com (\$)** – U.S. Wills and Probates collection with indexed records from all fifty states. Access the collection at [www.ancestry.com/will-probate-records](http://www.ancestry.com/will-probate-records).
- **FamilySearch.org** – Digitized probate records from much of the United States. Access these records through <https://www.familysearch.org/search/collection/list> (filter the list at the top left using [state] probate). Or, search the catalog at <https://www.familysearch.org/search/catalog>. Do a 'Place' search for United States, [state], [county]. From the list of topics choose 'Probate records.'
- Local county genealogical societies, historical societies, archives, or courts may have created indexes for or digitized probate records. (Check the FamilySearch Research Wiki for more information.)

### Probate Records Onsite

Most original probate books and packets are still held at county courthouses or archives (though some have been centralized by states). Start by locating the probate packets. Then use books to fill in the holes left by missing records. Also check the recorder's office for decrees and the county clerk's office for partitions and other court cases. Use the FamilySearch Research Wiki to learn more about probate records and where they can be found.