



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

United States Probate Research

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When searching for probate records, many genealogists quit searching after looking 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. The word probate means “to prove” and originally related to the process of proving a will. Currently probate relates to settling all estates, regardless of whether or not a valid will exists.

Probate has its roots in English Common Law, meaning that the right of probate was never questioned by the early American Colonies. This means that 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 differ 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:

- Relationships, such as spouse, children (included married names of daughters), grandchildren, siblings, nieces, nephews, and so forth
- Date and place of death
- Property ownership
- Socioeconomic status
- Religious affiliation
- Possible relatives (executors, administrators, guardians, witnesses, and bondsmen may all be related to the decedent)

Probate Terminology

- **Administrator/Administratrix:** individual named by the court to administer the settlement of an estate according to law; an 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 (see **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(s) named by a testator to execute the terms of a will; an 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 the 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 passes away
3. The executor(s) file a petition with the probate court to begin the probate process
4. A court date is set
5. Notice of the probate and court date are published in a local paper (or heirs are otherwise notified)
6. On that day and time, the will is presented in court; the witnesses provide evidence and heirs and potential heirs are given the opportunity to contest the will (a valid will must be written by someone of legal age, of sound mind, and free from restraint)
7. If the will is proven, the probate judge issues Letters Testamentary, giving the executor(s) the legal authority to act on behalf of the estate; the executor(s) sign a bond (with two sureties or bondsmen)
8. 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
3. A 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, 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 two sureties or bondsmen)

Settling the Estate

1. The executor or administrator hires three appraisers to inventory the estate; part of the estate, referred to as the dower, may be set aside at this time for use by the widow; the resulting inventory is filed with the court
2. If an heir (or potential heir) is incompetent or under legal age, a guardian will be appointed

3. Part of the estate may be sold to pay creditors, settle the estate's assets, or provide support for the widow; 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, believing the estate is ready to be settled, files a petition with the court to end the probate
2. A court date is set
3. Notice that the probate is being finalized is published in a local paper (or heirs are otherwise notified)
4. The administrator or executor files a last accounting (final settlement) with the court listing the final distribution of the estate's assets
5. 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 would either transcribe these records into a book (such as a will book) or make a note in the probate journal that the records had been presented. The original documents were then bound together in a probate packet or estate file. This means that probate records can be found in two forms: books and packets.

Probate Books

Probate books are compiled by the court clerk. Some probate records, such as wills, bonds and letters may be transcribed word for word into probate books. But many other records may only be referenced in the probate journal when they were presented in court. Probate books are more likely to be microfilmed or digitized. There are many different types of probate books, including will books, bond books, probate journals, probate orders, probate dockets, guardianship books, and probate indexes.

Probate Packets (Estate Files)

All original paperwork filed with the probate court during the probate process was bound together in a single packet or file. Probate packets usually contain the original will, letters, bonds, inventories, bills of sale, receipts, and more. Because packets include all of the records in one place, start with the probate packet when possible. However, packets are less likely to have been microfilmed or digitized and may only be accessible onsite.

Records Created during Probate

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 using wills. Testators were not required to name all of their

children as heirs. Oftentimes, older children who have already received their inheritance will not be named in a will. Also, testators may or may not indicate their relationship to their heirs.

Petitions

Several different petitions are filed during a probate. The petition to begin probate often has the most information of interest to genealogists. In some states (during certain time periods), petitioners were required to name all of the deceased's heirs (or potential heirs), as well as their relationship and current residence. This information was required regardless of whether there was a will or whether the heir was named in the will.

Proving of the Will

Once a will was proven valid, it was recorded (copied) into the court books. Either before or after the will, the court clerk usually included a statement indicating when the will was proven. When no other death date exists, the date provided in the will's proving can be used to determine the approximate date of death.

Letters

Letters of Testamentary (testate estates) or Letters of Administration (intestate estates) 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 are required to pay a sum, which is usually equal to the estimated worth of the estate. Bonds are signed by two 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 that heir in the estate. When a minor was under fourteen years of age, the court chose the guardian. When a minor was fourteen years of age or older, they were allowed to choose their own guardian. 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.

When researching guardianship records, keep in mind that several terms have changed meaning over time. Just because a guardian was appointed doesn't mean both parents were deceased. For example, if a man left property to his daughter's children, a guardian may still be appointed even though both parents were still living. Other terms to be aware of: an infant was someone who had not reached legal age (usually eighteen for women, twenty-one for men) and an orphan was someone who had lost at least one parent (though the other parent may still be living).

Inventories & Appraisements

Before an estate could be settled, the value of the estate had to be determined. Three individuals, usually hired by the executor or administrator, appraised all of the assets of the estate. The final inventory was filed with the court. Inventories can provide rich details about an individual's life and socioeconomic status.

Dower Right

In most states, a widow was entitled to one-third of her husband's estate following his estate. A widow who was named in a will could claim dower in lieu of her inheritance or vice versa. The dower was oftentimes set off during the process of appraising the estate and the real and personal property given to the widow may be detailed as part of the inventory.

Bills of Sale

In order to pay off debts, provide support for the widow and children, and distribute the assets, some of the deceased's property had to be sold, usually at public or private auction. Those who purchased property (as well as what they purchased) was recorded on a bill of sale, which was filed with the court. These names are valuable as they are often family, friends, and 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 who the deceased did business with, and more.

Estate Settlements

The final accounting of an administrator or executor is called the final settlement. This document usually specifies the final distribution of property from the estate. Among those receiving property from the estate are the heirs. In an intestate estate, the final settlement is one of the most valuable documents in a probate. All of the heirs (as defined by law) will be named. Those receiving an equal share of the estate will have the same relationship to the deceased.

Decrees of Distribution

Starting at the end of the nineteenth century, a decree was filed with the recorder's office officially transferring the property of the deceased to his or her heirs. Decrees, like final settlements, often name all of the heirs and their inheritance, on one document.

Receipts

As an executor or administrator paid money out of the estate, they collected receipts. These receipts can be grouped into two categories: creditor receipts and heir receipts. Creditor receipts help determine the business relationships of the deceased. Heir receipts may include clues about the heirs including married names, spouses, current residences, and more.

Court Cases

Probate leads to a lot of court cases over many different issues. An executor may take the heirs to court to clarify the terms of a will. An heir may take the executor to court to claim he or she is mishandling funds or to claim the executor's bond is no longer valid due to the death of a surety. Every court case produces more paperwork, which may provide additional genealogical information.

Partitions

Partition is the process of surveying and dividing a piece of land owned jointly by several individuals. Though an official part of the probate process, partition oftentimes results from probate (when several heirs inherit the same, undivided piece of land). Partition is actually a court case started when one owner sues the others. Partition may happen years or even

decades after an estate was settled, but partition records may include the names of all of the heirs as well as their spouses and current residences.

Finding Probate Records

Probate Records Online

Ancestry.com (\$) – Ancestry recently launched a US Wills and Probates collection with indexed records from all fifty states. You can access the collection at www.ancestry.com/will-probate-records.

FamilySearch.org – FamilySearch has digitized probate records from most of the United States, though most of these collections have not yet been indexed. To view these collections, go to Search > Records > Browse all Published Collections and then filter (on the left) to United States and Probate.

Local county genealogical societies, historical societies, archives, or courts may have created indexes for probate records. Use search engines (such as Google or Bing) to locate the websites for these repositories.

Probate Records at the Family History Library

FamilySearch has microfilmed many probate records from around the country. Search the FamilySearch Catalog to discover what probate records are available for a specific locality. On FamilySearch.org, go to Search > Catalog. Do a Place Name search for a county. Choose Probate records and Probate records-index from the topics page. You can also use WorldCat.org to find copies of probate records held by libraries located closer to you.

Probate Records Onsite

Most original probate books and packets are still held at county courthouses or archives (though some have been centralized by states). When visiting a county, start with the probate court. Check first for 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. If you are unable to visit a county, contact the local genealogical or historical society and see if they offer a lookup service. Or hire a local researcher who can get the probate records for you.

You can use the FamilySearch Research Wiki to learn more about probate records and their availability. To access the Research Wiki, go to FamilySearch.org and click Search > Wiki. Search for "United States Probate Records," "[state] Probate Records," or "[county] County, [state]".

Research Strategies

Probate is tied to property ownership. If someone owned property at the time of their death, it is likely they left a probate. Individuals who were white, male, and lived in rural areas were most likely to own property. Women who were single, widowed, or divorced, were also more likely to leave probates. To determine whether an ancestor owned property, also check:

- Census records (1850-1870 – value of real estate, 1860-1870 censuses – value of personal estate, 1900-1920 – home owned or rented, 1930-1940 – value of home, if owned)
- Land records
- Tax records

Don't limit your probate searches to only direct ancestors. Other family members may have also

left probate records. Watch especially for probate records for unmarried or childless relatives as their heirs were their siblings and their siblings' children.

If a man died and left everything to his widow, search for a probate for his widow as she may have named the rest of the family.

If your ancestor owned land in multiple locations, check for probate records in all of related counties.

Learn More

FamilySearch Research Wiki (<http://www.familysearch.org/en/wiki>). Search for "United States Probate Records" or "[State] Probate Records."

Greenwood, Val. *Researcher's Guide to American Genealogy, third edition*. (Baltimore, MD: Genealogical Publishing Co., Inc., 2000)

Szucs, Loretto Dennis & Sandra Hargreaves Luebking, editors. *The Source: A Guidebook to American Genealogy, third edition*. (Provo, UT: Ancestry Publishing Company: 2006)