

## **Probate Packets and Genealogical Research**

The term “probate packet” refers to the court file where all paperwork, documents, and other legal papers pertaining to the settlement of an estate are kept. Wills and probate packets are among the most interesting and revealing sets of records you can find for an individual. You will find them among the records of the county probate court, usually in the state and county in which the person resided at the time of his or her death.

A person's will often turns out to be one of the most honest statements about his or her relationships with other family members and friends. The contents of a probate packet may provide information and insights into the person that may never be found elsewhere.

### The Probate Process- Concise Overview

The last testament and will of a decedent is intended to express his or her wishes for what is to happen to any possessions after death. In many cases, a person's will may include instructions concerning the disposition of the body, funeral arrangements, and/or memorial instructions. A will may be revoked through the creation of a new will or through a document known as a codicil. A codicil can be used to revoke and/or amend specific sections of a will without the person having to write an entirely new will. It may also be used to append additional supplemental instructions to an existing will. Without exception, wills or the codicil must be signed by the individual and witnessed by at least two other persons. Sometimes the document is also witnessed by a notary public.

The probate process is a legal procedure intended to certify that a person's estate is properly disposed of. The process has changed very little over the past several centuries. Where there is a will and it is presented to a court to be proven, there usually is a probate process that takes place. In cases where a person dies intestate (without a will), a court may become involved in making sure the person's estate is correctly valued, divided, and distributed to appropriate beneficiaries.

While there may be some special conditions of a will or codicil that generate additional steps to the process, here is the normal procedure that is followed through the probate process:

1. Testator/testatrix makes his/her will and any subsequent codicil(s).
2. Testator/testatrix dies.
3. Someone involved in the testator/testatrix's legal affairs or estate presents the will/codicil(s) to a special court of law called the probate court. The probate court is concerned with the body of law devoted to processing estates. Court minutes and notes concerning the estate and any probate court proceedings related to the estate are recorded throughout the process and should not be overlooked as you research the estate.
4. The will/codicil(s) are recorded by the probate court.
5. The individuals who witnessed the testator/testatrix's signature are called on to testify, person or by sworn affidavit, that they witnessed the actual signing of the document(s). Part of the “proving” of the will requires that the document(s) contain an authentic signature.
6. The probate court assigns an identifying code, usually a number, to the estate.

7. The probate packet is then created for the court, by placing all documents pertaining to the settlement of the estate in a special envelope or “jacket”.
8. If the will or codicil(s) has named one or more persons to act as executor/executrix or administrator of the estate, the probate issues a document called “Letters Testamentary”. (If a named executor cannot or will not serve, the court may name another person to act in that capacity). This document authorizes the correct person or persons to act on behalf of the estate in conducting business related to settling all fiduciary claims.
9. Potential beneficiaries named in the will/codicil(s) are identified and contacted.
10. If any are deceased, evidence to that effect is obtained, and if the intent of the will indicates that others besides the deceased beneficiaries are to benefit from the estate, these are identified and contacted.
11. The executor/executrix or administrator publishes a series of notices, usually in the newspapers where the testator/testatrix lived, concerning the estate.
12. Persons having claims on or owing obligations to the estate are thereby given notice that they have a specified amount of time to respond.
13. The executor/executrix or administrator conducts an inventory of the estate and prepares a written list of all assets, including personal property, real estate, financial items (cash, investments, loans, and other instruments), and any other materials that might be a part of the estate.
14. The executor/executrix or administrator pays bills and satisfies any outstanding claims or obligations of the estate and then prepares an adjusted inventory of the deceased's assets.
15. This documentation, is submitted to the probate court and becomes a permanent part of the probate packet.
16. The probate clerk reviews all the documentation for completeness and submits it to the probate judge for review.
17. The probate court rules that the estate is now ready for distribution to beneficiaries.
18. The estate is divided and distributed.
19. In many cases, beneficiaries are required to sign a document confirming the receipt of their legacies.
20. Following the distribution, the executor/executrix or administrator prepares a final statement of account and presents it to the probate court.
21. The probate court rules that the estate has been properly processed, that all assets have been divided and distributed, and that the estate is closed.

The probate packet is filed in the records of the probate court. Special arrangements in wills and codicils, such as trusts and long-term bequests may involve additional steps in the process. In some cases, the final settlement of an estate may be deferred for many years until certain conditions are satisfied. Trusts, for instance, may require the establishment of a separate legal entity, and the estate may not be settled until a later date. Some people leave wills that skip a generation, perhaps leaving monies to grandchildren, in which case the estate may not be settled for a generation or more and may require extended administration.

In the case of any estate in which settlement extends to multiple years, the executor/executrix or administrator must prepare annual reports to the probate court. These are entered into the probate court record, and the reports usually are placed in the probate packet.

### Locating the Probate Packet

In the course of your research, you should always note the place – city and county – where an event occurs, because probate records, like many other genealogical record types, are located by geographic region. You should also record the county that had jurisdiction over the place where the event occurred; that way, you know which courthouse to contact or visit to obtain record copies.

The National Association of Counties web site at <http://www.naco.org/> is a great place to determine contact information about a county. In particular, you will find addresses, telephone numbers, names of judges, and other relevant contact information. Two other good sources, Everton's ***Handybook for Genealogists*** and Ancestry's ***Redbook*** are listed in the bibliography at the end of this study guide.

The information contained in probate packets will vary by jurisdiction and time period. Some courts are very meticulous in their maintenance of the packets, in which case, you may find vast amounts of documents. Other courts are less thorough, and documents may have been misplaced, incorrectly filed, lost, or even destroyed. It is important when examining probate packets to also review probate court minutes for details. Patrons have reported finding missing documents from one ancestor's probate packet filed in the packet of another person whose estate was heard in court the same day due to misfiling by a clerk.

Probate packets may contain information and documents that shed light on some or all of the following types of information and records:

1. Will and codicil(s). These documents are the core of a probate packet and include names of heirs and beneficiaries and often relationships to the deceased. Married names of daughters are great clues to tracing lines of descent, and names of other siblings may only be located in these documents.
2. Letters Testamentary. Look for a copy of this document in the probate packet. If it isn't there, look in court records. The name(s) of the actual executor/executrix and/or administrator may well be different from that named in the will. You will want to determine the actual person(s) and their relationship (if any) to the deceased. It is important to know if and why the named executor did not serve. Was he/she deceased, or did he/she decline to serve?
3. Inventory of the estate. The inventory will reveal the financial state of the deceased, which is a good indicator of his/her social status. The inventory of personal property will also provide indicators to the person's lifestyle. The presence of farm equipment and livestock may indicate that the person was a farmer; an anvil and metal stock might point to blacksmithing as a profession; hammers, chisels, nails, a level, and other tools may reveal carpentry. In an eighteenth century estate inventory, the presence of books indicates education and literacy, and the possession of a great deal of clothing and shoes indicated an elevated social position. There are many indicators. You may

- even find items listed in the inventory that confirm family stories, such as military medals.
4. List of beneficiaries. The list of persons who collected an inheritance may differ from the list of names in the will. Beneficiaries may be deceased; they may have married and have a different name; they may not be locatable; or their descendants or spouses may have become inheritors. This list will tell you much about the family.
  5. Records of an auction. Sometimes all or part of an estate was auctioned. Assets were sometimes liquidated to pay bills or to raise money for the surviving family. Auction records will reveal much about estate contents and their value. It was common for relatives to participate as bidders/purchasers at an estate auction, and you may find participants with the same surname (or maiden name) as the deceased. These may be parents, siblings, or cousins you will want to research.
  6. Deeds, notes, bills, invoices, and receipts. There may be a variety of loose papers in the probate packet that point to other persons. Deed copies will point you to land and property records and tax rolls. Names appearing on other papers may connect you to relatives, neighbors, friends, and business associates whose records may open doors for you.
  7. Accounting reports. Reports filed with the documents can provide names of claimants and entities holding estate debts, including names of relatives.
  8. Final disposition of the estate. This report is of vital importance. You may find the names and addresses of all the beneficiaries, and what each received from the estate. This will ultimately point you to the locations where you will find other records for these persons.

As you can see, there are many clues in probate packets. Those listed above are only the more common records available, but you may also discover letters from family members to the court or to the executor/executrix/administrator. Remember to look at both the probate packet and the court minutes, and you will find a wealth of information in those probate records.

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