

Where there's a Will, there's a Probate

A will, which is a document written by someone before their decease defining what should be done with their property, can be incredibly valuable to the genealogist. But wills are just the beginning. Where there's a will (and even when there's no will but there is property), there's a probate. This class will discuss the probate process, introduce the documents (and the treasures they contain) created during the probate process and identify where probate records 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 only to the process of proving a will. In modern usage, probate is the process of settling an estate regardless of whether there is a will or not.

Probate comes from English Common Law and was never questioned by the early American Colonists. This means that probate records exist from the time each colony and state was founded. In the United States, probate law is dictated by the individual states. Most states have assigned the duties of settling probate to either county or district courts though the names of these courts vary from state to state.

Genealogical Value of Probate Records

Probate records can provide a lot of information about your ancestors, including:

- Relationships (spouse, children, grandchildren, parents, siblings, nieces & nephews, etc.)
- Date and place of death
- Property ownership
- Socioeconomic status
- Religious affiliation
- Possible relatives (executors, administrators, guardians, witnesses, bondsmen)

Probate Terminology

- **Administrator/Administratrix:** individual(s) assigned by the court to settle an estate
- **Bondsman/Surety:** individual(s) who gives security on the signing of a bond
- **Codicil:** an addendum to an existing will
- **Decedent:** individual whose estate is being settled
- **Executor/Executrix:** individual(s) named by a testator to execute the terms of a will
- **Guardian:** individual named by the court (or by a minor child of 14+) to guard the interest of a minor or incompetent individual in an estate
- **Intestate Estate:** an estate without a valid will
- **Personal Property:** property that is moveable (spoons, beds, cupboards, horses)
- **Real Property:** property that cannot be moved (land, buildings, etc)
- **Testate Estate:** an estate with a valid will
- **Testator:** the author of a will
- **Valid Will:** a will that has been proved by the court to have been written by someone of legal age, of sound mind, and without restraint

THE PROBATE PROCESS

Testate Estates (with a Valid Will)

- A will is written (with date, signature, seal, and witnesses) naming heirs and executor(s); the author passes away
- The executor(s) file a petition with the probate court to begin the process; a court date is set
- Notice of the probate and the court date is published in the local paper (or heirs are otherwise informed)
- In court, witnesses attest to the signing of the will; the court determines the will's validity
- If the will is proven, Letters Testamentary are signed; if the will is contested and proven invalid, the estate is considered intestate

Intestate Estates

- An individual dies without leaving a valid will
- An interested party (potential heir or creditor) files a petition with the court to begin the probate process; a court date is set

- Notice of the probate and the court date is published in the local paper (or heirs are otherwise informed)
- In court, an administrator is chosen and Letters of Administration are signed

Testate & Intestate Estates continued

- The executor or administrator hires three appraisers to inventory the estate
- Dower is set aside for use by the widow
- If minor children (or incompetent individuals) are involved, a guardian is appointed
- Parts of the estate are sold to pay creditors and provide support for the widow/minor children
- The administrator, executor, or guardian files yearly accounts detailing the proceedings of the estate
- When the executor or administrator decides the estate is ready to be settled, they file a petition with the court and all heirs are notified
- Once all property has been distributed, a final accounting (final settlement) is filed with the court and the estate is closed
- A decree of distribution detailing the final ownership of property may be filed with the Recorder's Office

RECORDS PRODUCED BY PROBATE

Wills

A will is a document written by an individual outlining what should happen to their estate following their decease. There are three major types of wills: attested wills, holographic wills (wills that are not witnessed), and nuncupative wills (deathbed wills). Wills can contain a variety of genealogical information including relationships, listings of property, indications of religious affiliation, and more.

Wills, however, do have some limitations. Some testators name their heirs without indicating relationships. Others may not include all of their children as heirs. This may be because the children have already received their inheritance (upon reaching their age of majority) or may have been disowned.

Petitions

A petition begins the probate process. A petition informs the probate court that an individual has

died and that their estate should enter probate. Petitions may include the decedent's date and place of death or list all potential heirs and their current residences (even if there is a will).

Proving of the Will

When a will enters probate, it must be proved valid and as the true and accurate account of the testator. Witnesses are summoned to attest that they were present when the will was signed. Those wishing to contest the validity of the will can also present their case at this time. Once a will has been proved it is copied into the court records followed by notes indicating that it has been proved. The proving of the will can be used to determine approximate date of death when no other records of death exist.

Letters Testamentary/Letters of Administration

Once an executor has been confirmed or an administrator appointed the court issues Letters Testamentary (executor) or Letters of Administration (administrator). Letters indicate the executor or administrator has permission from the court 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 estate is not settled properly (if the finances are mishandled) the executor, administrator, or guardian will pay a sum of money usually equal to the estimated worth of the estate. Bonds are also signed by two sureties or bondsmen who agree to pay the bond if the signee is unable to. The value in bonds lies in the names of the sureties who are often related to the person signing the bond. (The person signing the bond is often related to the decedent.)

Guardianships

A guardian protects the financial interests of a minor (or incompetent individual) in an estate. Guardians are chosen by the court for minors under the age of fourteen or by the minors themselves once they reach the age of fourteen. Guardianships will list the names of all minor children involved and their relationship to the decedent. Guardians are usually related to the decedent or their spouse.

Inventories & Appraisements

The value of an estate had to be determined before the estate could be settled. The administrator or executor hired three individuals to appraise the estate and list all assets, including debts though not all states required that real property be included in the inventory. Inventories can indicate socioeconomic status, property ownership, and individuals doing business with the decedent.

Dower

In most states, widows had a right to one third of their husband's property following his decease. Widows named in a will had the right to refuse their inheritance in favor of dower. Dower was often set off as part of the appraisal process and may be detailed in the inventory.

Bills of Sale

In order to pay the debts of an estate, support the widow and children, or distribute the property of an estate, it was often necessary to sell some of the estate at public auction. The final bills of sale from these auctions were filed with the court. Bills of sale list the names of individuals who purchased items at the auction. These individuals are often the relatives, friends, and neighbors of the decedent.

Annual Accountings

Administrators (and sometimes executors) were required to file an annual accounting of the proceedings of the estate indicating the increases and payments from the estate. Accountings may list early distributions to heirs as well as the names of creditors.

Settlement of the Estate

After the property has been distributed, the administrator or executor filed an Estate Settlement. This document indicates the amounts paid out to the heirs. In an intestate estate, the final settlement should name all of the heirs as determined by law (known as heirs-at-law). Those considered primary heirs can be identified based on the percentage of the estate they received.

Decrees of Distribution

A decree of distribution documents the transfer of property from the decedent to his or her heirs. (If land is involved, a copy of the decree may also be

kept on file in the recorder's office.) Decrees have been required only for more recent probates. Decrees will name all of the heirs of an estate.

Receipts

As an executor or administrator pays expenses and debts owed by the estate, receipts are issued which are collected and filed with the annual accountings and final settlement. Among these will be receipts signed by the heirs as they receive money from the estate. Receipts give clues to the decedent's business relationships as well as information about the heirs including signatures, married names and spouses, current residences, and more.

Court Cases

Heirs (or potential heirs) may generate court cases throughout the probate process. Heirs may contest the will, sue the executor for failure to perform his duties, request the executor/administrator be replaced, etc. Copies of probate related court cases may be found with the probate court as well as with the clerk of the court.

Partitions

Partition is the process of dividing a piece of land owned jointly by several individuals. Though not part of the probate process, a probate often leads to partition (as several individuals inherit the same piece of land). Partition begins when one of the owners sues the remaining owners. Partitions may include the names and spouses of the all the owners (heirs) and their current residences.

RECORDS OF PROBATE

- **Probate books** contain records that were copied by hand by the clerk of the probate court. Probate Journals, Will Books, Bonds, Guardianships, and Dockets (which references the location of an individual's probate in other books) are kept by the Probate Court.
- **Probate packets** or **Estate files** consist of all the original paperwork generated during the probate process and are numbered and filed by the Probate Court.
- **Other court records** generated by the probate process may be found with the Land Office (Decrees of Distribution) or the Clerk of the Court (Partition, Court Cases)

LOCATING PROBATE RECORDS

Probate Records Online

- **FamilySearch.org** – 25+ collections, most of which are images only (no indexes).
- **Ancestry.com** (\$) – 300+ collections under “Wills, Estates & Guardian Records,” most of which are indexes or scanned copies of books containing abstracts.
- Many **State and County Archives, Libraries, Genealogy Societies** have online indexes or images of court and probate records. Use a search engine (Google, Bing) or a link library (CyndisList.com or Linkpendium.com) to find these resources.

Published Books

Many probate records (especially wills) have been abstracted or indexed by local genealogists and genealogy societies. If you find an abstract or an index, make sure to get a copy of the original records. Published books can be located online through Google books (books.google.com), the Internet Archive (www.archive.org), and more. Published probate books can also be found in local libraries using World Cat (worldcat.org).

Probate Records on Microfilm

Many probate books (as well as some probate packets) have been microfilmed and are available from FamilySearch. These records can be identified using a Place-name search in the Catalog for the county where your ancestor died. (The catalog is available at FamilySearch.org/catalog-search). Click on the topic ‘Probate Records’ for a list of the records available from FamilySearch.

Some states or counties may also have microfilmed copies of probate records. Check with state archives and libraries, University libraries, and county archives to see if such microfilm exists and to find out if the repository participates in inter-library loan.

Probate Records on-site

Most original probate books and packets are held by the probate court or county archives of the county where the estate was settled. Copies of probate can usually be ordered from the court or a

local on-site researcher or genealogy society may be willing to copy the records for a fee.

RESEARCH STRATEGIES

- Probate records usually exist for white men who owned property. If your ancestor fits that mold, make sure to search for probate records.
- Women are more likely to have a probate if they were single, widowed, or divorced when they died.
- Search for probate records for all of your relatives including siblings, children, parents, and especially unmarried aunts and uncles.
- If your ancestor owned land in multiple counties or states or the property was located on a county line, search for probate records in each of those counties.
- Look for probate records for individuals named in your ancestor’s probate. Your ancestor may be named in their probate record and include additional details.

LEARN MORE

FamilySearch Research Wiki – Search for “United States Probate Records” or “[State] Probate Records. (wiki.familysearch.org)

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

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

CONCLUSION

Wills are just the beginning of probate research. If your ancestor owned, make sure to get copies of their probate records. You might just be surprised by what you find.

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