



Using Probate Records for Genealogy

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Definition and Reason for Probate

- The legal process of administering a person's estate after their death
- Probate is termed Testate if the deceased had a will, and Intestate if they did not
- It is done to provide an orderly and fair process to transfer property to the heirs of the deceased
- A will provides instructions on how this should be done
- Lack of a will means the laws of the state will guide distribution of property to heirs

What Can Family Historians Get From Probate Records?

- Death date (with caution)
- Relationships
- Names of associates of the deceased, including appraisers, creditors and debtors, bondsmen, administrator(s), buyers at sales.
- An indication of occupation and economic status
- Sometimes, death dates of other family members
- Sometimes, medical information
- Original signatures

What are Some Limitations of Probate Records?

- Probate may not have occurred for some deceased (see below)
- Not every child (or sometimes even the widow) may be named in the document(s)
- Places of residence may not be mentioned
- Maiden names are usually not given
- Exact date of death is lacking
- Because probate was usually done where the deceased resided, they may be hard to find if someone had recently moved
- Indices are usually just by the testator's name
- Beware of myths (all heirs must be left something in a will, for example)

Know the Law!

- Probate is regulated mostly by laws instituted by the state
- Knowledge of the laws helps explain documents in probate files and most events occurring during the course of probating an estate
- Pay close attention to laws in force at the time of the probate of the decedant's estate

Wills – Testate Inheritance Types

- Attested – prepared in writing and signed by witnesses (most common)
- Holographic – written by the testator and dated, with no witnesses and no other person's writing on the will
- Nuncupative – oral, dictated will (deathbed will) to witnesses, who write them down as soon as possible

Information we can get from wills

- Heirs (often not exhaustive), often their names and places of residence
- Names of enslaved people
- Death date or approximate death date
- Approximate ages of minor children
- Previous residences
- Occupation
- Economic Status
- Original Signatures

Steps to Probate a Will

- Will is written, testator professes to be of sound mind, or age, and not under undue influence
- Will is proved in court, that is, certified as valid
- Court issued Letters Testamentary to the executor of the will
- Notice to creditors and debtors, then probate process continued as below

Limitations

Not all heirs may be mentioned

May not provide for all property

Date of writing and death date may be separated by many years

Probate – Intestate Inheritance Steps in Probate and Records Generated by Each Step

Action	Document(s) Generated
Petition the court	Petition
Hearing	--
Administration rights granted	Administrative Bond, Letters
Notice to creditors and debtors	Receipt & Newspaper Clipping
Inventory	Itemized list or listings (administrator)
Appraisement	Itemized list of listings (appraisers)
Sale/distribution	List(s) of sale, widow's set-aside
Records kept/Reports to Probate	Annual Settlement/lists; court minutes
Court/Annual Settlements	
Final Settlement	Statement; court minutes
Distribution to heirs	List and/or receipts

Releases and Receipts from Creditors and Heirs

If administrator cannot complete process, court appoints a new one (administrator de bonis non)

Categorized & numbered receipts (original signatures)

New Administrative Bond, Letters of Administration

There may also be guardianships, dower petition/assignment, other petitions, powers of attorney, etc. in probate records

What if there is no probate?? (check state statute for the time period)

- No property
- Property was in another county – search surrounding or alternate sites
- Deeds only in the event the heirs agreed
- Silent transfer
- The Individual intentionally avoided probate
- Delayed – when the spouse died or when property needed to be transferred
- You have the wrong approximate date
- Check court records for a Petition to Partition

Guardianships

- If the deceased had minor heirs (under age 16 or 21, depending on the time and place)
- The other parent may have survived - still may be a guardianship and reference to “orphans”
- Either the court appointed guardians, or for older children, they selected one
- Because the guardian protected rights of minors to property, they signed documents and had to account to the court
- Probate packets or guardianship packets contain documents related to the guardianship
- Guardians were also appointed for incompetent adults – same process as a probate was followed

Finding Wills

- Check online indices: Family Search, Ancestry, Local Society pages
- If accessible, check library resources
- Check local resources (
- Originals may be in a probate packet or filed separately
- Copies in will books, probate books, or if land was involved, in deed books

Finding probates

- Check online indices: Family Search, Ancestry, Local Society pages
- If accessible, check library resources
- Contact the local people knowledgeable about local research
- Probate books may be digitized and online, in the courthouse, or annex/archives
- Probate packets may be in the courthouse, records annex, local archives, state archives, or in some states may not exist (Virginia is an example)

- Check court records for lawsuits connected with disputes related to settling an estate, or petitions to partition

Research Strategy

- Learn the law for the state and time period
- Determine which court handled probate
- Find a probate index for the county
- If there is none, search for details in probate minutes (index may be in each volume)
- Find indexed records in the appropriate book(s)
- Locate probate packet, if they exist
- If your specific packet is missing, partial reconstruction using minute books
- If your ancestor had no probate, check for probate of their relatives (children, parents, grandparents, aunts, uncles, etc.)
- Check probate of associates of your ancestor

Additional Resources

Ancestry.com. For probate-specific information, go to:

https://wiki.rootsweb.com/wiki/index.php?title=Probate&_ga=2.72495763.1073797088.1607346885-1530345622.1607346885 : accessed 22 September 2021.

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