

All records which relate to the disposition of an estate after its owner's death are referred to as probate records

The nature of probate records recommends them as an invaluable genealogical source. They exist because of relationships, both family and social, between various persons. When a man makes a will it is because he wants those whom he loves – generally his family – to have the substance and benefits of his worldly estate after his death. The laws set up to govern intestate estates are based on the same premise – members of the deceased’s family are his rightful beneficiaries.

- Val Greenwood, *The Researcher's Guide to American Genealogy*, page 116

History

Never has been a time on this continent when wills were not made or courts did not handle estates of those who died without a will

Land owners required probate to disburse estate to heirs

In Colonial days English law and custom were meticulously followed

Probate law in America has developed as a state function

Laws differ from state to state

Probate Courts: Different States - Different Times - Different Names

Chancery Court

Circuit Court

Court of Common Pleas

County Court

District Court

Ordinary Court

Orphans Court

Prerogative Court

Probate Court

Registers Court

Succession Court

Superior Court

Surrogate Court

Probate Record Types

There are many different records, but they basically fall into two main categories:

Testate

Intestate

Testate - Deceased had a will that was accepted by the court.

Intestate – No will

Testator Requirements

Sound mind

Free from restraint

Legal age

Wills - Most Informative and Most Misleading

- **Less rigid in form and content than deeds**

- **Informality and latitude**
- **Allow expression of personality, preferences and prejudices**
- **Changing customs**
- **Changing lexicology**
- **Misinterpretations**
- **Missed clues**

Will Analysis Tips

- **Original wills will show signature or true mark of testator as well as witnesses**
- **Recorded copies have danger of transcription errors**
- **Text should flow smoothly from page to page of original loose paper wills**
- **If will begins with an oath (In name of God, Amen) testator was not Quaker or of another religious body that eschewed oath-taking**
- **Named wife may not be mother of all named children**
- **If infants or minors are mentioned, estate may not be settled until the last is an adult, possibly twenty years**
- **The term “infant” meant that the person was a minor**
- **The term “of tender age” commonly meant that children were under the age of fourteen**
- **Children over fourteen might later sue for a change of guardian**
- **Education willed to children before mid-1800’s indicates wealth, education for older children indicates greater wealth**
- **Children of deceased children generally received special favors**
- **Newly adult sons and husbands of newlywed daughters often sued for possession of inherited property or money**
- **If an heir receives only a token, they had likely already received their inheritance**
- **Under English Common Law married women could not own land, therefore land was devised to sons-in-law well into the 19th Century**
- **Mention of property in other regions may indicate earlier residence localities**
- **Witnesses could not be beneficiaries but were frequently related**
- **All children not always named in wills**

Testate Process

- **Will is presented in court**
 - **Name of court varies from state to state, and in some states from county to county**
 - **Appropriate court is in the county and state of residence**
 - **Locality of death does not necessarily affect the probate locality**
 - **Application or petition for probate must be filed with court by executor (In more recent years this will include names of all next of kin with their relationship)**
 - **Court will admit will for probate and set hearing date and notice is published**
- **Witnesses are examined**

If no one comes forward to contest the will at the hearing then it is considered that there is no contest and it is ordinarily admitted to probate on the testimony of one of the witnesses who signature attested to its validity. Even in the case of contest the testimony of only one witness is sufficient if he can show due execution.

- **Will is admitted to probate and recorded**
 - Fee is charged for recording or registering by the court
 - Usually indexed at the same time
 - Most courts make a direct index (testator or divisor index)
 - Some states make a reverse index (beneficiary, devisee, or legatee index)
- **Executor, with court authority pays the just obligations of the deceased**
 - Usually a "Notice to Creditors" published
 - Creditors must file their claims against the estate.
 - Only variations allowed from the will provisions are in the settlement of all just debts and obligations and in possibly setting the widow's dower
 - Inventory of estate taken and appraisal made by men appointed by the court
 - May be an estate sale to settle claims by creditors.
- **Executor administers the specific provisions of the will**
 - After the obligations of the estate have been discharged with court approval
 - The specific provisions of the will are carried out as stipulated by the will
- **Executor makes periodic court appearances until estate is closed**
 - Many states also required that a *Decree of Distribution* be completed by the executor, to show how the distribution to beneficiaries had been completed.
 - This document was issued and recorded by the court as the final document in probate proceedings and was often recorded both in the probate court and in the land records.
 - Beneficiaries may have also signed receipts.

Research Tips

- Pursue witnesses as possible relatives
- Verify recorded will with original
- Check court actions until estate was closed
- Check court actions to see if will was contested
- If any heir bears the name of the person whose parents are sought, still need to prove they are the same person
- Check land and tax records for legatees who receive only a token
- Check land records in other regions mentioned in wills

Intestate

- Deceased did not have a valid will - If they did not state in a legal document the preferred distribution of their possessions – the court and administrator makes those decisions
- Person died with a will that was not accepted by the court

Intestate Process

- "Petition to Administer" is filed with court
 - Probate proceedings are begun by an interested party filing a petition or application indicating the nature of his interest

- Indicates that a death has taken place
- The decedent died intestate
- Property left to administer is within the court's jurisdiction (locality of residence at time of death)
- Approximate value of the estate must be stated
- More recently, names and relationships of those entitled to share in estate must be stated
- Probate court receives, reviews, and usually grants petition of administrator to settle the estate
 - Court receives the petition
 - Hearing date is set and notice is published
 - Hearing is to establish proof of claims of petition
 - Administration is granted
 - Letters of administration are granted after bond with sureties is obtained
- Inventory and evaluate property and possessions
 - Court appoints men to inventory and appraise all real and personal property of the decedent
 - Failure to have estate inventoried and valued would be a breach of administrator's bond
- Administrator administers the estate according to state statute
 - Estate sale may be held to meet needs of creditors
 - Distributes the property and settles the affairs of the estate
 - Is usually the advocate of the widow and minor children
 - Keeps an accurate record of actions and obtains court approval
 - Makes periodic court appearances to give his reports
 - Final account must be accepted by those interested in the estate

Guardianships

- Minor children are not considered capable by law of managing their own persons or properties
- Parental will names guardian (Testamentary Guardian)
- Guardian appointed by the court

Guardianship Records

- Petitions
- Appointments
- Bonds (may be waived for Testamentary Guardians)
- Inventories
- Accounts
- Periodic accounts to court
- Final account upon death, majority or marriage of minor
- Apprenticeship

Guardian Analysis Tips

- Relatives are given preference as court appointed guardians for minors, natural parents are usually named
- Children 14 or over may request a specific guardian – court must approve

- The final account filed at the termination of the guardianship may be more useful in determining age of minors
- Description of real property should be included and can be used as an aid for identification

Probate Research Steps

- Determine locality of residence at death, OR where property was located
- Find where the court records are currently housed (county boundary changes, some old records are housed in state archives or libraries)
- Locate index (online, FHLC or in locality)
- Be thorough – look under names of relatives
- Find and note the docket number
- Examine the complete probate and/or estate file

When There is no Probate

- There was nothing to probate
 - No estate worth probating
 - Some states require a certain value to warrant the necessity to probate the estate
- Your ancestor intentionally avoided probate
 - Transferred property to children before death
 - Personal effects not worth probating
- Probate was delayed significantly
No probate until desire to dispose of property
- There was a guardianship
 - Guardianship may have overseen inheritance
 - Estate records may only appear in Guardianship Records
 - Historically women had few rights and may not have been children's guardian
- The tradition is wrong
It may only be a tall tale of a large estate
- There are post-death land records
- There was a guardianship
 - Guardianship may have overseen inheritance
 - Estate records may only appear in Guardianship Records
 - Historically women had few rights and may not have been children's guardian
- State statute makes a difference
Different states have different requirements about the probate process; an estate that may have to be probated in one state may not be probated in another
- Check the last survivor
Greater chance of an estate record for the surviving spouse instead of the one who died first
- Looking in the wrong place and/or wrong time