Research Like a Pro with

U.S. Probate Records

Genealogy Cheat Sheet

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What is a Probate Record?

A probate record is created by the local court upon an individual's death. The records deal with the distribution of the estate and care of dependents. Probate took place regardless of a will (testate) or no will (intestate). Various types of records were created such as bonds, petitions, accounts, inventories, and administrations. A case file includes all the papers that were created during the probate process for an individual and are filed by case number.

Possible Information in Probate Records

- An individual's exact death date
- Names of family members
- Family relationships
- Names of spouses of children
- Burial information
- Residences of executors, heirs and associates
- Adoption or guardianship of minor children or dependents
- Worth of the property and land holdings
- Evidence of occupation, religion, or military service

Valuable as Evidence

An original probate record is valuable as evidence because it provides primary information, usually given by an eyewitness to the event. Make sure that you find the original record if you are viewing a transcription or abstract. Often the handwriting is difficult to read and names may have been transcribed incorrectly.

Sample Citations

Chambers County, Alabama Estates, box 26 folder 24, Thomas Beverly Royston, for will of 1867; "Alabama, Wills and Probate Records, 1753-1999," case file for Thos B Royston, 1867-1883, *Ancestry* (http://www.ancestry.com: accessed 19 August 2016), digital images 138-140.

"Tennessee Probate Court Books, 1795-1927," Hardeman, Wills, 1824-1838, Vol. 01, Entry for Richard C. Royston, images 286-288, FamilySearch (https://familysearch.org : accessed 7 December 2016); FHL microfilm 2137713

Anderson County, South Carolina Estates, box 10, No 362, case file for William Keaton, Notice to heirs, 8 September 1830; FHL Microfilm 1572233, image 22.

Davidson County, North Carolina, Estate File for John Johnson, 1825, petition of Benjamin and Polly Davis; image online, North Carolina Estate Files, 1663-1979," > Davidson County > J > Johnson, John (1825), image 7, FamilySearch (https://www.familysearch.org : accessed 14 Nov 2018); Citing FHL microfilm 1888955.

Types of Estate

Intestate Estates

If an individual dies without a will, the property becomes an intestate estate. According to the law, the estate will be divided among the heirs. A spouse or other family member may petition the court to administer the estate.

Testate Estates

A will is often drawn up when an individual is in ill health or aged and preparing for death. Wills vary in length and breadth. They may be long and involved, stating many heirs and much property; or they may be short and simple. Although a will specifically is a document that declares an individual's wishes concerning the disposition of his or her property upon decease, different circumstances can be in play. The three categories of wills are holographic, nuncupative, and formally witnessed.

ABCs of Terms in Probate Records

Selected terms from the *FamilySearch Wiki* "Glossary of Probate Terms"

Administrator (-trix) - When no will exists (intestate), the court appoints an administrator (male) or administratrix (female) to handle the estate proceedings.

Appraiser – An appraiser is an impartial person who estimates the value of the personal or real property of the estate.

Bond - In most probate cases, the court required the administrator, (and sometimes the executor, guardian, appraiser, and trustee) to post a bond to ensure that he would properly complete his duties. The bond required that a fee be paid to the court if duties weren't adequately performed. One or more persons were required to co-sign the bond as "sureties."

Codicil - A codicil is an addendum to a will.

Decedent – The decedent is the person who is deceased.

Distributions - Distributions refer to the way the deceased's possessions are allocated.

Divisions - Divisions are records in the probate process. These might include commission reports, settlements, decrees of distribution, dower rights, courtesy rights, awards, private disbursement, ledgers, guardians' final report, probate decrees, certificates of devise, assignments of real estate, orders of distribution, or decrees of heirship. When the distribution was completed and payments to the creditors and heirs made, the executor or administrator presented to the court a record or decree of distribution and settlement. This document listed the beneficiaries of the estate and the property each received.

Dower rights - The dower rights are the rights that a non-owner spouse has in the real property.

Executor (-trix) – The person (executor = male; executrix = female) who has been named by the testator of the will to manage the estate

Feme sole - Feme sole refers to a single woman.

Guardian - A guardian is the person appointed by the court to manage the affairs of a minor or someone incapable of handling his or her own affairs.

Heir – An heir is a person who inherits property upon the death of the owner.

Legatee – A legatee is a person receiving real or personal property by way of a will.

Minor – A minor is a person who has not yet reached full legal age.

Relict - A relict is a widow or widower.

Testator (-trix) – The testator (male) or testatrix (female) is the person making the will or testament.

Witness – A witness is a person who attests to actions or events personally seen.

FamilySearch Wiki, "Glossary of United States Probate Terms," *FamilySearch* (https://familysearch.org/wiki/en/Glossary_of_United_States_Probate_Terms : accessed 12 Dec 2018).

All About Wills

A last will and testament is a written document expressing a person's wishes for his or her property at death. It is estimated that 25% of the population left a will, and 50% were mentioned in a will. Finding the will of each family member and associate of your ancestors can yield helpful genealogical information.

Basic Components of a Will

Preamble: The testator (the person whose will it is) identifies himself or herself (a woman is known as a testatrix) by name, usually giving a place of residence, and for testatrixes, often stating "wife of," "widow of," or "daughter of," depending on her marital status. The preamble will also have language concerning the mental status of the testator—for example, "being of sound mind and judgment"—designed to show legal capacity to write a valid will.

Disposition of body and soul: This clause gives directions concerning funeral, burial, and/or cremation. Wills before and during the nineteenth century often give statements of religious belief and comments as to the disposition of the soul.

Payment of debts: Most wills generally direct that all just debts be paid before any distributions are made, as required by law.

Specific gifts: bequests and devises. These are gifts of specific property or amounts of cash given to specific individuals. This part of a will often provide us with names of specific relatives and friends.

Residuary distribution: This clause specifies to whom the residue (what is left of the estate after paying costs of probate court administration, debts, and specific gifts) is distributed. In most cases, this residue will be given to the spouse (if still living), then to the children, although the final beneficiaries might be other relatives or friends. Often sons–in–law are listed in place of their wives, which can be a significant clue when looking for the family of a woman. Often the residue (called a life estate) will be given to the spouse only during her lifetime, and then given to one or more children. In that case, look for probate court action or transfers of real property when the surviving spouse dies.

Naming executors: The executor (executrix if female) is the person appointed and authorized by the court to handle the affairs of the decedent. The person named is usually a son, brother, or trusted friend. A wife or her brother might be named to serve if she or her family has assets and interests to protect. Often in this clause, the legal requirement of the executor posting a bond during court administration is waived.

Guardian for minors: Most states do not allow distribution of property to minor children. Since a guardian has to be appointed, the testator would name the person he wanted to serve in that capacity. Often the language does not specifically say "guardian" but provides that all decisions are to be made by an older child or brother for a specific child who is a minor.

Revocation of previous will and codicils: It is standard language to revoke all prior wills and codicils. This does not necessarily mean there are any, but the procedure is precautionary in nature. Often this concept is incorporated into the preamble.

Execution Clause: This contains the signature of the testator and those of the witnesses, usually with language to state the circumstances surrounding the signing of the will to establish its validity.

Challenges Using Wills as Evidence

May not List All Relationships

Not all family members have to be listed in a will. In the case of Thomas B. Royston, he only mentions three children and one grandson. He actually had fourteen children and several more grandchildren by 1867. Why are they not listed? A clue would be the statement "after my children which are now unmarried & minors be made equal with my children which are married." Perhaps he already gave land or an inheritance to his married children and his minor children are not old enough to receive theirs. Obviously, there are more children in this family, making it necessary to look at other records. When analyzing a will, read it carefully to determine any clues to additional family members.

Inconclusive

You may discover a will that lists many heirs with no relationships. Then it is up to you as the researcher to use other records to put together the family. An individual may leave property not only to children and grandchildren but nieces, nephews, friends, etc. Just as in a census, be careful about assuming that the wife named in the will is the mother of the children named in the will. She could be a second or even third wife.

Latin Terms

Et al - abbreviation for et alii, meaning "all others"

Et ux – abbreviation for et uxor, meaning "and wife"

Imprimis - Imprimis is Latin, meaning "in the first place."

Locus sigilli (L.S.) - Locus sigilli is Latin, meaning "in place of the seal."

Sine prole (s.p.) - Sine prole is Latin, meaning "without offspring."

Videlicet (viz.) - Videlicet is Latin, meaning "namely."

3 Types of Wills

Formally Witnessed

In order to be valid, the will has to meet the formal requirements of the state statute. In effect, that law defined the requirements for a valid will. Holographic and nuncupative wills are specific exceptions to the general requirements for validity. Generally, a formally witnessed will had these requirements: In writing, signed by the testator (or if he cannot sign his name, by another in his presence and at his direction); Verbally acknowledged by the testator as his will in the presence of at least two Witnesses; Signed by the two witnesses in each other's presence and that of the testator.

Holographic

Usually written and dated entirely in the writing of the testator and signed by him. This type of will generally doesn't require witnesses, but the laws differ from one state to another.

Nuncupative

An oral will, witnessed by two or more persons. It is usually only valid if given in a moment of danger or imminent death, often limited to soldiers on the battlefield or sailors at sea. To be valid it must be recorded within a certain time, generally six to twelve days.

Locating Probate Records

Steps to Locate Probate

1. FamilySearch Research Wiki

Go to https://www.familysearch.org/wiki/en/ and search for the county or state your ancestor may have died in. Find the section about probate records. The wiki contains links to probate collections by locality and can help you learn about the records that are available in that area. Be sure to check the record loss section of the wiki for that county also, to learn if any probate records have been lost due to courthouse fires or other disasters.

2. Ancestry Indexes

Ancestry.com has indexed probate records by state. If you're not sure which county your ancestor died in, this is a good place to start. Usually just the main individual is listed in the index – not all the other family members and associates listed in the will, administration paper, or final settlement. After you search the Ancestry.com database, you can click through to see the image. Sometimes it's an image of the will index page, and you must note the page the actual will is on and then browse forward in the images to find the correct page for the actual document. Sometimes you will find a probate packet or estate file with several images relating to your relative. If you are only able to find the index, you can use the indexed information with the will book number and page number to find the original record in the *FamilySearch* digitized microfilm of the will book.

3. FamilySearch Digitized Microfilm

Go to the *FamilySearch* Catalog at https://www.familysearch.org/search/catalog/search and search for the county your ancestor died in. Go to the probate section and choose the collection in which the author is the county. Most of the microfilms of the probate books have been digitized, but not indexed. Click on the camera icon next to the microfilm title to view the digitized images. Most probate books have indexes at the beginning. Sometimes the index will be a separate microfilm of images that you can search through alphabetically. If you are looking at an estate file digitized microfilm, those are usually arranged alphabetically by file.

4. County Courthouse

Probate books are originally kept at the county level. If you can't find probate records online for your county, you can contact the courthouse. Before planning a research trip to the courthouse, call ahead to find out the hours and requirements for visiting. Some probate collections have been moved to the state archives. Some states have digitized their probate collections; links to these may be found on the FamilySearch Wiki.

Quick Links

FamilySearch Research Wiki
https://www.familysearch.org/wiki/en/

FamilySearch Catalog
https://www.familysearch.org/search/catalog/search

Ancestry U.S. Wills and Probate Collections
https://www.ancestry.com/search/categories/us_willsprobate/

Tips for Browsing Digitized Microfilm

If you don't find your ancestor initially in the *Ancestry.com* probate indexes, remember as with any index, the name may have been misread. You can browse the indexes at the beginning of the county will books, generally alphabetical, for your ancestor. Find these books by using the FamilySearch Catalog.

- Enter the name of the state or county in the "Place" search box. Don't type "county." For example type "Chariton" not "Chariton County." Select from the options that will pop up your correct county and state. Many states have counties with the same name, so select carefully.
- Click on the blue search box and you will be taken to a list of the holdings for that location.
- Scroll down to "Probate records" and look for a database with the county probate court as the author. Clicking that database will take you to a screen where you can view the digitized microfilm. Now you have two options.
- Click the red notice that probate records are available online, then click "browse through_____ images." You'll be given several options for counties. Select the county of interest, then you'll see the list of microfilm to search.
- Skip the red notice that probate records are available online, and instead scroll down to the specific microfilm. You might see a general index to the county probate records as well as individual volumes that generally also have indexes located at the beginning. You can access the microfilm by clicking on the camera icon shown at the far right.
- Examine each set of records where your ancestor might be listed. Each county organized their record books differently and you'll want to track down each entry that might apply.

Don't forget to take good research notes as you're searching the probate records. In your research log, note exactly what microfilm you viewed, the page numbers, the image numbers, etc.

Understanding Probate Records

Tips for Probate Records

1. Locate all probate papers

Where there's a will, there is generally a probate packet. It may be filed several years after the will was recorded. Search in multiple collections to find all the probate records. The will, final settlement, and probate packet may all be in different collections on *Ancestry*, *FamilySearch*, and other locations.

2. Transcribe all the probate papers

The first time you read a document is the best time to transcribe it. Then you don't have to decipher it again later. As you transcribe you catch interesting facts you might have missed in scanning for just names and dates. As you transcribe, put the image number or citation and the date of the document in bold at the beginning of each image transcription.

3. Put the probate papers in order

The documents may not be in order by date. After transcribing each document, copy and paste the transcription into order by date.

4. Extract key information

Extract important information like death dates, names, ages, and residences. Add the information to your timeline or genealogy database.

5. Note further research possibilities

If there is a division of land, you can look for land records. If the residence of an heir is mentioned, you can search that locality for census records. Make a list of future research ideas as you extract information from the probate packet. Put this list of future research suggestions in a research report or summary of your research to help you remember where you left off and what to do next.

Probate records are one of the best U.S. record types for proving parentage in the early 1800s.

Documents in a Probate File

Cover Page – the first page in the file, usually stating the deceased's name and the file number

Will Papers – the last will and testament, any codicils (addendums to the will)

Petition Papers - Following the decease of an individual, the executor or executrix files a petition or application to begin administering the estate. Petition documents include letters testamentary, letters of administration, guardianship, etc.

Administration Papers - Letters of Administration refers to the formal document from the court granting authority to handle the affairs of the estate.

Account Papers - debts paid to creditors by the executor

Inventory Papers - Inventory and appraisal of the estate.

Order Papers – orders and summons to find heirs

Sales Papers - sale of personal and real estate.

Receipts – statement that funds were received

Notices – publications placed in public places and newspapers to let creditors and relatives know about the deceased's estate

Dower Papers - widow's rights determined

Guardian papers - guardians appointed for minors

Final settlement - the final accounting of the estate and how it was distributed

Source List

Elder, Diana. "Back to the Basics with Probate Records." Parts 1, 2, &3. FamilyLocket. https://familylocket.com/?s=probate.

Elder, Diana. "Probate 101 or The Real Life Drama of the Thomas B. Royston Estate." Family Locket. https://familylocket.com/probate-101-or-the-real-life-drama-of-the-thomas-b-royston-estate/.

FamilySearch Wiki. "Glossary of United States Probate Terms. FamilySearch. https://familysearch.org/wiki/en/Glossary_of_United_States_Probate_Terms.

Greenwood, Val D. The Researcher's Guide to American Genealogy. 4th Ed. Baltimore, Maryland: Genealogical Publishing Company. 2107.

Szucs, Loretta Dennis and Sandra Hargreaves Luebking. The Source, a Guidebook of American Genealogy. Revised Edition. Salt Lake City, Utah: Ancestry, 1997.