



## **Probate Records: Proof of Life, After Life!**

While we remember to research probate records most of the time, the question could be raised: do we remember to search all probate records? We often check will abstracts or indexes found online or in local archives. If we find no mention of our ancestors, we move on to other avenues of research.

When we do find that will of interest in an index and pull that century-old will book at the courthouse, we read the preamble and contents of our ancestor's last will and testament. We are hoping to find mention of lost relatives, great riches, or lost property in the text. Regardless of what we find or don't find in the will, we need to search deeper into the archives of not only the Probate Court but also the Clerk's office. Many surprises and facts can lie in those records we don't look at.

### **What are probate records?**

Probate records can be any record created after a person's death that documents a court's approval of decedent's will (testate) or the court's decision as to how to distribute a decedent's property when no instruction is left (intestate). These may include any number of wills, bonds, petitions, accounts, inventories, administrations, orders, etc. They may not all be located in the custody of the Probate Court. Many times, partition petitions or other related records will be in the custody of the Clerk of Courts. A general understanding of these records can help know what and where to search for these records.

Not all wills were recorded. In the cases that wills were recorded, it is noteworthy to remember that wills recorded in will books are transcriptions and subject to human error. Some persons may have had more than one probate record filed. This could have been for any number of reasons, but never assume that the record you are looking at is the only one that exists.

### **Probate terms**

**Will** - A written instrument legally executed by which a person (Testator) makes disposition of his or her estate to take effect after death. (Merriam Webster)

A will can hold a wealth of information. We can learn of and confirm spouses, children, and other heirs. We can also learn of neighbors and in some cases, discover spouses of heirs. By researching witnesses, we may discover neighbors or close friends. Wills often give a glimpse into religious beliefs, family structure, and possible wealth or lack of. At the very least, a will may help add context to one's life.

**Codicil** - An addition or supplement that explains, modifies or revokes a will or part of one.

A codicil may name heirs previously omitted, or possibly change an inheritance. It may shed light on a family conflict or highlight a change in family structure.

**Intestate / Intestacy** - The condition of the estate of a person who dies without having made a valid will or other binding declaration. (Wikipedia)

Intestate probate filings are not always required and, in many cases don't happen. If an estate is worth more than an amount set by local law, or if a creditor files suit against an estate, the court may order a filing. These often contain the same information as testate filings especially if there is real property or minor children involved.

**Administrator** - A person appointed by a probate court to manage the distribution of the assets in the estate of a person who has died without leaving a valid will or leaving a will that does not name an executor able or willing to perform.

**Executor** – Person named by decedent to execute the wishes and intents in a will.

An administrator or executor position may require a bond to be filed with the court. A testator may request that no bond be required of a named executor. An administrator or executor is often, but not always, a family member. Determining the relationship, if any, may help reveal unknown facts about the family.

**Trustee** - A trustee can be named as the individual who will serve as the legal representative of any part of an estate that will be distributed to beneficiaries through a trust. Until the assets held in a trust are transferred to the beneficiaries, the trustee holds the titles.

Trustees may not always be named in probate. If real property is held in trust, a life estate may be accorded in a deed filed in the recorder's office naming remainderman (heirs). A search of real property deeds may reveal as much or more information than probate filings.

**Guardian / Guardian ad litem** - Both terms appear in Probate records. The two serve somewhat similar purposes, but there are significant differences. A *guardian ad litem* has the responsibility to represent a minor person's interests in the probate proceeding. A *guardian*, on the other hand, is responsible for managing a person's affairs on a daily basis.

**Accounts** – An inventory of moneys incoming or outgoing during the course of the probate process. These will sometimes include a record of debts due the estate that are proven to be uncollectable.

Account inventories can sometimes give hints as to where an ancestor previously lived. A debt owed from or to a person in another community or state could lead to further familial discoveries. Legacy (inheritance) payments will be recorded as well as debts paid to attending doctors at the time of death or funeral expenses (coffin makers, stone cutters, etc.) This could reveal the cause or dates of death in times prior to death registration requirements. These transactions may be ledgers or only receipts kept in the probate packet, or any combination thereof.

**Inventory** – This is a complete listing of an estate's physical assets. Inventories will generally contain the estimated value of each item.

Estate inventories give an excellent perception of the way and means of a family. From bed ticks to reading glasses to saddles and hand planes, much can be learned. A foreign language bible or law book may lead to discoveries of ethnicity or even education levels. Inventories can be crucial to placing context to an ancestor's way of life.

**Sale record** – A complete listing of every item sold at an estate sale including name of purchaser and price of purchase.

Sale records not only place monetary value on estate assets but help place a family in the community structure. Familiarizing yourself with the relationship and status of the purchasers may give considerable insight into the stature the family held within the community.

**Petition for Partition** – This is generally the result of an intestate probate filed with the Clerk of Courts when there is a dispute as to how to divide or sell the decedent's real property. Named litigants may be heirs or creditors.

While long in legal boilerplate, these petitions give a lot of insight into heirship and sometimes extended family. Parties named in these proceedings are often subpoenaed to appear. The resulting Sheriff's order to appear may lead to learning where a family member emigrated or moved to as well as a timeline for that move. Many times these partitions resulted in the sale or dividing of real property resulting in a partition deed. These deeds may not name the decedent, but rather been filed in the name of the administrator.

Familiarize yourself with the probate laws in the jurisdiction in which you are researching your family. Laws change from state to state and in some cases, county to county.

### **Helpful links**

Family Search Wiki; [https://www.familysearch.org/wiki/en/Main\\_Page](https://www.familysearch.org/wiki/en/Main_Page)

Family Search Catalog; <https://www.familysearch.org/search/catalog>

Ancestry Probate: <https://www.ancestry.com/cs/probatesandwills2015>

Black's Law Dictionary 11th Edition Pdf; <https://collegelearners.com/ebooks/blacks-law-dictionary-pdf/>

Researching Probate Records Using Family Search Catalog Tutorial

<https://www.youtube.com/watch?v=7He0DwaxRqw&t=4s>

This is an instance in which the internet can be your friend. A simple phone call to the Probate Court or Clerk of Courts can yield surprising results!