

Who gets it when I'm gone? WILLS & PROBATE

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Terminology

People

- **Relict:** A widow; the surviving spouse.
- **Consort:** A spouse (usually implies the husband was alive when the record was made).
- **Issue:** Direct descendants (children, grandchildren).
- **Infant:** A person under the legal age of majority (often 21).
- **Executor (m)/Executrix (f):** Person named in a will to carry out its terms.
- **Administrator (m)/Administratrix (f):** Person appointed by the court to settle an estate when there is no will.
- **Legatee:** Person designated to receive personal property from the deceased estate.
- **Devisee:** Person designated to receive real property (land, house)
- **Surety:** A person who guarantees the administrator/executor will perform their duties. In the 19th century the bond was usually 100 – 200% of the estimated value of the estate.

Assets

- **Messuage:** A dwelling house, its outbuildings, and the adjacent land.
- **Moiety:** A portion or share of an estate (often a half).
- **Chattels:** Moveable personal property (livestock, tools, furniture).
- **Appurtenances:** Rights or objects belonging to a property (like a right-of-way).
- **Dower:** The legal right of a widow to a portion of her late husband's real estate.

Legal Process

- **Imprimis:** "In the first place"; commonly starts the list of bequests.
- **Nuncupative Will:** An oral will, typically delivered on a deathbed.
- **Holographic Will:** A will written entirely in the deceased's own handwriting.
- **Codicil:** an addendum to a will
- **Intestate:** Dying without a valid will.
- **Devise:** To give real estate by will.
- **Bequeath:** To give personal property by will.

Terminology References

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The Probate Process

Probate is defined by state law and therefore may differ somewhat from state to state. Questions about the probate proceedings should be answered by examining the probate law of that jurisdiction/state as constituted at the time. Probate law defined who were heirs-at-law of an estate, how property was to be divided in an intestate estate, the age at which children required guardianships, who could be guardians, and so much more. Consequently, when analyzing a probate case file, it is important that the corresponding probate law be located and studied to draw appropriate conclusions from the records.

File Court Petition

1. **Testate:** The will is presented/proved in court. Proving the will required that the witnesses to the will (and possibility beneficiaries such as the widow) be examined in court to ensure the testator was of sound mind and under no coercion. A challenge to the will often disrupted the probate process for extended periods of time (years) and generated many additional court proceedings/documents. The court also determined whether the executor(s) named in the will were willing to fulfill the responsibilities of that function. Serving as an executor was voluntary and if all named individual(s) renounced the role, then the court would have to appoint an administrator (often one of the beneficiaries or other close associate of the family) in their stead.
2. **Intestate:** When the deceased was intestate, a family member (or sometimes a creditor) would petition the court to appoint an administrator for the estate, and the court would issue letters of administration authorizing that individual to function for the court. Administrators were required to dispose of the deceased's assets according to provisions of the laws. The administrator had to identify all heirs-at-law and where they were living.
3. **Guardianships:** If any beneficiaries in the will (or heirs-at-law) were minors (as defined by state law), guardianships were established by the court to look after the financial concerns of the minor children. This generated additional records regarding who was appointed, required surety bonds, and a final full account of the guardianship. Children of a specified age (often 14 years or older) were allowed to appear in court and identify the individual they chose to be their guardian. Guardians would petition for release from the duties at the time their charges came of age.
4. **Bonds:** The probate court bond guarantees that the appointed estate representative (administrator or executor) handles the deceased person's estate honestly and according to law. It protects the beneficiaries and creditors from financial losses due to mismanagement, fraud, or failure to pay debts. In 19th century proceedings, the surety or bondsman was typically a third party who was acquainted with or related to the deceased and/or the appointed administrator/executor. Today, the surety is frequently a commercial enterprise.

Inventory/Appraise Estate

5. The court appointed appraisers to inventory and determine the value of the deceased person's estate.
6. The widow's portion of the estate, defined by law and by her husband's bequests in his will, would be identified.

Notify Creditors

7. The executor/administrator was required to notify creditors of the person's death so they could submit their claims against the estate. This was done by publishing a notice in successive issues of local newspapers and/or placement of the notice at the courthouse or other specified location for public viewing.
8. When the estate was close to final settlement and distribution, the creditors would be notified.

Pay Debts

9. Personal property of the deceased was often sold to pay debts or to support the widow and her children. Purchases were often made by friends, family members and neighbors and record of the sales is frequently found in the profile case file.
10. Probate case files typically include the creditor's invoice/statement documenting the deceased person's debt as well as receipts of payment made by the estate.

Distribute Assets

11. Unless otherwise specified by the testator's will, the estate was oftentimes sold for cash distribution among the heirs. A petition for partition of the property may be included in the probate case file showing how the estate was distributed.
12. After settlement, the executor/administrator would petition for release from their duties.
13. Many estates were not settled for years after the testator's death so researchers must diligently search records well beyond the date of death to find all probate records.

Probate Case File Contents

1. Petitions: requests made by various individuals for some kind of probate court action.
2. Last Will & Testament: The typical format includes:
 - Invocation
 - Identification of the testator
 - Instructions for payment of just debts and disposition of remains
 - Bequests/Devises
 - Executor(s)
 - Revocation of previous wills
 - Date
 - Signature
 - Witnesses
3. Bonds
4. Guardianships
5. Letters of Administration: the formal court authorization directing the appointed executor/administrator to carry out their responsibilities.

6. Affidavits: statements made by individuals who have been placed under oath providing testimony regarding some aspects of the probate.
7. Inventories
8. Accounts & Receipts: The executor/administrator was required to maintain detailed documentation of all actions related to the estate and periodically file reports with the court.
9. Final Settlement

Finding Wills and Probate Records

1. Remember, probate may have been handled in court other than a "probate court". Search all court records: probate, account books, application books, guardianship books, docket books, inventory books, administration books, will books, and court journals/minute books.
2. Always search BOTH FamilySearch and Ancestry. Though there is some duplication of the sources available at these two sites, **they also each have records you may not find on the other website.**

- **FAMILYSEARCH:** Click SEARCH (upper menu bar), then CATALOG. Enter the location name. Scroll down the list of source types to the PROBATE RECORDS and PROBATE RECORDS-INDEXES.

REMEMBER - probate may not be in the state/county in which the individual died. If the deceased owned property in a different state, there will be a probate in the state in which the property is found. Check all locations in which the individual had resided previous to their death unless you know they sold all their property at the time of their relocation.

- **ANCESTRY:** Click SEARCH (upper menu bar), then choose ALL COLLECTIONS. Scroll down to EXPLORE BY LOCATION and choose the state in which you wish to search. Scroll down to COURT, LAND, WILLS & FINANCIAL to find probate collections. Be sure to click the "View all ..." under that heading to see the full list of available databases.
3. Be sure to do a Google search for County/State probate record websites. Some locations have digitized indexes and probate records.
 4. Contact the locality Clerk of Court to determine what records they have and whether the records have been microfilmed or archived at another location.
 5. Check the state historical and genealogical societies, state library, and state archives to determine whether they have any probate record holdings.