

PROBATE RECORDS  
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(Always with an eagle eye out for historical and genealogical information, Sue W. Maggart spotted this outline of Probate Records by Donald L. Wilson published in the December 1992 issue of the Prince William County Genealogical Society, Manassas, Virginia Newsletter, *Kindred Spirits*. Mrs. Maggart obtained permission for reprinting in our newsletter. Our sincere appreciation is expressed to the Society and to Mr. Wilson for permission to reprint.)

OUTLINE:

1. Importance of Probate Records:
  1. Probate records show when and where our ancestors died and what property they left to their heirs.
  2. They (the will) may refer to the decedent's previous residence or homeland, and give other biographical information such as religious affiliation, occupation, dialect.
  3. They may identify the decedent's next of kin and their residences.
  4. May help to determine birth order and ages of children.
  5. Can prove the remarriage of the widow and the name of the new husband.
  6. Distribution to heirs can identify children and daughters' husbands not named in will.
  7. Heir's sale of inherited land (quit claim) can show where they have moved.
  8. Chancery suits many years after the decedent's death can lead to a division of the estate among living heirs and can identify many descendants.
  9. Sale of the widow's dower interest by the heir, without her release, can prove she has died.
  10. The inventory of personal property can give you a picture of the home and family's standard of living.
  11. Executors, administrators, and guardians are usually close kin.
  12. Witnesses are usually neighbors, may be kin.
  13. Guardian's accounts show what happened to minor children, may prove birthdates, marriages, names of other kin.
  
2. Development of the record-keeping systems.
  1. Land and probate system was established by each state. Records go back to the earliest European settlement. In the English colonies they are based on English law.
  2. In regions where other nationalities first settled, systems of record-keeping and terminology may be somewhat different, but they also were concerned with the ownership of property and its descent to heirs or legatees. (This

talk will concentrate on the rules of English law, though many rules are common to other cultures.)

3. Local and state magistrates, usually attached to the courts, were charged with responsibility of keeping track of (recording changes in) property ownership. They would copy into record books documents approved by the court, such as deeds, wills, leases, property divisions, and surveys. Some states tended to centralize most property records during the colonial period (examples: Maryland's and North Carolina's probate records may have been copied for the benefit of local jurisdictions).
4. Changes in county, town, and state boundaries over time affect where the records you seek will be found. Changes in the number, types, and locations of courts also affect what records exist. You need to become familiar with geographic and governmental changes that have occurred in your state. If court decisions were appealed to a higher court (which frequently happened in suits concerning land and inheritance), details of the case may be recorded at more than one level or jurisdiction.
5. Records that should exist may be missing for many reasons: fire, war, flood, vandalism, theft, carelessness, dumping. Where they are lacking, you need to look for duplicate copies or other sources that give similar information.

### 3. Explanations of important but little-understood terms.

#### Probate Records:

1. Decedent: deceased person, usually the person whose property is in question.
2. Testator: the person who makes a last will and testament.
3. Will (conveys real property) and testament (conveys personal property). Remember that some family members may be omitted from a will because they are already provided for (such as the heir-at-law or married daughters). Often, those already provided for are mentioned with a token bequest, such as one shilling.
4. Testate or interstate: an adjective meaning the decedent died leaving a will (testate) or didn't leave a will (intestate). An intestate's property is divided among the heirs according to shares determined by law.
5. Heir (at Law): During the colonial period, the law of primogeniture was in effect. That meant the eldest son would inherit all lands not bequeathed by the will, subject to the widow's life interest. If the eldest son were dead, lands would all go to his heir-at-law; if no son, daughters inherit jointly as heirs-at-law. If there were no children, heir-at-law was usually the eldest brother of the decedent or his heir-at-law. Primogeniture was abolished in all states after the Revolution and by 1811. That means, from about 1790, all children inherited equally.
6. Personalty: Personal property. It would be divided among all the children, after the widow received her portion (usually a third). Sometimes the heir-at-law would receive a double share. If there is no child, other family members inherit as stipulated by law. You need to determine the laws in

effect at the time in question for the state where the decedent's property lay.

7. Attested will: usually signed by the testator and witnessed by two or more persons who attest later that the decedent made the will freely and was of sound mind.
8. Nuncupative or oral will: one not written or signed while the decedent was alive. Witnesses to the decedent's desires make depositions (swear) to its provisions. If approved by the court, the provisions are carried out.
9. Holographic will: One in the handwriting of the decedent and not witnessed. Is not valid in some jurisdictions.
10. Codicil: a supplement to a will, added after the original will was signed and witnessed. Must also be signed and witnessed.
11. Executor (executrix): Person appointed by the testator to execute the provisions of the will.
12. Administrator (administratrix): Person appointed by the court to administer and distribute the property of a decedent who did not leave a will or whose executor resigned (latter is an administrator with will annexed).
13. Probate: from a Latin word meaning "to prove." The will is brought into court and "proved" or authenticated by the witnesses to it, which begins the process by which the estate is settled.
14. Letters testamentary: Authority to probate a will granted by the court to the executor.
15. Bond: Security posted (for example) by an executor, administrator, or guardian to insure that they will faithfully perform their duty. Bondsmen (also called sureties, securities) co-signing the document are generally close kin. If the widow is posting bond, the sureties are likely to be her blood relatives.
16. Inventory or appraisal: A listing of the personal property left by the decedent. Appraisers were three disinterested men, not potential heirs (though can be kin). In some jurisdictions (such as Maryland), a close relative was required to approve the inventory.
17. Sale bill: list of who the personal estate was sold to. Usually contains the names of relatives and neighbors.
18. Estate account: a reckoning of amounts owed by and to the estate.
19. Distribution: an account of amounts distributed to the heirs and legatees.
20. Legacy or bequest: Personal Property conveyed (bequeather) by a will. Person receiving it is a legatee.
21. Devise: Real Property conveyed (devised) by will. Person receiving it is a devisee.
22. Relict: widow of the decedent.
23. Dower and curtesy. Dower: the wife's interest in her husband's estate. Curtesy: the husband's life interest in this wife's estate/
24. Orphan: does not have to mean that both parents are dead, indicates a minor child who is inheriting from at least one deceased parent.
25. Infant: a child under the age of majority. (Varies from state to state.)

4. Procedures for finding wills and probate records.
  1. If the place and date of death is known, check the probate indexes for that jurisdiction. Some statewide indexes are available, especially for the colonial period. If you don't know an exact date or place, check records of the time when the decedent could have lived and died (and years later), for all the places he is known to have lived.
  2. If a record is not found in the index, see if a gap exists in the records. Check neighboring jurisdictions, other places where the decedent owned property, and the records of appellate courts.
  3. Check tax lists, census, and other records to determine where he was living in any given year, and when he disappears from the records. If his wife appears as a widow on the personal property tax lists or his lands are listed as belonging to his "estate", you know he has died.
  4. Newspaper notices, private papers, court minutes, and later deeds and lawsuits may give details about the probate of his estate. They can supplement or substitute for incomplete official probate records.

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PRE 1900 LEGAL TERMS FOR GENEALOGISTS: by Cleo G. Hogan, JD, 700 Ironworkers Rd., Clarksville, TN 37043.

ca. – about

dec – deceased

dsp – dec w-out issue

dspm – dec w/out male issue

daps – dec 2.out surviving issue

dvp – dec in father's lifetime

dvm – dec in mother's lifetime

LE – licensed exhorter – Methodist

PE – presiding elder – Methodist

MG – minister of the Gospel

ef – see also

nd – no date

np – no place

sic – thus

femme sole – unmarried woman

femme covert – married woman

deranged – separated from military service

crazy – (physically) ill

spinster – female legally capable of acting in her own behalf

CC – Chain carrier

CCt – Clerk of the Court

**WILLS:**

will – real; testament-personal

testate: with valid will

intestate – without valid will

numcupative – oral to witnesses

holographic – handwritten

codicil – supplement

bequest – personal property

devise – real property

in primis – in the first place

in esse – in being

in vitro – not yet born

non compos mentis – no mental capacity

per stirpes – right of heirs to inherit, according adm dbn – adm. de bonis non – property

discovered to blood relationship by representation by dividing their deceased ancestor's share jurat – certificate of notary public or other authorized officer.

my now wife – present wife: No inference

domicile – intends to return when absent

own cousin – first cousin

brother – full / half/ step/ adopted / in-law

brother-in-law – half brother

cousin – uncle or nephew

nephew – nepos (grandson)

natural child – by blood (not nec. Illegit)

senior – elder

adm c. ta. A. – adm. cum testament annexo-adm with will annexed, apptd by court if defective will; no exec; or exec fails to act after probate completed

per capita – right of heirs to inherit share and Relic – one left behind share alike, all heirs inheriting equally, nephews with uncles, without regard to degree of relationship to decedent.

relic – one left behind

consor – spouse still living

**MINUTES:**

plaintiff / petitioner – complainant

defendant / respondent –

attorney-in-fact – power of attorney

original attachment – initial attachment

fifa – (Fieri facias) – cause it to be done execution

subpoena deuces tecum – bring with you

nunc pro tunc – now, for then

de novo – anew

infant – under age of majority

et uxor, et vir – and, wife, and husband

et pater, et mater – and father, and mother  
et fils – and son  
strays – strays  
skilliards – scales  
de jure – by right of law

**DEEDS:**

abstract – chain of title  
will transfer – not by deed  
affidavit of heirship – to clear title  
indenture – lien – retained deed  
chattel deed – personal property  
freehold – at least a Life Estate  
Life Estate – for life only (of someone's life)  
fee simple absolute – absolute title  
parsonage glebe – church land  
curtilage – soil adjoining house  
messuage – building included  
improvements – buildings  
appurtenances – easement, right-of-way  
hereditaments – rights to inherit tangibles  
Virginia Hundred – supports 100 families  
bargain, sell, alien, enfeoff – transfer  
Curtesy – widower's Life Estate interest in wife's real property if he sired issue by her  
which were or was born alive.  
Dower – widow's Life Estate interest in Third of husband's real property owned during  
the marriage.

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