

Perils, Paradoxes, and Pitfalls in Probate Records

Glenn Kinkade
glennkinkade@gmail.com

Whether your ancestor died with a will or without, finding the probate records for the decedent may prove to be the most valuable records you can find; however, these records can be misunderstood, scattered in many books and boxes in a courthouse, and can be confusing to a beginning genealogist. This lecture will help guide you through the challenges of probate records in order to reap the rewards.

Two terms you should be familiar with are: **testate** and **intestate**. Testate describes a person who dies and leaves a valid will. Intestate describes a person who dies without leaving a valid will.

If your ancestor died testate (leaving a valid will) the probate process is as follows:

- Witnesses attest to the will
- Will is proven in court
- An executor is appointed
- Guardians are appointed for infants
- Estate is inventoried, appraised, and sold
- Decedent's debts are paid
- Distribution is made to the heirs according to the will

If your ancestor died intestate (did not leave a valid will), the probate process is slightly different and proceeds as follows:

- An administrator is appointed by the Probate Court.
- Petition will name all those who are of the same or closer relationship to the decedent as the proposed administrator and show that they have renounced their right to serve.
- Guardians are appointed for infants.
- Estate is inventoried, appraised and sold
- Real estate owned by the decedent must be surveyed, appraised, and distributed to the heirs.
- Decedent's debts are paid.
- Distribution to the heirs is made following the probate laws for that state.

To understand the probate process it is important to know:

- Where the person died.
- When the person died.
- The state and local laws in effect at the time of death.

Pitfalls

- Relationships:
 - Nephew
 - Cousin
 - Sisters and brothers
 - My son-in-law Thomas
 - My sister Mary
- Omission of a known child in the will.
- Not all children are listed in the will.
- Wife may not be the mother of the children?

Clues

Several important clues may provide valuable information about your ancestors:

- Why was the eldest son not listed in the will?
- Why did a married daughter receive less than a single daughter?
- Why did one son receive twice as much as another son?
- Why were children apprenticed or placed as indentured servants?
- Why did the guardian of the children have a different surname?
- What is the significance of being a witness to a will?
- When the widow is appointed executrix how might this help you?
- Why did one heir receive only a token amount?
- When can the estate be legally settled and then distributed to the heirs?
- What if the will begins "In the name of God, Amen"?
- What if only one grandchild received a special share?

When you encounter pitfalls, perils, and paradoxes remember what Sherlock Holmes said and use his advice to help solve your dilemma and let you reap the rewards of your diligent research.

Sherlock Holmes said in *The Hound of Baskervilles*, "The world is full of obvious things which nobody by any chance ever observes."

Probate Glossary

Administrator or Administratrix - An appointee of the court who settles the estate of a deceased person who died without leaving a will..

Bequeath - To give personal property to a person named in a will.

Codicil - A document or addition at the end of a will that changes the provisions in a will. The provisions in a codicil overrule the provisions in the original will.

Curator – A guardian who was appointed to take care of a minor and their property.

Curtesy – Under common law, a husband’s right to his wife’s land at the time of her death.

Devise - Gift of real property by will.

Devisee - One to whom real property (land) is given in a will.

Devisor - One who gives real property in a will.

Dower - Legal right or share from a husband’s estate for support of his widow and family, allotted to her after his death for her lifetime.

Estate - the property and debt belonging to a person that is left at death.

Executor or Executrix – Person named in the will of the decedent responsible for making sure the wishes stated in the will are followed and carried out.

Femme covert - married woman (Latin).

Femme sole – unmarried woman (Latin).

Heirs - Those entitled by law or by the terms of a will to inherit property from the decedent..

Holographic will – Handwritten will signed by the testator.

Infant – Person not of full legal age.

Intestate - One who dies without a will.

Legacy - Property or money left to someone in a will.

Lineal - Consisting of or being in as direct line of ancestry or descendants; descended in a direct line.

Nuncupative will - One dictated by the decedent, usually for persons in last sickness. Sometimes referred to as a “death bed will”.

Orphan - Child whose parents are dead; sometimes, a child who has lost one parent by death.

Per Stirpes - When, for example, a man dies intestate, leaving children and grandchildren, whose parents are deceased, the estate is to be divided not per capita, that is, by each of the children and grandchildren taking a share, but per stirpes, by each of the children taking a share, and the grandchildren, the children of a deceased child, taking a share to be afterwards divided among themselves per capita.

Personalty – (Tangibles) household goods, livestock tools. In Common Law it may be called Chattels. In Civil Law it may be called Movable.

Probate - Having to do with wills and the administration of estates.

Progenitor - A direct ancestor.

Progency - Descendants or issue of a common ancestor.

Realty - real estate, land.

Relict – Surviving spouse of the deceased.

Testamentary - Pertaining to a will.

Testator - A person who makes a valid will before his death.

Proved will - A will established as genuine by probate court.

Will - A legal declaration of how a person wants his or her property disposed of

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