

## Probate Records: Wills and Estates

### Why to Search and How to Search

Allan E. Jordan

New York, USA

[aejordan@aol.com](mailto:aejordan@aol.com)

### Background

Probate is an interesting topic because it's not a source people immediately think about but the files are rich with information and can provide routes around research roadblocks. Going to a court to conduct research however can seem like a daunting task. This presentation breaks it down and shows the research skills needed, and what you can hope to find in these files. Illustrated examples will be included in the presentation but following is a basic guideline to getting started on probate research.

### What is a Probate File?

When a person dies the court proceedings to handle their estate and distribute their assets are referred to as probate. A probate file is the court records of all the actions related to the handling of a person's estate.

There are two types of files:

- If the person who died left a will the probate is referred to as **testate**;
- If the person who died had assets but did not leave a will then they are said to be **intestate** and the court will conduct what is known as an **administration**.

This basic concept is important to understand because the court records usually are separated by these two groups and to conduct a thorough search you may need to check two separate indexes. You do not need to know in advance if there was a will but if you do not find a testate file ask if there are separate administration records.

### Who has a Probate File?

Anytime a court was involved in the distribution or management of a person's assets there will be a probate file. Just because the person left a will it does not mean there definitely will be a probate file. Historically in New York, for example, it is estimated prior to 1900 only 25% of wills or estates were processed in the courts. Probate records are more common after 1916 when the U.S. Government introduced the first income tax and estate tax laws.

Most often a person's estate was submitted for probate if they had assets that had a financial value, such as a house, land, owned a business, had a bank account or other "meaningful" assets. The transfer of these types of assets to heirs, for example changing the name on a deed or bank account, often required court involvement.

## **How to Find a Probate File**

You need to know where a person was living or their legal residency when they died. Probate cases are filed in the court that has jurisdiction over the area where the person's legal residence was at the time of death. The person might have died in a hospital or location away from their home and while the death certificate would be in that location, their estate would be recorded where they lived. Rarely you might find records where their business was located if it was in a different area than their home.

Depending on the age of the files, probate records are usually stored either at the court or in the case of older files may have been moved to a historical society or state archive. Court records generally cover the 20<sup>th</sup> century and once a case is completed they normally are public unless the family has specifically asked the court to seal the records. Usually this only happens in the case of famous people where the families prefer to withhold the details from the public.

While most courts have indexes of their files, few have those indexes online. In most cases you will either have to visit the court, hire a local researcher, or pay the court to do a mail order search.

Before starting a court search it is often helpful to check with family members and local newspapers, especially if the newspaper has an index or can be searched from an online database, to see if any records indicate if the person had an estate that went to probate. Often newspapers published lists of newly filed probate cases or in some cases even summaries of a person's will. Family members might also have a copy of the will or someone who received an inheritance might recall having been contacted by the executor of the estate or the court appointed administrator.

While most courts cannot do look ups for you on the telephone, you should still call the court before making a visit. The court clerk, the registrar's office or the records room can describe for you the individual court's procedure for doing research, times they are available, if the files are in storage, policies for obtaining copies, etc. (Note that most court houses do not permit cameras or scanners into the building, but some do not object to tablet computers or smart phones. In some cases they will permit you to take pictures of the documents on these devices. Ask before you go because court security may restrict your entrance if you are carrying these devices or may require you to check them before entering the building.)

## **What Information is Necessary to Research Probate?**

Court records are organized by date and case numbers. However all you need to know is where the person was living and their date of death. If by chance you have the case number it might speed the search but otherwise the case number is often found in the court's index.

Start by establishing the place where the person was living at the time of death. The exact street address is not always required but the name of the town, city or county is important. As previously mentioned, a local newspaper might provide the specifics of the probate case including the name of the court where the case was conducted. In the United States the cases are most often at the Surrogate's Court but an online search for the local courts will confirm the name of the court in your area.

While normally you search a probate file based on a person's date of death sometimes you can use the probate file index to identify when a person died. If you know the place a person was living in and established a timeframe for their death from the Census or other references you might search the index of probates in hopes of finding their name and date of death.

It helps to have additional identifying information for the person before you start searching for the court files. Do you know their date of birth? Or do you know the name of the spouse, siblings, children and alike? Probate cases often are not filed for weeks or months after a person died and if the person had a common name having additional information will help you to confirm if you have the right file or not.

### **What is in a Probate File?**

Each file is different depending on how much action was required in the court and the individual circumstances of the estate. Generally a probate file will include: a copy of the person's will (sometimes mostly prior to the 1900s the courts returned the wills to the families) as well as copies of the death certificate, court papers, correspondence, financial accountings and alike required in conducting the business of the estate. Administrations may only include a basic form submitted to the court or may also have correspondence and copies of the death certificate. However administrations can still provide valuable genealogical information.

Genealogists can hope to discover the following types of information within a probate file:

- Name of the person, date of death and address at time of death
- Marital status, the spouse's name and address (this may be updated for many years depending on how long the case continued or if for example a trust was established)
- Children (living or dead) including names, ages, married names, addresses
- Other heirs including grandchildren, siblings, cousins, nieces, etc.
- Details of the burial
- Occupation or trade
- Citizenship
- What they owned, e.g. house, land, money, bank accounts, jewelry, other items of financial value

If the court had to conduct a search to establish the rightful heirs those documents will be in the file. In one instance the file had a complete family tree drawn by a relative for the court.

Each person's estate is as unique as the individual. They may have left monies to charities which give clues to their personal interests and those charities maybe where they lived or in "the old country," i.e. where they were born or immigrated from to their adopted country. They may name family members who were still in their native country. The person may disinherit an individual and in their will cite the reasons for this action. Relationships such as step-children or adoption may also be explained in the estate papers. If there were any disputes about the estate or someone attempted to make a claim against the estate it will be detailed in the probate file.

In short, you never know what you will find in a probate record until you get the file and start reading.

### **How to Get Started**

Like most genealogy research today the starting place should be the Internet. Once determining the person to be searched and where they lived, search on the Internet using such basic searches as "*(fill in name of town) historical probate records*" or "*how to find probate records from (fill in name of town)*". These searches will often find articles that tell you what court oversees probate in the area, what type of historical records survive and where to look for historical records, i.e. the court, historical societies, archives, etc. It will also provide links to the court and its contact information.

Online you should check the files available at FamilySearch.org as they are offering free access to some probate files. Currently they have over 130 collections of probate records. Ancestry.com mostly only has historical wills and estate files from the 1700s but is also worth checking.

As mentioned previously, it may also be appropriate to search local newspapers before attempting to contact the courts.

Courts may only be retaining files from the late 1800s forward and in some cases only the twentieth century or mid-century (e.g. after the 1940s). Each court has its own individual policy and calling the court or reading their website may help identify what records exist.

Some courts transfer their older records to the state archives. Also some state archives hold indexes of estates and wills even if the actual records are still in the individual courts or local jurisdictions.

Local historical societies may hold colonial era records in the United States, i.e. 1700s, and calling the historical society or reading their website may reveal what records they hold.

Consulting a local genealogical library may also reveal if there are any books or other forms of indexes that have been published on the existence of wills and estate files.