

The Basics of Probate Records

David Allen Lambert, Chief Genealogist, dalambert@nehgs.org

Probate records are an important resource for connecting families and learning more about your ancestors. While wills are the most popular document in a probate file—as they often list out family members and connections—there are other valuable records found in a probate file that can provide new avenues of research and teach you more about the life of your ancestor.

Why Look at Probate Records?

1. Determine and verify family connections
2. Vital record substitutes
3. Important source for female ancestors
4. Trace property and family heirlooms
5. Give context to your ancestor's life

Also . . .

- Many published genealogies never went to the bother of searching probate and deeds
- Because old handwritten documents are a challenge, they are overlooked by genealogists

Key Probate Record Terms:

Testate: when an individual dies with a Last Will & Testament

Intestate/Administration: when an individual dies without a will

File Papers: the original documents associated with the probate file

Record Books/Copy Books: copies of certain probate files copied into bound record volumes

Administrator/Administratrix: an individual appointed by the court to administer the estate

Executor/Executrix: a person with the responsibility of having a will proved and acting on its conditions

Testator/Testatrix: an individual leaving a will

Personal and Real Estate: the possessions belonging to the deceased outlined for distribution.

Common Documents found in Probate Records

Last Will and Testament: Legal document that communicates an individual's final wishes pertaining to possessions and dependents.

- **Holographic Will:** a will that is reputed to have been written entirely by the testators

- **Nuncupative Will:** when the Will of an individual is conveyed in conversation orally
- **Written Will:** is a handwritten or typed document conveying the distribution of the real and personal estate of an individual after their decease.

Codicil: An addition made after a will is written. The will is altered, explained or added to, but is not revoked. These can usually be found after the will. There can be multiple codicils created

Letters Testamentary: A document from the probate court which allows the executor to settle an estate

Letters of Administration: A document from the probate court which allows and administrator of an intestate authority to settle the estate

Inventory: List of real and personal property owned by the deceased; items are appraised for the estate

Accounts: A list of amounts owed to the estate by individuals, as well as debts owed by the deceased to others. These accounts must be settled before the estate is distributed

Distribution: The division of the estate amongst the heirs of the deceased. This occurs after all debts and costs have been paid

Guardianship Records: Document in which an individual is appointed by the court to oversee the interest and affairs of a minor

- **Lunatic Commitment:** court action to have an individual committed due to their mental health
- **Lunatic Guardianship:** the act when a guardian is assigned to oversee the affairs of an adult who is incapable of managing their own real or personal estate
- **Spendthrift:** an individual deemed to be leading his / her personal or real estate to ruin, often assigned a guardian to oversee his / her affairs.

Dower Right: Portion of an estate given to a widow by law from her deceased husband's estate; usually 1/3

Bill of Sale: Documents indicating sale of certain parts of an estate in order. There are several reasons that this may happen.

Published Resources

Barbara Jean Evans, *A to Zax. A Comprehensive Dictionary for Genealogists & Historians*. (Midlothian, VA: Hearthside Press, 1995).

Lawrence M. Friedman, *A History of American Law*, 3rd edition (New York: Touchstone, 2005).

Karen Grannum and Nigel Taylor, *The National Archives. Wills & Probate Records, a guide for family historians* (London: The National Archives, 2009).

Val D. Greenwood, “Understanding Probate Records and Basic Law Terminology,” “What About Wills?” and “The Intestate” chapters within *The Researcher’s Guide to American Genealogy* (Baltimore, MD: Genealogical Publishing Co., 2017).

Donald L. Jacobus, “Probate Law and Custom,” *American Genealogist* (1932) 9:4-9.

Diane Rapaport, *New England Court Records: A Research Guide for Genealogists and Historians* (Burlington, MA: Quill Pen Press, 2006).

Christine Rose, *Courthouse Research for Family Historians: Your Guide to Genealogical Treasures* (San Jose, CA: CR Publications, 2004).

Kip Sperry, *Reading Early American Handwriting* (Baltimore, MD: Genealogical Publishing Co., 1998).

Loretto Dennis Szucs and Sandra Hargreaves Luebking, *The Source. A Guidebook to American Genealogy* (Provo, UT: Ancestry, 2006).