

Beyond the Grave: Uncovering Life Stories from Death Records

Class 4: More Probate

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When it comes to working with probate records, everyone wants to find a will. They expect the will to answer questions about children's names, daughter's married names, and perhaps additional family relationships. And while this does happen to an extent, researching those who died *intestate*—without a will—can often prove more satisfying.

Understanding Intestate Estates

When individuals with property (real and personal), other assets, and debts, die without making a will, their estate is handled somewhat differently than if they had bequeathed everything. The will tells the court the wishes of the deceased. For those who die intestate, the court does not try to determine the wishes of the deceased, but instead takes the estate in its entirety, and if there is residual money and property after handling the debts of the deceased, it is then generally dispersed equally among those identified as legal heirs.

Legal heirs vary by state law and by the circumstance of the deceased. It could include one of these scenarios:

- Spouse and children
- Spouse, children, grandchildren (of deceased children)
- Siblings
- Siblings, nieces and nephews (of deceased siblings)
- Parent

Tip: Seek out books about inheritance for the locality in which you are interested in.

Working with Books and Articles

Understanding inheritance laws for the place in which you are researching may require doing a bit of digging for published resources. Some of the best places to begin are included in the bibliography below.

When seeking books and articles, try to remember that it is not always the specific topic of the book or article that could prove most beneficial, but instead the bibliography of the book or the footnotes of an article. Always pay close attention to where the authors found the information they are writing about.

Intestate Indexes

Look out for certain terms when seeking indexes to the records generated by an intestate probate. This may include indexes to:

- Administration bonds
- Inventories
- Distributions

In some places the index may include both wills and intestate probates in a single volume. In such cases, you may find abbreviations to assist you in determining the type of probate it is. Those that used registers with columns for the different types of documents recorded may have a bond column with abbreviations such as:

- Ad – administrator
- Ex – executor

If this column is empty, see if there is a “will” column. If there is a volume and page in this column, then the individual did *not* die intestate.

When working with online sites, examine all potentially pertinent datasets. And, while FamilySearch.org now offers many full text searches using artificial intelligence, if you don’t find the name of your ancestor, take the extra time to go through the actual images for indexes (both those separate and those included at the beginning of the various volumes).

Tip: If an index mentions volumes, these are the clerk’s copy books (copies by the county clerk of the most important documents of the probate case file).

Intestate Records

There are two types of documents you are likely to find when working in probate records in general (especially in the United States):

- Clerk’s Copy Books – bound volumes that have many pages all written in the same handwriting (that of the clerk who has copied the record in question into the volume)
- Probate Packets or Probate Case Files – made up on many individual pieces of paper, often in varying sizes, including the original will, receipts, letters, petitions, distributions, etc.

If you are working in various European countries such as France, Italy, and Spain, along with the province of Quebec in you find some of these records are handled by notaries.

Work systematically through all the records that have been created in an intestate case. While the final distribution is likely to supply you with the names (and likely the relationships) of the heirs-at-law who have received something, other records could include additional information. For instance, if the final distribution just lists the names of the heirs-at-law and what they received, it is possible that their places of residence and relationship may be identified elsewhere in another record as part of the probate file.

Tip: If the county you are researching includes a “final report” register, seek out all documents mentioned in that register.

Probate Packets or Files

As mentioned above, probate packets, sometimes referred to as probate case files, are collections of all records generated during the probating of an estate, regardless of whether it was a testate or intestate probate. Among the documents, you may find originals of:

- Wills (testate probate only)
- Bonds ensuring that the administrator (intestate) or executor (testate) carry out their duty
- Inventory/inventories (if a probate takes years to complete)
- Letters to the court
- Petitions by individuals involved in the case
- Proof from creditors that they are indeed owed what they say they are
- Receipts from those who were paid (creditors, heirs-at-law)

Many probate packets contain documents (usually tri-folded) and inserted in an envelope labelled with the deceased’s name, docket number, year of probate, and sometimes their last residence.

In some situations, if the estate was quite large or there were irregularities (such as more than one wife appearing) the packets could have included too many documents to fit in the traditional envelope. Additionally, if the older packets have been turned over to the state archive, it is possible they have been removed from the envelope and unfolded to help the documents survive longer.

Tip: If you are allowed to, be sure to get a digital image of the front and back of every piece of paper.

Working with Other Records

There are many records that can assist you in understanding more about the family situation, or in discovering what happened to certain items, especially real estate. Among those highlighted here are:

- Census
- Newspapers
- Land Records

Census

The census from 1850–1880 included a mortality schedule for those who died the 12 months prior to the date of enumeration for that particular decennial census. However, when working in the 1850–1870 censuses, if your ancestor was shown with real estate, then you will definitely want to follow up in the probate records to see if you can find a probate.

Newspapers

Your initial clue to someone having died and the probating of the estate may be a notice in the newspaper. In general, if the case is intestate, the court-appointed administrator may take out one or more ads within the local newspaper(s) alerting creditors of the death and that they should present their claims by a certain point to the person mentioned in the ad. Subsequent ads may be put in papers to try to notify all the heirs that the deceased's estate is being probated, especially if known heirs-at-law have removed from the general area.

Land Records (Deeds)

The most useful record type when tracing the real property of someone who died intestate are land records. Though land records are not a resource that genealogists particularly enjoy, they really can answer many questions or offer insight into intestate estates.

Tip: Land records can clue you in to a person dying intestate by the wording of the land being sold.

There are certain phrases or words that are good indicators that the individual selling the land inherited it through inheritance laws established in the state in which the land is found. These include:

- Use of the term “undivided” with a percentage
- Mention of “as heir of”
- Mention of “dower right”
- Deeds in which many family members are selling their shares in a piece of property.

The Value of Intestate Probate Cases

When seeking probate for your ancestor, do not give up if they are not found in an index of wills. Intestate probate cases often include more information than what may be found in a will. Inheritance laws define who can inherit, so you can more easily understand the relationship to the deceased for those receiving part of the estate in an intestate case. Whereas, a will may simply say the estate should be equally divided among “my wife and son” or the remainder equally distributed to “my sons and daughters.”

Suggested Bibliography

Books

Friedman, Lawrence M., *Dead Hands, A Social History of Wills, Trusts, and Inheritance Law* (Stanford, Calif.: Stanford University Press, 2009)

Greenwood, Val. D., *The Researchers Guide to American Genealogy*, 4th ed. (Baltimore, Md.: Genealogical Publishing Company, Inc., 2017)

Shammas, Carole, Marylynn Salmon, and Michel Dahlin, *Inheritance in America, From Colonial Times to the Present* (New York: Frontier Press, 1997).

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

Van Caenegem, R. C., *European Law in the Past and the Future, Unity and Diversity over Two Millennia* (Cambridge, England: Cambridge University Press, 2002)

PDF Resources

Law Library, Library of Congress, *Inheritance Laws in the Nineteenth and Twentieth Centuries: France, Germany, United States* <https://tile.loc.gov/storage-services/service/l1/llglrd/2014504249/2014504249.pdf>

Websites

Academia, <https://www.academia.edu/>

Ancestry.com, www.ancestry.com

Bing (Search Engine), www.bing.com/

Chronicling America, chroniclingamerica.loc.gov/

FamilySearch.org, www.familysearch.org

GenealogyBank, www.genealogybank.com/

Google (Search Engine), www.google.com

Google Newspapers,

<https://news.google.com/newspapers>

Google Scholar, <https://scholar.google.com/>

HathiTrust (Books), www.hathitrust.org/

Internet Archive (Books), archive.org/

JSTOR (Periodicals, Books), <https://www.jstor.org/>

Perlego (Books), <https://www.perlego.com/>