

PROBATE AND WILLS

THE PROBATE

1. Probate is concerned with the **verification of wills and the administration of estates**.
2. Probate actions may include matters relating to **orphans, guardianship, insanity, and lunacy** as well as those of **inheritance or heirship**.
3. Most probate records are found in the **county courts**, but may be found in **town, district or state courts**. In Europe, especially England, before the 1830's the Church of England had jurisdiction over the probating of estates. (The more valuable the estate the higher in the system this probating would take place.)
4. These **courts of probate take different names** in various states: Surrogate Court in New York and New Jersey; Orphan's Court in Pennsylvania; Ordinary Court in Georgia; Town Probate Court in Rhode Island; District Court (at the appropriate Shiretown) in Vermont. Most other places simply call them Probate Courts.
5. There can be **many different documents generated by the probating of an estate**. Those relating to one particular case may be referred to as the "**case files**" or "**probate packets**".

TERMS & DOCUMENTS

1. **Testate/ testator / testatrix** -- with a will/ person with a will / female with a will.
2. **Intestate/ intestator/ intestatrix** – without a will or with no acceptable will,etc.
3. **Executor/trix** – person designed by the testator in his will to execute the wishes of his will.
4. **Administrator/trix** – a person designed by the court to process the matters of the estate. Most often this takes place when there is no will or when the executor named in the will can not or will not function in that position.
5. **Letters Testamentary** – documents issued by the probate court showing that the person(s) named as executor(s) have the authority to process the matters of the estate of the testator.
6. **Letters of Administration** – documents issued by the court giving the person(s) appointed by the court as administrator(s) authority to process the matters of the estate.
7. **Bond** – in the matter of probate, this is a document showing the amount of money posted with the court to insure the proper handling of the funds and properties of the estate. The more valuable the estate the higher the bond. Often several people are listed on the bond. There may also be a bond required by the court for the guardianship of the estate of a minor.
8. **Chattels** – possessions other than real estate or money (tools, clothing, cattle, furniture, slaves, etc.
9. **Codicil** – an additional or amendment to a will.
10. **Petitions** – to bring court action concerning a certain matter (to probate, protest, administer, etc.)

11. **Dower right** – the right of the wife to a given portion of the estate by right of marriage, usually one-third of the estate.
12. **Infant** – person under the age of 21 years of age; may also be listed as a minor.
13. **Orphan** – a child with both parents deceased (both father and mother), or in some cases where only one parent is deceased (most often the father).
14. **Partition** – division of an estate
15. **Holographic will** – a will which is written solely in the handwriting of the maker or testator of the will.
16. **Nuncupative will** – this is an oral will given before witnesses who attest to its provisions before a court after the individual's death.
17. **Ancillary administration** – is auxiliary or subordinate to the administration at the place of residence of the decedent. It is taken out in other locations where assets were held by the individual.

MAJOR DOCUMENTS OR RECORDS

1. **Will Book or Will Register** – original wills copied (handwritten or typed) into a bound volume.
2. **Estate Files or Case Files** – file or packet containing the original documents relating to the probate of an estate and/or guardianship.
3. **Petitions** – a request for action by the court; such as, contesting provisions of the will, guardianship, bonds for the executor or administrator, letters testamentary, power of attorney, final distribution, etc.
4. **Notice to Heirs** – compiled list of heirs with relationship and residence. Individual notices were delivered to each person on the list if they could be found.
5. **Final distribution, Partition, Division of the Estate, or Final Accounting** – this is the final accounting of the estate and how it was distributed in fees and balance given to heirs. (Like petitions, these records may be hidden in the court order books, if not found in the probate files. In some jurisdictions there may be separate book or file for the final settlement.
6. **Probate Dockets** – log of the probate documents and where each is filed; such as, volume and page in the Will Book, or Inventories, and especially important is the file or packet # for the original documents or book entries.
7. Other probate documents, may be interesting, but generally have **minor genealogical value**: bonds, inventories, appraisals, sales, accounts, vouchers, notice to creditors, etc.