

Wills and Probate Records: A Treasure Trove of Information

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Using wills in your research can lead you onto unexpected paths. Wills can identify parents, spouses, children, siblings, grandparents, uncles and/or in-laws. Wills can provide insight into the economic and social life of the testator and his family. And because wills require the involvement of people not related to the testator or heirs, there is the opportunity to find valuable information about your ancestors in wills of friends, acquaintances and/or neighbors. Even if your ancestor did not leave a will, there is the possibility of finding important information in the wills recorded in the county where your ancestor lived.

An example of this is found in the probate records for Thomas Wooldridge who died in May 1762. His will was filed in Cumberland County, Virginia. The executors of his will were John and Thomas Watkins. Samuel Watkins was named as guardian of one of Thomas Wooldridge's children. No family connection has been found between these two families. Family members filed suit against the executors of the estate for retention of funds. Thomas Watkins answered the complaint and stated that at the time of the suit, June 26, 1765, he was the lone executor of the estate because John Watkins had died in January 1765. So, in a probate packet, we find the death month and year of someone not related to the decedent.

The following persons will often be found in probate records: testator, witnesses, securities, executors, heirs, and/or guardians. Probating a will creates records. The following documents will often be found in a probate file: the original will, affidavits of witnesses, petition for an executor or administrator, an inventory of the estate, list of heirs, estate accounts, correspondence related to the administration of the will, bills submitted for payment by the estate, including tuition bills for minor children, and a closing statement by the court.¹ If the property holder left minor children, there should also be guardianship records.

These records can be created over a period of many years, especially if there are minor children involved. The estate will cover the cost of raising the children, and providing for the widow until she dies or remarries. Arguments and/or lawsuits can occur over the distribution of the estate. If this happens, further court records are created. It is important to follow the probate record through to the end in order to glean all of the information available in the probate file. The information recorded in the will book will only be a summary of the court proceedings. For instance, a sister may present a bill to the court to be paid from her brother's estate. The will book will list the amount of the bill, and the court's order for the bill to be paid. However, the clerk will likely not record what the bill was for. That information will be found in the probate file in the form of an invoice or bill presented to the court.

Wills are generally considered primary sources, though caution must be exercised when looking at copies of the will. It is important to remember that the wills we find in the will books in

¹ It is important to remember that even if a person dies without a will (intestate), if he or she has real or personal property, the estate will still need to be probated. The family may petition the court to assist with the division of the estate, and a probate file will be opened.

county courthouses or probate offices are actually copies made by the clerk and that the original document will be found in the probate packet. “Written by individuals with firsthand knowledge of their heirs, wills appear to be among the most trustworthy of official records specifying genealogical relationships. But they are not indisputable. As with any other record, a will’s data must be weighed against all other known information on the family – secondary as well as primary. Occasionally, the preponderance of the evidence will actually fall away from this primary source and tilt toward a mass of other evidence that individually might be unacceptable.”²

When studying wills, family historians “should not attribute general community attitudes or behavior to particular ancestors. Not every individual followed prevailing norms. Furthermore, genealogists must not allow modern opinions to color their portrayal of ancestors. Evaluating nineteenth-century behavior to twenty-first century standards will introduce errors.”³

Terms:

Abstract: Summary of a document that retains every important or pertinent detail of the document.

Administrator: Person appointed by the court to handle the estate of one who died without a will.

Estate: The whole of one’s possessions, especially the property and debts left by a person at time of death.

Executor [Executrix]: Person appointed by a testator to carry out the testator’s directions concerning the disposition he makes under his will.

Guardian: In the legal sense is someone who is responsible for representing the legal interest of the child before the court. It isn’t uncommon for one of the parents to be still living. The child didn’t have to live with the guardian. It is a legal arrangement, not a custodial agreement.

Heir: Strictly, those who statutory law would appoint to inherit an estate should the ancestor die without a will [intestate]. The term is often applied indiscriminately to those who inherit by will or deed.

Infant: A person who is a minor. Infants might have been on the verge of adulthood. Children of “tender age” were commonly under the age of fourteen.

Instant (inst.): Indicates that the date referred to was in the same month as a previously mentioned date.

Intestate: To die without leaving a will.

Nuncupative Will: A nuncupative will, also known as an oral will, is instructions for distribution of personal property given by an individual too sick to make a written will. There must be at least two witnesses reporting on what occurred. A nuncupative will is considered a "deathbed" will, meaning that it is a device for someone struck with an unexpected terminal illness or accident and robbed of the ability or time to draft a proper written will.

² For a case study where this is the case, see Dr. Jones’s NGS article regarding Calvin Snell listed in the source section of this handout. The will of Calvin Snell as proved on April 18, 1849 in Lake County, Ohio names three children – two sons named Solomon Snell and Calvin Snell, and a “beloved” daughter Lydia. Calvin Snell actually had eleven or twelve daughters, none of whom were named Lydia and only one son, John Snell.

³ John Phillip Colletta. “Developing Family Narrative from Leads in Sources: The Case of James W. and Nancy Parberry, *National Genealogical Society Quarterly*, 94 (March 2006) 34.

Orphan: In early times, an infant under the age of majority who had one or both parents deceased, commonly used when the father was deceased but the mother was living.

Personal Property: Individual's belongings excluding land.

Primary source: Records that were recorded at the time of the event and may be considered legal documents.

Primogeniture: The right, by law or custom, of the firstborn legitimate son to inherit his parent's entire or main estate, in preference to shared inheritance among all or some children, a child other than the eldest male, a daughter, illegitimate child or collateral relative. The law of primogeniture ended in the United States following the Revolution.

Probate: Court procedures by which a will is proved to be valid or invalid. The current usage of the term has been expanded to generally refer to the legal process wherein the estate of a decedent is administered. Generally, the probate process involves collecting a decedent's assets, liquidating the debts, paying any necessary taxes and burial expenses, and distributing property to the heirs of the estate. These activities are carried out under the supervision and jurisdiction of the probate court, or other court of appropriate jurisdiction.

Real property: Refers to land and slaves.

Secondary source: Records that were created a significant amount of time after the event occurred or were recorded by someone who was not present at the time of the event.

Testament: A testimonial or statement of a person's wishes concerning the disposition of his or her **personal property** after death, in contrast to a will, which is strictly a device of real estate. Commonly, however will and testament are considered synonymous. The word is rarely used today except in the formal heading of one's will, which reads, "This is the last will and testament of..."

Testator [Testatrix]: One who makes and executes a testament or will.

Transcribing: The act of faithfully duplicating the exact wording, spelling, and punctuation of an original document.

Transcription: Word-for-word exact copy of the text in a document.

Ultimate (ult.): In giving dates, refers to the previous month.

Will: A person's declaration of how he desires his **property** (land) to be disposed of after his death. Such a declaration is revocable during his lifetime, operative for no purpose until death, and applicable to the situation that exists at his death. The difference between a will and a deed is that by means of a deed, a present interest is passed on delivery while a will takes effect only upon the death of the testator.

Witness: On a document, one who swears that a signature was made in his or her presence. Witnesses could not be heirs.

Sources:

Baltimore and Anne Arundel County Wills:

<http://www.rootsweb.ancestry.com/~mdbaltim/wills/xxwills.htm> (324 wills from Anne Arundel and Baltimore County in the 17th, 18th and early 19th centuries.)

Black, Henry Campbell. *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern*. Sixth edition. St. Paul, Minnesota: West Publishing Co., 1990.

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Mills, Elizabeth Shown. "Analyzing Wills for Useful Clues." *OnBoard* 1 (May 1995): 16.
Also available online at <https://bcgcertification.org/skillbuilding-analyzing-wills-for-useful-clues/>.

Salmon, Marylynn. *Women and the Law of Property in Early America*. Chapel Hill: University of North Carolina Press, 1986.

Scotland's People: Wills & Testaments:
<https://www.nrscotland.gov.uk/research/guides/wills-and-testaments>.

The official government source of genealogical data for Scotland. Free index search of over 611,000 index entries to Scottish wills and testaments dating from 1513 to 1901.

Szucs, Loretta Dennis and Sandra Hargreaves Luebking, editors. *The Source: A Guidebook to American Genealogy*. Provo, Utah: Ancestry Publishing, 2006. Pages 268-267, 667.

Using the *FamilySearch* Catalog:

In using the *FamilySearch* Catalog to locate wills, first enter your location and then select your subject matter. Sources containing wills are found under Probate records and Probate records – Indexes. For example, the Will Books of Bedford County, Virginia from 1763 to 1914 "contain wills, inventories and appraisements, estate accounts, and other probate matters" and are comprised of 29 reels of microfilm. While *FamilySearch* has not indexed the wills, many of the films have been digitalized and you can search the indexes. Ancestry has indexed the testator of many wills and probate packets and these will show up in your search results. Some will books have been filmed twice. Look at both films to find the best images.