Wills and Estates

A Beginner's Guide from the Heritage Research Center

COURTESY OF THE HIGH POINT PUBLIC LIBRARY

WHAT YOU'LL FIND WITHIN:

- The content of wills
- European traditions
- Peculiarities of the colonial period
- Inheritance rules
- Locating records
- Elements of an estate
- Absence of records

HERITAGE RESEARCH CENTER

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WILLS! YOUR FIRST STOP FOR PROVING RELATIONSHIPS

One of the main reasons to do genealogy is to make a link to the prior generation and find the names of the parents of an ancestor. Surely, the easiest and most direct way to do this is to determine whether or not he or she was mentioned in the last will and testament of older family members —a grandfather, grandmother, father, mother, aunt, or uncle.

Mindfulness of the inevitability of death prompted many people to record their wishes about how their property should be distributed when they died. People who made wills were said to have died "**testate**." Those who didn't manage to make such preparations in time were called "**intestate**."

Remember, however, when searching for a mention of your ancestor in a will that he may not have been the only person with that name in the community. Many families used the same given names repeatedly. You have to look for other corroborating sources to figure out if the person mentioned in the will is your ancestor.

Even where wills do not exist, other records may document inheritance.

THE WILL IN EUROPEAN TRADITION

Originally, the "**will**" was a document bequeathing real estate (land and attached property) and the "*testament*", was an instrument that gave away personal estate (everything else). Today, they are combined. In Europe, most folks did not own land, so there was no need for a will. Since most people were tenants and laborers, few owned enough personal property to merit a testament. Even those who owned land often held it under terms called *entail*, meaning they *were* required to pass it to a particular heir, usually their eldest son (a system called *primogeniture*.) When you do find a will in Europe, most of the time, the ancestor was a prosperous artisan, merchant, public official, member of the gentry or aristocracy. The established church oversaw the distribution of estates and the recording and execution of wills because these matters related to the family and sacramental relationships recorded in church registers. Older wills often left moneys to the poor of a person's native parish. Many near and distant relations received small tokens by which to remember the deceased. The names for relationships are sometimes different from the ones we typically use. "Son" can mean son-in-law or "cousin" nephew/neice.

The Colonial Period.

Special challenges

When the colonists left Europe, they kept many of the traditional forms and practices related to settling estates. But there were two major differences. In America, far more people had the opportunity to own land, and entails were less common, so that wills became normal for ordinary folk. Also, civil authorities oversaw the registration of wills and ensured that terms were carried out faithfully. Bishops and archdeacons were not involved, since in many colonies there was difficulty establishing and supporting one unified church. *Primogeniture*, however, continued to be important, with the oldest male getting a larger share or the entirety of real property or slaves. In most cases, males were privileged over females when property was divided, and many females received only a portion at marriage and were not included in the will. In some colonies, the county level courts recorded and enforced such documents. Sometimes, special courts such as orphans courts were set up just for that purpose. At other times and places, the Colonial Secretary for the colony recorded many wills and estates on a colony-wide basis. Most North Carolina wills before 1760 were filed in the Colonial Secretary's office, not in the counties. Some matters regarding the settling of estates were heard before the local county court and some could be heard in higher courts, like the District Superior Courts in places like EdentonNew Bern, Halifax, Salisbury, Hillsboro, and Wilmington. The files of those courts should be checked for persons who died in the decades just before the Revolution.

Terms.

Administrator with the will annexed: A person appointed by the court to carry out a person's will.

Executor (Executrix, fem.): The person appointed by a testator in a will to handle the estate.

Probate: The process of proving and recording a will.

Testator: An individual who makes a will.

What a Will Can Tell

Wills contain many predictable elements. They begin with a statement of faith and an affirmation that the individual is legally competent to make a will.

The *testator* then proceeds to direct how his *executor* should dispose of his remains and handle unpaid debts. Usually this element follows a formula. The burial arrangements were in the hands of the *executor,* and the debts were to be paid before any bequests.

The part of the will that typically interests us most is the stream of *bequests* that follows. It is usually separated into "items" or paragraphs with each beneficiary (or *legatee*) having his or her own item or provision. Some items may direct that property be sold and divided evenly among all or a number of the testator's natural heirs. Slaves, land, and personal effects, like beds and furniture or livestock, are frequently mentioned, specifically and distinctly.

Hopefully, the bequests will provide us with the names of all of an individual's heirs, but sometimes only a few heirs are named. The rest may be spoken of in general terms ("all my children") or not at all. Children who moved away early, who received advances during the life of the testator, or who died before him, may be omitted or left a small sum like $1 or 5 shillings.

The will ends with the testator's appointment of his *executor*(s), usually a relative or trusted friend designated to carry out his wishes, his affirmation that this *is* his final will, his signature (on the original) and the signatures of the witnesses who will prove that he signed it before the court. A date is also given here. When the witnesses have proven the document, the clerk records it and attaches a dated probate statement to the will. The testator died between the date of signature and the date of recording. This is important, since tombstones with death dates usually don't survive before the mid 1800s.

Wills can be altered by additional provisions of a later date called *codicils*. Some wills were not written, but were pronounced orally in front of witnesses (called a *nuncupative* will) and others were written in the testator's own handwriting without witnesses, (called a *holographic* will).

LOCATION! LOCATION!

Wills tell us so much about who is related to whom and how close various members of a family were to the person who wrote them. But if we are unable to locate them, they will do us little good. They were usually recorded in the county where a person resided at his death, but they could also be recorded where he owned significant property.

In North Carolina, all wills recorded prior to 1900 can be found listed in Thornton W. Mitchell's *North Carolina Wills: A Testator Index, 1665-1900.* This book does not contain transcriptions or abstracts of the original will—only one line for each will recorded in the state. Each record gives us the name of the deceased, the date of recording, whether the original version of the will survives in the county or at the State Archives in Raleigh, and on what book and page number the will was recorded in the County will book. Note that there are usually at least two copies of a will—the original will that was actually signed by the testator and witnesses (a loose piece of paper) and the copy of the will made by the clerk. The original copy is more reliable, if it survives.

Today, most original wills live at the State Archives in Raleigh, but some are kept in the county. Will books are almost always in the original county. The Archives holds microfilm copies. If you are in N.C., both will books and original wills on microfilm are often available on loan through your local library from the State Library. Many have been abstracted in book form by local genealogical and historical societies. Ask us about these abstracts.

Unrecorded wills (those not submitted to the court for probate or legally rejected by it) are not indexed by Mitchell. They are often kept in a separate series in the North Carolina State Archives, if they have survived. They may also be found in estate files or among the civil action papers of the court in which they were set aside. They are still useful for extracting genealogical information.

What If There Is No Will?

What if you are unable to find a will for your ancestor? Chances are, he didn't write one. The vast majority of people, then as now, never had the forethought to prepare for their deaths. n their cases, the *law of intestacy* applied. This law varied somewhat over time and place. But, in general, it directed how an individual's assets should be divided (and to whom) when his/her wishes were not recorded.

Before 1960, the widow or widower of a propertied person was eligible to receive a life estate in a third (called *dower* or *curtesy*) of his or her land (and slaves). Lifetime rights in this property could be sold by the surviving spouse, but the property itself reverted to the other heirs at the widow's death. The rest was available for immediate distribution to the children if they were of age. In the colonial period, the eldest son might receive the entirety of the land. Sons and daughters split the personalty. For a brief time, between 1784 and 1795, all the sons would divide the land equally. After 1795, all the children shared equally in land and personal estate.

But, what if a person had no children? In that case, the surviving spouse had lifetime rights, and the heirs were the next of kin of the deceased person—usually, parents, brothers and sisters, or nieces and nephews, but occasionally, when there were no siblings, first cousins. Where no next of kin could be found, the state inherited.

All the records of settling an estate (carried out by a court-appointed *administrator*) are preserved in files by county or, for the colonial period, in Secretary of State records, at the Archives. Many have been microfilmed and can be shared on interlibrary loan from the State Library. Many, but not all, have been digitized on *Ancestry* and *FamilySearch.* Estate files may name all of a person's heirs explicitly, but in every case. However, they do contain useful bits of information. Estate records also sometimes exist in addition to a will.

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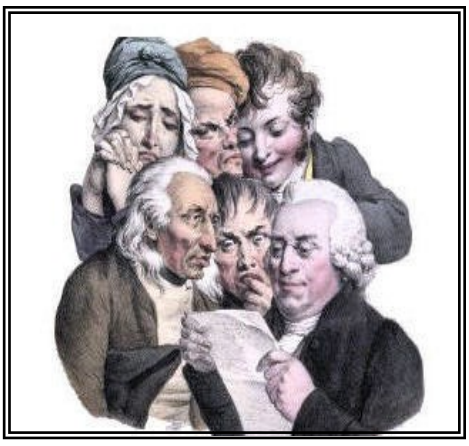

ESTATES: Item by Item

There are many types of documents that might be found in a deceased person's estate file. In fact, there are too many to list here. The most important of them and the kinds of information they might reveal are specified below:

Administrator's bonds—In which a person appointed by the court as next of kin or chief creditor bonded to perform his duties faithfully in liquidating and dividing the estate. A female administrator was called an *adminstratrix*. The date of the administrator's bond is a good indication of the time at which the individual died (since the last quarterly term of court.)

Petitions for dower and thirds or **year's support**—A surviving widow's petition to have her portion of the land and slaves laid off or a sufficient portion of the personal property to support the family for a year. Sometimes, an exact death date was given in the petition.

Inventories and sales—Most of the personal estate had to be sold at public auction. To this end, the administrator listed, valued, and recorded the sale of these items. He also inventoried debts due the estate. Purchasers frequently included family members and neighbors.

Petitions and reports of divisions—The heirs often petitioned the court to have land or slaves divided among them. Commissioners not related to them were appointed to carry this out and report back to the court. These documents are most likely to give the names of all the heirs and may give the names of slaves and a map (or plat) of the land division.

Guardian bonds and accounts—If some of the heirs were too young to handle their own property or were incompetent to do so, a guardian would be appointed for them—usually a relative. The bond gives the name of the child. Annual reports were filed with the court to show how the estate was managed until the heir reached majority (18 for females; 21 for males.)

Final accounts—In which the administrator shows all the credits due the estate and all the obligations paid out by it, leaving a balance available to be distributed to the heirs (or not). Sometimes the heirs are listed and the distribution specified.

Petitions, answers and writs related to law suits. These controversies at law were often between the estate and the people to whom it owed money or who owed the deceased money. They could also relate to the claims of the various heirs or to allegations that the administrator might have mishandled the estate. Written testimony is sometimes included.

What If There is no estate?

Many people died leaving neither a will nor an estate record of any kind.

This may mean one of several things:

(1) It is possible that the records of the county in which the deceased resided have been lost for the period of time in which you are searching. Many counties have lost records due to fire, flood, looting, theft, or just plain carelessness.

(2) Some individuals, as they advanced in age, realized that they could no longer manage their own affairs and decided to dispose of their property by deed of gift, trusting their personal upkeep to relatives for the rest of their lives. These deeds were usually recorded in the county's deed books, but not always. Before 1885, there was little legal risk involved in failing to record a deed in N.C.

(3) In the colonial period, many individuals lived far distant from any courthouse. The heirs often chose to dispose of the property informally without filing reports with the county or colonial government. Since primogeniture was common, the eldest son or the eldest brother often ended up with the land even though there was no deed of conveyance from the dead person to this heir. Follow the land!

(4) The person died with insufficient estate to justify a formal settlement process. The poor and landless must be traced in other, more difficult ways. That is another story for a different guide.