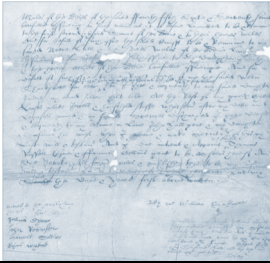


THE INS AND OUTS OF PROBATE FOR GENEALOGISTS – WHAT ARE PROBATE PROCEDURES?

James L. Tanner for Family History Expos


Understanding Probate for Genealogy

- ❑ Need to know some of the terminology
- ❑ Need to know the law in the state or area being researched
- ❑ Need to know the procedures of the court



What are Probate Procedures?

- ❑ Laws are made by the legislatures
- ❑ Rules are made by the administrative agencies
- ❑ Procedures are made by the courts (judges)



Procedures vs. Law

- Procedures determine what happens in court
- Laws determine how the judge or other magistrate decides the case
- Parties to a probate must follow both the law and the procedures
- The difference can be baffling

Probate Law

- Based on English Common Law
- Includes both legislature made statutes and court made decisions
- *Stare decisis* – Precedence

Attorneys

Represent clients in court and learn the law through reading about cases

Rules of Civil Procedure

- Vary from court to court and county to county and state to state
- Change frequently
- Often determine who wins or loses in court
- Are like a road map of how to conduct a case

When we are talking about “Probate Law” we are usually talking about Probate Procedure. It is the procedure that creates the documents.

Some procedures change some don't

- A probate action is started by the petitioner filing probate petition with the court that includes the original copy of the will, if one exists.
- The petition asks the court (the judge) to open a testate actions (with a will) or open an intestate action (without a will).

Probate Procedures

- ❑ Have changed very little in historic times
- ❑ The format of the petition (not the wording) has changed
- ❑ The time periods for filing have changed
- ❑ The number of copies has changed
- ❑ All of these types of rules change

Black's Law Dictionary Definition of a Probate

- ❑ The act or process of proving a will. The proof before an ordinary, surrogate, register, or other duly authorized person that a document produced before him for official recognition and registration, and alleged to be the last will and testament of a certain deceased person, is such in reality. The copy of the will, made out in parchment or due form, under the seal of the ordinary or court of probate, and usually delivered to the executor or administrator of the deceased, together with a certificate of the will's having been proved, is also commonly called the "probate." In the canon law, "probate" consisted of probatio, the proof of the will by the executor, and approbation, the approbation given by the ecclesiastical judge to the proof. 4 Reeve, Eng. Law, 77. And see In re Spiegelhalter Will, 1 Pennewill (Del.) 5, 39 Atl. 405; McCay v. Clayton, 119 Pa. 133, 12 Atl. SCO; Pettit v. Black, 13 Neb. 142, 12 N. W. 841; Reno v. McCully, 05 Iowa, 029, 22 N. W. 902; Appeal of Dawley, 10 R. I. 094, 19 Atl. 248.
- ❑ Law Dictionary: [What is PROBATE? definition of PROBATE \(Black's Law Dictionary\)](#)

Three major steps in a probate

- ❑ Filing the probate petition either with or without a will
- ❑ The administration of the estate
- ❑ Closing the estate

Probate

Probate is a lot more than just filling in the blanks on a form
