

THE INS AND OUTS OF PROBATE FOR GENEALOGISTS – WHAT HAPPENS WHEN THE PROBATE GETS COMPLICATED?

James L. Tanner for Family History Expos

A Genealogist's Delight

A complicated probate proceeding is a genealogist's delight

What constitutes a complex probate?

- Primarily caused by disagreements among the heirs
- Can be caused by the size and complexity of the estate
- May be the result of conflicting claims to property
- Could involve property in multiple states or even other countries
- May continue on for years

What to look for

- Probate can be filed years after the death of the testator or intestate deceased
- Watch for time limits in filing a probate
- Time limits may not apply to certain types of property
- There may be a time limit on the length of a probate case

How to find a late filed probate

- Research the real property owned by the deceased
- After death, real property can only be transferred by a court appointed representative of the estate
- Watch for joint tenancy or other type of ownership that transfers after death

When does a probate case end?

- Upon the distribution of all of the property the estate
- Filing of the Final Accounting and Notice of Distribution
- Court order for the Discharge of the Administrator/Executor and Discharge of the Bond, if any

What are jurisdiction and venue?

Legal jurisdiction is the ability of a certain court to hear a certain type of case

Venue is the proper place or court to file a particular claim or action

Jurisdictions pile up like pancakes



© iStockphoto.com/John and Jane's Pictures - www.iStockphoto.com Licensed under CC BY-SA 4.0 30252011074
iStock.com/john_and_jane's_pictures - www.iStockphoto.com/John and Jane's Pictures

When does a Court have jurisdiction?

- A court has jurisdiction when it can hear a certain type of case and that the case can properly be filed in the that court's venue i.e. that particular court
- Venue means that given the different divisions of the court, the particular court is the proper place for the action

Levels of Courts

- Local or Municipal Courts
- Justice Courts or Magistrate Courts
- General trial courts: Superior Courts, Circuit Courts, Courts of Common Pleas, District Courts
- Appellate Courts
- Supreme Courts
- Change from state to state

Probate in Multiple States?

- Look to the record on real property
- Examine any out-the-ordinary transactions
- Look for probate documents asking for a “stay” pending resolution of foreign claims

Ancillary Probate

- Held in a state other than the one where the deceased died or otherwise where jurisdiction lies
- Not a complete probate action
- Has similar pleadings as a regular probate
- Usually ends with the transfer of the real property

Probate Hearings

- Look for the transcript of any formal hearings in a probate action
- Be sure to note the date and place of any evidentiary hearing
- Watch for affidavits submitted in support of claims

Read Everything in the File

Go through a probate file page by page and make sure to record any helpful or pertinent information. Do not skim the record.

Look for an Appeal

In any contested matter, there is always the possibility of an appeal
