

THE INS AND OUTS OF PROBATE FOR GENEALOGISTS – WHERE THERE IS A WILL THERE IS A WAY

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Probate law is challenging

A current popular text is as follows:
 Dukeminier, Jesse, and Robert H. Sitkoff.
Wills, Trusts, and Estates. 2013. This book
 costs over \$200 and has 1032 pages.

Probate records are little known and little used by genealogists

Importance of Probate Records

Probate records are essential for research because they often pre-date the birth and death records kept by civil authorities

Probate laws differ from State to State

- Identify the place where the probate records are archived
- Check the local laws before doing research
- Search online
- Contact the court for availability

Probate law has always been complicated

- Earliest laws in the U. S. came from England and Spain
- Both English Common Law and Spanish Civil law are used in the U. S. depending on the state
- There are nine civil law (community property) states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin (and Alaska)

Uniform Probate Code

- Drafted by the National Conference of Commissioners on Uniform State Laws
- Adopted by only sixteen states: Alaska, Arizona, Colorado, Florida, Hawaii, Idaho, Maine, Michigan, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Carolina, South Dakota and Utah
- Abolishes percentage attorneys' fees

Probate may be necessary with
or without a will
Testate = with a will
Intestate = without a will

Most states have laws that
essentially write a will for
everyone
The Laws of Intestate
Succession

Definitions

- Testator/Testatrix – Person making a will
- Administrator – Person administering the estate without a will
- Executor/Executrix – Person administering an estate where there is a will
- Personal representative – Anyone administering an estate (Uniform Probate Code term)

Oral Wills

A will made shortly before death that is communicated to witnesses. The enforcement of such a will depends on the testimony of the witnesses and whether or not such wills are recognized in the state where made.

Nuncupative Wills

An oral will that must have two witnesses and can deal with only the disposition of personal property. May be made at any time.

Deathbed Wills

A common term used to describe both oral and nuncupative wills.

Holographic Wills

A will entirely in the handwriting of the testator and enforceable depending on the particular laws of the place where the will is made. A holographic will may still require the signatures of witnesses.

Pour-over Wills

Wills made by spouses to dispose of their commonly owned property, usually made in conjunction with a trust that governs the disposition of the property. The will is designed to confer any property owned by the deceased person into a trust.

Simple Wills

This term is usually applied to wills that follow the statutory scheme for wills in the state of origin. This type of will seldom has provisions that will affect the deceased's property any differently than would be the case had the deceased died without a will.

Reciprocal Wills

Wills with mirrored provisions between spouses, usually leaving everything owned to the surviving spouse.

Joint Wills

Where both the wills of the spouses are contained in one document. A joint will is usually treated as if it were two separate wills.

	Mutual Wills
<p>An attempt by married or committed couples to assure that their property passes to one or more heirs, usually the children of the relationship. After one of the parties dies, the surviving party is bound by the provisions of the will.</p>	
