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ILLINOIS STATE ARCHIVES

Probate Records

Genealogical Research Series Pamphlet No. 2

THIS PAMPHLET IS THE SECOND IN A SERIES DESIGNED TO ASSIST THE GENEALOGICAL researcher in using the most pertinent of related federal, state and local governmental records in the possession of the Illinois State Archives and its Illinois Regional Archives Depositories (IRAD) system. The disposition of estates on the county level of government is the subject of this pamphlet.

PROBATE RECORDS, 1772-1970

HISTORICAL BACKGROUND

The General Assembly granted probate jurisdiction to the clerk of the county commissioners' court in 1819. This jurisdiction was subject to review and reversal by the full commissioners' court. Probate duties included issuing letters of administration for intestate (without a will) estates, distributing the estates of individuals who died intestate, recording all wills and letters, ruling on contested wills, receiving bonds from administrators, paying witnesses, ordering final distributions, ordering property sales for payments of debts, making pro rata distributions of assets to creditors, appointing guardians for children under age 14, approving guardians selected by children age 14 and over, and receiving bonds from those guardians.

The functions of the probate court were transferred from county commissioners' court clerks to county probate courts in 1821. Probate judges were elected by the General Assembly to lifetime terms. Their duties included those specified in 1819 as well as bankruptcy and imprisonment for debt cases. Probate justices of the peace were established in each county beginning in 1837. These justices were selected for four-year terms by the electorate. Their jurisdictions included those cases in which claims did not exceed \$1,000. Probate justice of the peace proceedings were reported to the circuit courts of their respective counties, which either approved or rejected them.

The 1848 Illinois Constitution moved original jurisdiction in probate matters to the newly created county courts. County judges were elected to four-year terms. The 1870 Constitution gave the General Assembly authority to authorize separate probate courts in counties with populations of 50,000 or more. Legislation enacted in 1953 mandated free-standing probate courts for counties with populations of more than 125,000, while it left it a local option for those counties with populations of between 70,000 and 125,000. By the terms of the Judicial Amendment of 1962, the functions of both the probate courts and the county courts were transferred to the circuit courts in January 1964.

RECORD CONTENTS

Four record series generated by local courts in their probate capacities are the most useful: Probate Case Files, Probate Record, Probate Wills and Probate Will Record.

PROBATE CASE FILES AND PROBATE RECORD

Probate Case Files consist of loose papers that have been filed with the court in relation to particular decedents. Central documents include property inventories and appraisals, sale reports, bills and claims filed, and final settlements. Each of these case files concerns a single estate and the overall arrangement is chronological by the original filing date.

The Probate Record is bound in volumes and largely replicates that found in the case files. But besides formally recording the documents found in the files, the Probate Record shows how the court acted upon each of those items. Like the Probate Case Files, the Probate Record is arranged chronologically by the original filing date for each estate.

PROBATE WILLS AND PROBATE WILL RECORD

Probate Wills consist of loose documents arranged chronologically by filing date, which show the name of the testator and provisions for his or her property after death, and the date the will was executed. As an official court record they also show the dates they were filed and probated.

The Probate Will Record is contained in hardbound volumes. This record includes a transcription of the will along with the date the testator died and documentation regarding the filing of the will and its submission to probate. In cases of intestate death, the record contains a declaration of no will and the appointment and bond of an administrator. Probate Will Record entries are arranged chronologically by filing date for each estate.

INDEXES AND DOCKETS

The Probate Case Files, Probate Record, Probate Wills and Probate Will Record are arranged by filing date, and the approximate date of death is most useful in locating the name of the desired estate in these records. The Probate Record and Probate Will Record may contain internal indexes. Related record series of help in locating particular estates include Probate Case Files Indexes, Probate Record Indexes and Probate Will Record Indexes, all of which provide alphabetical access by the estate name. Additionally, Probate Dockets, which in summary form list cases chronologically by filing date, aid in locating particular estates.

SEARCHING FOR PROBATE RECORDS HELD BY IRAD

The IRAD system houses probate records for many Illinois counties. To view a comprehensive listing of all county probate records maintained in IRAD, please consult the Local Governmental Records Database under the State Archives page at www.cyberdriveillinois.com.

A current listing of records, including recent accessions for a particular county in IRAD, may be obtained free by contacting: IRAD, Illinois State Archives, Margaret Cross Norton Building, Springfield, IL 62756.

FINDING YOUR ANCESTORS

RESEARCHING ON YOUR OWN

For in-person searches of probate records stored at one of the regional depositories, the researcher must visit the appropriate depository. To use local probate court records available at the Illinois State Archives in Springfield, please ask reference staff for the listing of county records available on duplicate microfilm at the State Archives Building. Probate records not found at an IRAD center or at the State Archives generally are still maintained at the respective county courthouses where they originated. In these instances contact the appropriate circuit court clerk's office.

MAIL AND TELEPHONE REQUESTS

The Illinois Regional Archives Depository system welcomes mail and telephone inquiries. See the IRAD brochure *Discovering Family and Local History* or consult the Archives Web page for the addresses and phone numbers of the regional depositories. It also includes a map that shows the counties covered by each depository. In requesting a search of a particular county's probate records contact the appropriate regional depository. Provide the name of the decedent and the county where the estate was probated as well as the approximate date of the transaction. (Indexes are not available for some IRAD probate records, making searches very difficult without a near date.)

A photocopy of the record requested will be provided by the appropriate regional depository if it can be located. State Archives reference staff do not search county probate records on duplicate microfilm housed at the State Archives Building. These must be consulted by users on-site.