

Probate Records

The transfer of property from generation to generation was serious business in colonial Virginia. *Probate* refers to the process of settling an estate after death. Records relating to probate include wills, inventories, and accounts of administration. Wills are sets of directions that indicate how, and to whom, property should be distributed. Probate inventories list and give value to portable property (they do not include land). Accounts of administration document how debts are settled and property distributed in cases where someone dies without a will or if the will is unclear or incomplete.

If a man or woman died with a will (testate), his or her property was divided according to the terms of that will, provided that debts were paid. To be legal, the will had to be witnessed by at least two people who had to then present it in court and attest to its authenticity. Married women did not own property (although by custom they received one third of the estate, their “dower share” in recognition of what they had brought into the marriage), so wills only appear for single or widowed women.

The testator named his or her executors (administrators); if he failed to do so, the court named them, drawing on family members or major creditors. If a man died without a legal will (intestate) or in debt, the county court appointed executors to oversee the disposition of his property. The court also appointed appraisers who made a detailed inventory (excluding house and land) of possessions, including enslaved or indentured people. The inventory consisted of a list of people, portable goods, and livestock, with an estimated value for each (listed in pounds, shillings and pence, the currency of 18th-century Virginia). This list is known as a “probate inventory” and was used to determine the worth of portable property (which might be sold to settled debts) and to assess taxes on the estate. The administrator of the estate also presented an accounting of money received by and paid out by the estate to the court.

Prior to 1776, estates could be entailed, a process which was meant to ensure that land stayed in a family over several generations. Entailed land usually passed to the eldest son (primogeniture). He had the right to use the land during his lifetime, but not to dispose of

it. The land was legally required to pass to his heir and so on in perpetuity and could not even be sold to pay debts. In order to break this cycle of ownership through a process known as “docking entail,” an heir had to seek special permission from the Virginia House of Burgesses. The elder Francis Eppes’ entailed different tracts of land to different heirs, both sons and daughters, in his will. After 1727, slaves could be attached to entailed land, an act which would prohibit their sale and the sale of their children. Unlike land, slaves could be sold to cover debts.

In cases where a man had inherited his lands through entail, his will might only reference the disposition of a few personal goods without mentioning the major landholdings and slave holdings of the estate, since their disposition was set by the terms of the entail. After the American Revolution, all heirs to estates where the property owner had died without a will (intestate) inherited equally.

Slaves can appear in the text of a will or in a probate inventory. There was no standardized method of listing them; sometimes they are grouped by family, sometimes by sex, by where they lived on the plantation, or by which of the testator’s heirs would inherit them. Sometimes references to slaves also appear in accounts that are associated with the settling of the estate, indicating their sale or transfer to a creditor.

Sources:

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