

Probate Matters

Finding Heirs and Untangling
Complex Webs of Kinship



Have You Located All the Heirs?

When someone dies, the laws of his or her state will determine whether a formal or informal probate may be required, based on circumstances such as the size of the estate or whether the decedent died intestate. Even when a decedent dies testate, some states require that potential heirs receive notice of the probate proceedings. In most situations, reconstructing a family tree for the decedent is helpful during the probate process to satisfy the applicable state laws.

Decedents who arrange affairs in advance may not anticipate the degree of relatives who will need to receive notice of the probate. Often, few clues are left behind to identify an entire class of potential heirs, such as all second cousins of the decedent. Even with the decedent's good intentions, an attorney appointed to administer the estate may not know how to identify the decedent's next-of-kin and may feel overwhelmed with the amount of searching necessary to account for everyone.

How Many People Should Be Documented?

Contemplate a decedent who died with no surviving spouse, children, or siblings. Ancestral research must extend back to the paternal and maternal grandparents before shifting to descendant research that moves forward to identify aunts, uncles, first cousins, and more distant relatives. When considering current life expectancy rates and average generation lengths, a decedent born in 1940 will typically require ancestral research back to the 1880s or earlier. Descendant research may then have to extend forward to individuals born in the 1970s or more recent decades to completely reconstruct classes of potential heirs or interested parties. In a simple example, assuming only three children were born in each generation, a researcher may have to document 75 or more individuals to account for all living first cousins or the surviving children or spouses of deceased first cousins.

A conscientious attorney knows everyone must be found to avoid missing a discoverable heir, despite the sheer number of individuals who may need to be researched in this process. To estimate the amount of time needed to search, discover, and properly document family members for a probate matter, we generally expect to spend at least one hour researching each living individual who is either a potential heir or needs to receive notice of the probate proceedings. This is a good rule of thumb, but individual cases will vary.

Three Steps to Performing Due Diligence in Genealogical Research for Probate Matters

STEP 1: Understand Who Needs to Be Located

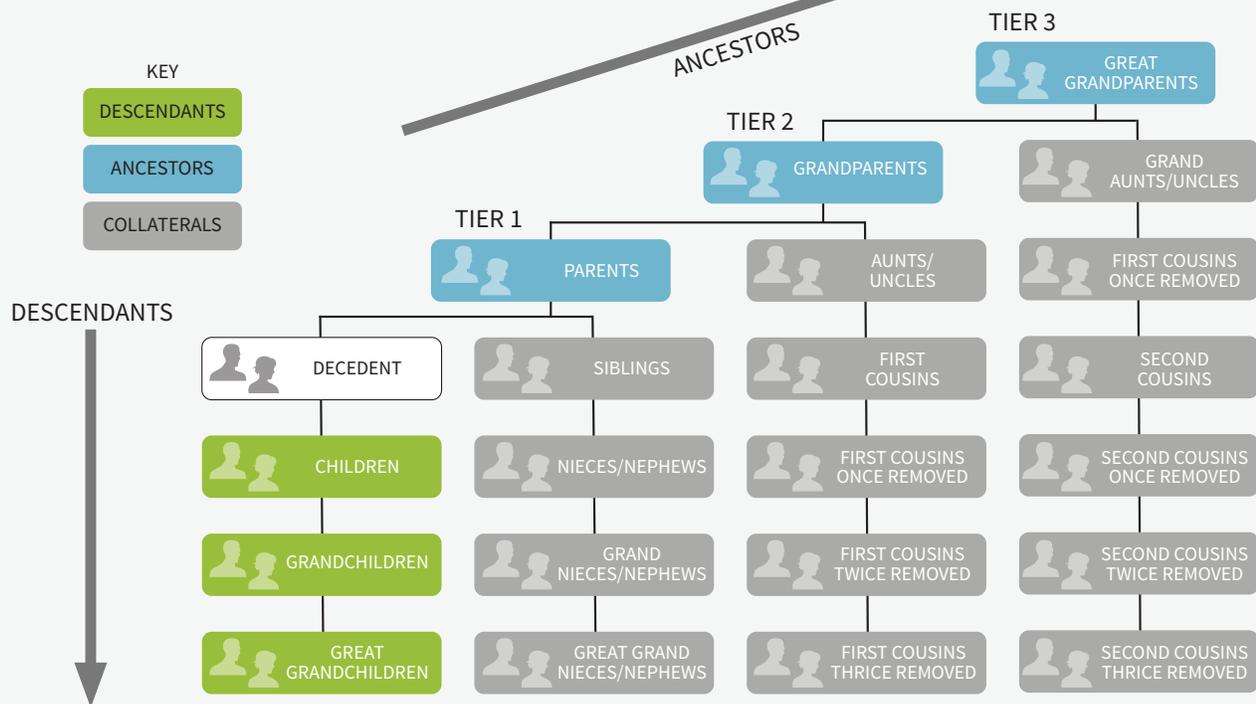
It is critical for an attorney to clearly understand who must be identified and located during the research process before any time is spent on the actual research. Every state has different intestate succession statutes that define the level of next-of-kin who must be found before estate assets escheat to the state. It is extremely important to correctly calculate relationships so research can focus on finding a complete class of heirs. Understanding how relationships like first cousin-once-removed and second cousin are computed is the first step in defining who must be located.

Attorneys must also have a clear understanding of how the state values and prioritizes differing ranges of relationships. For example, does the state view half relationships as equivalent to full relationships? If so, the scope of research may have to be expanded to document additional children born to either of the decedent's parents or grandparents from other marriages. Suddenly, what seemed to be a small family at the outset of research could mushroom into a larger number of people to track down.

Similarly, whether probate code prescribes inheritance on a per capita or per stirpes basis can impact which family branches need to be researched. An attorney who is mindful of the costs of administering an estate will be careful to interpret which family branches require research so that excess funds are not spent on unnecessary genealogical research. The relationship chart on the next page illustrates how to accurately compute relationships from the perspective of the decedent.

While it is an attorney's role to review and analyze the kinship laws, the attorney may need help from a genealogist who understands the family relationships defined by the applicable laws the attorney identifies.

Family Relationships



Note: Half relationships result when only one ancestor (not an ancestral couple) is shared between the decedent and a collateral relative. For example, an uncle who shares only one grandparent with the decedent is a half uncle.

While every state's probate laws may differ slightly in regard to which relationships must be documented, they will usually follow a similar progression from closest next-of-kin to more distant relatives. Generally, research first progresses down the lines of descent from a decedent to locate living descendants, such as children or grandchildren, before shifting to focus on any ancestral generations and associated descendants, who are the collateral relatives of the decedent. Once research has progressed upward to an ancestral generational tier such as parents, the research would then shift to carry downward through that tier's descendants (within any limits imposed by state probate code). If no next-of-kin are found within a tier, research may progress to the next ancestral tier, such as grandparents or great-grandparents, to seek their descendants. This process may eventually reveal the decedent's closest collateral relatives such as aunts, uncles, or first cousins.

STEP 2: Identify Individuals Who Meet the Relationship Criteria of the Applicable State's Probate Code

Today, a large portion of genealogical research can be conducted online. The table below outlines some of the major record groups that may be relevant to reconstructing families for probate research, with some caveats for use of these records.

Public family trees

Is the ancestral family documented in a public tree that is accessible? Finding a family tree on a website such as Ancestry® can provide clues to the family composition at the beginning of the research process and alert the researcher to potential branches of the family that require more investigation. But, buyer beware! Not everything documented in unsourced online trees is complete and correct, and thus, should be verified by seeking indexes and original historical documents, where obtainable, or consulting with a professional genealogist to assess the accuracy of the tree data.

Vital records

Birth, marriage, and death records, often referred to as “BMDs,” are the primary documents that establish identities of individuals and their relationships to others. Often, these records will name an individual’s parents, but this information may not be accurate. For example, a death certificate is generally accurate for the date, place, and cause of death—but the genealogical information supplied by the informant can be inaccurate if that person was misinformed.

Divorce records

Not all relationships end “happily ever after.” Divorce records will typically say whether the couple had children who were minors at the time of the divorce. These can be essential clues to track down branches of the family that may have become fragmented due to the divorce.

Probate records

Locating probate records for a grandparent of the decedent can show the heirs of that grandparent, which usually includes the aunts and uncles of the decedent. This type of documentation can be extremely useful in reconstructing a family or learning the married names of female family members who may have received notice of the matter.

Newspaper articles

Locating obituaries can be particularly helpful in accounting for the whereabouts of surviving spouses, parents, children, and siblings, or knowing which individuals may have predeceased other family members. Clues about the decedent’s marital status can also be gleaned from an obituary. Because we rarely know who authored an obituary, the information it contains should be verified in other sources, as obituaries notoriously contain errors or omissions. Other types of newspaper articles can establish places of residence, property ownership, legal notices involving the family, or clues that open additional avenues of research.

Censuses

Census records are a great tool to find evidence of parents with their children, with defined relationships provided in the 1880–1940 enumerations. In closed records states where birth or death records cannot be obtained without a court order, a substitute record such as a census enumeration might provide necessary evidence of relationships. The 1940 census is the latest that has been released to the public, so locating families after 1940 is more challenging. The 1950 census will not be released until April 2022, after a 72-year privacy period.

Public records

Other types of public records can be used to identify individuals and their associates. Online databases containing addresses and phone numbers may reveal which other individuals were associated with the primary person being researched. Property records such as deeds or tax appraisals can confirm a last known address or provide evidence that a couple is married. Even 21st century records such as social media accounts, alumni associations, or personal blogs can identify missing family members or hint at relationships.

Depending on a state’s privacy laws and available searchable indexes, not all relevant content can be found online. Relying solely on evidence from online records can create significant gaps in the research findings when attempting to reconstruct a family. Therefore, most probate research requires some level of research in offline records. This may include contacting county clerks, court clerks, state departments of health, archives, libraries, or historical societies. Offline research is generally more time-consuming than online research, because many agencies send records via postal mail and may have months of lag time in fulfilling records requests. However, the goal is to obtain evidence needed to draw sound conclusions about a family’s composition. In some cases, offline research may not be necessary, but omitting an offline search purely because it is inconvenient increases the risk that discoverable information about a family could be missed.



STEP 3: Prepare Charts and Reports to Submit to the Probate Court

Many factors affect the information that needs to be compiled before the probate court judge can adjudicate a determination of kinship. Attorneys should familiarize themselves with required language or formats that the courts expect in their states.

Courts usually require an affidavit of the research findings that includes the next-of-kin and their contact information. This document provides sworn testimony that the affiant believes the research findings are true and complete. The accompanying report usually includes confirmed family members and their relationships to the decedent, as well as evidence demonstrating the breadth and depth of the searches employed to locate unknown or missing heirs. Showing that a diligent search produced no additional previously unknown family members lends credibility to the claim that all next-of-kin in a particular relationship class have been located.

For large or complex families, custom charts may help to accurately depict relationships and convey the family composition. This is especially true in situations where the decedent may be related to the same individual in more than one way (double cousins) or may have half or adoptive relationships that must be accurately documented. The charts should be easy to interpret and labeled in a manner that removes doubt about how individuals are related to the decedent. The charts can also be used as a research aid to expose any family branches that have not been thoroughly documented, before the reports are finalized and submitted to the court.

Finally, the report should contain source citations that show how the facts became known. Source document images, such as marriage or death certificates, may need to accompany the report or affidavit, depending on the proof requirements for different jurisdictions. Source documents are usually attached to the affidavit and cross-referenced to content in the report.

Following these three steps will help identify the appropriate class of next-of-kin, conduct research to reconstruct the decedent's family tree, and package the information in a format that is required by the probate process.

How Using a Professional Genealogist Can Save Time and Minimize Frustration

There are many scenarios where attorneys will benefit from hiring a professional genealogist instead of attempting to conduct the genealogical research themselves. Sometimes, research on a complex family can be so difficult or convoluted that using a trained researcher is necessary to make any progress at all. At other times, relying on the expertise of a professional genealogist will allow the research to progress in the most efficient manner, freeing the attorney's time to work on other matters.

The following are just some of the scenarios in which a professional genealogist can benefit attorneys.

- An individual named in a will may not be easily located or may need to be distinguished from other same-named individuals who lived at the same time.

Sometimes, research on a complex family can be so difficult or convoluted that using a trained researcher is necessary to make any progress at all. At other times, relying on the expertise of a professional genealogist will allow the research to progress in the most efficient manner, freeing the attorney's time to work on other matters.

- The appointed administrator or guardian ad litem of an estate has little or no information about the family structure of the decedent.
- Due to estrangement, a decedent intentionally left no information about family or next-of-kin.
- Ancestral or descendant research on a recent immigrant family must extend to international locations, where specialized knowledge of the availability and accessibility of records is needed to obtain the necessary documents and translate them to English.
- In some states, the next-of-kin of a testate decedent may be required to receive notice of the probate proceedings in the event that they wish to contest the validity of the will and establish themselves as potential heirs who might have inherited under the state's intestate succession statutes.

- Survivors of next-of-kin who died after the decedent may need to be located, including unrelated individuals or entities such as charities who were named in the post-deceased relative's will.
- In some states, proof of notice is required by the court for large or fragmented families who disbursed geographically over the generations and whose contact information may be difficult to locate.
- An attorney may need to document due diligence in searching for branches of a family before a judge will approve notice by publication.

By using a professional genealogist in these situations, attorneys can feel confident that they are in good hands and the research will be conducted in the most logical and straightforward manner, using the most appropriate research methodologies, search strategies, and subscription resources to conduct a diligent search.

An experienced researcher will know which historical records are most likely to yield the desired information, and they will go straight to the source, thus eliminating any time spent on unnecessary or misdirected searches. A professional genealogist will prepare a report outlining the evidence of the identities and relationships that were established from historical and public records, in support of the attorney's specific needs.



Case Study

[Names and facts have been changed to protect the privacy of living individuals and confidentiality of our client.]

AncestryProGenealogists® was hired to document next-of-kin for the probate proceedings of the estate of Valerie Small. Valerie never married and did not have children, and despite having a sizeable amount of assets, she did not have a valid will in force at the time of her death. Carol was a close friend of Valerie and became the administrator of her estate. Near her death, Valerie confided in Carol that she had an older half-brother from her father's first marriage. She had never been in contact with him and presumed he was already dead. Carol believed Valerie's estate would be distributed to first cousins, if any were found to be living.

Our research documented that Valerie did, indeed, have an older half-brother named Thomas, who had not only changed his name, but had also been married five times and had children with three of his wives before his death in the 1970s. These children were half-nephews Valerie had never met. Searches for this family extended into Canada to corroborate identities and the whereabouts of Thomas and his wives. Additionally, we discovered that Valerie's father had a third marriage later in life, after his divorce from Valerie's mother. This late marriage produced another half-sister to Valerie, who was over 20 years younger and likely unknown to Valerie.

In summary, our research documented two half-siblings of Valerie—one who pre-deceased her with surviving children, and the other who was living at the time of her death—as well as the contact information for these closest next-of-kin. If Carol had only relied on information shared by the decedent or gone by what was available in public family trees, the closest heirs likely would not have been found. The accurate reconstruction of this family required thorough research in both online and

offline historical records, including divorce records and newspaper accounts, to correlate members of this family who moved often due to career military service.

Early in the process, Carol said, "It was all so simple yesterday when Valerie had one living cousin. Thank you for being thorough. I couldn't have learned this information on my own." By the end of the process, Carol was extremely grateful that our research uncovered the unknown half-siblings and their descendants, whose families were found to be the closest next-of-kin. They ultimately received distribution of assets from Valerie's estate.

This case study illustrates why it can be challenging to find relatives as close as half-siblings, who may have been estranged from one of their parents or did not have regular contact with the children born to a parent's other spouses. Beyond siblings, many decedents do not leave information accounting for all of their aunts, uncles, or first cousins, especially if one side of the family was out-of-touch. When there is a need to find even broader degrees of relationship, very few individuals can account for all of their first cousins once removed or second cousins—yet these are precisely the next-of-kin who are typically required to be located by the intestate succession laws in many states.

Hiring a professional genealogist who specializes in estate research is often necessary to reconstruct complicated or obscured family relationships. By working with AncestryProGenealogists®, attorneys can focus on what they do best and leave the genealogy research to experts who can quickly and accurately produce the court-ready documentation required to complete the estate's administration.

Why Hire AncestryProGenealogists®?

- Since 1998, we have satisfied the research objectives of tens of thousands of clients, including many law firms, attorneys, and executors.
- Our 150 employees have thousands of combined years of research experience, and our vast worldwide contractor network allows us to use our professional expertise to identify, locate, and report on possible heirs or beneficiaries, both domestically and internationally.
- We are disinterested third parties who have no stake in the outcome of the research and can offer impartial testimony on our findings. Our hourly-fee-plus-expenses billing model does not create any bias, as may be the case for heir-searching firms who charge a contingency fee or percentage of the overall estate.
- We reconstruct family trees and can verify or complete the research begun by other third parties, particularly in situations where the other party's research is suspected to be incomplete or in error. We can also assist in partial engagements to examine a difficult branch of a line of succession, where other portions of the family are already known and have been well-documented.
- We help our clients fulfill their fiduciary duties to provide notice to potential heirs by supplying current contact information for those who are considered interested parties to the estate or legal matter.
- We provide proposals for the scope of work and level of effort anticipated to thoroughly document the next-of-kin of a decedent, which an attorney can present to the court to facilitate release of funds necessary for the payment of the research retainer.
- AncestryProGenealogists® is not a law firm, and we do not provide legal advice in any form. Only a judge can adjudicate to determine the legal heirs of an estate. As professional genealogists, we provide the necessary information about the decedent's family composition in an easy-to-understand format, so the judge can make informed rulings during the probate proceedings.
- We are not licensed private investigators. The records we research are publicly discoverable, and our means to obtain the information follows established protocol that does not violate applicable privacy laws.

While the research required for estate administration can be complex, working with an established company that specializes in genealogical research can help expedite the process and significantly reduce costs. Most importantly, when a judge asks, “Have you accounted for everyone?” an attorney should feel confident answering with a resounding “Yes!”



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