

Distribution of Land after Death Creates Wealth of Documents

by Dee Gibson-Roles

Last month we discussed land records and the methods by which our ancestors acquired their land. Methods discussed were headrights, land grants, bounty land awarded for military service and purchase of land.

Another common method of acquisition was by inheritance.

Most everyone is familiar with the inheritance of family land, whether in their own families or in those of other relatives and friends. Inheritance of land can generate an abundance of documents which are of value to the family researcher.

If the deceased land owner had a will, the disposition of his land was usually indicated in that document. Sometimes the complete detailed description of the land is given, including the "calls" or description of the boundaries (with the approximate the number of acres included) of the portion bequeathed to each of his heirs.

But the deceased sometimes went to the other extreme, saying that his land was to be divided equally among his heirs with no other instructions as to the actual division and sometimes no mention of the heirs' name(s).

In this case, the executor of the will or the courts would appoint a person or persons to divide the land into parcels of equal value. This sometimes resulted in lengthy court battles if one or more of the heirs felt that the division was not equitable.

All of these processes would, of course, have resulted in documents valuable to the researcher.

Families and deeds

One may also find that the land owner gave or sold for a small amount the land to one or more of his heirs. It is common to find the testator stating in his will that having previously given some or all of his heirs what he intended each of them to have, nothing or just a small pittance was being left to those heirs in the will.

This statement is a clue to the researcher that a deed concerning the testator's land may be recorded in the deed records of the county some time before the date of the will. Such a deed may or may not state the relationship of the heir/grantee to the grantor.

Sometimes the phrase "for natural love and affection" may be used in the deed. In genealogical research, it is generally accepted that this phrase is proof of the relationship (usually father/mother to son/daughter) between the grantor and the grantee.

One can often find a deed in which the grantor is giving the land to an heir, usually a son or daughter, in return for caring for the grantor and his/her spouse in their declining years.

Most of these deeds state the stipulations under which the land will be inherited by the caregiver, and may also specify the disposition of the land should the caretaker fail to fulfill his/her obligation.

We should also note that in many states, including North Carolina, the deed does not have to be registered or recorded in the appropriate county office unless and until the land is to be sold. An heir could receive land and a deed given to him/her for the said land, but he/she may not record the deed for many years, doing so only when he/she decides to sell any part of the land.

Family researchers should be aware of this possibility and check the deed records for a long time span, not just the time period of the will, death and probate of the will.

Dying without a will

If the land owner died intestate, there were laws in place which governed the distribution of his real property.

In colonial times, the law of primogeniture was in effect in some states, including North Carolina, Virginia and South Carolina. Under the law of primogeniture, the oldest son (who was considered the "heir at law") inherited all of his father's land. (Since this law was in effect in England, many times the younger sons would migrate to the colonies where they could obtain their own land.)

The law of primogeniture was abolished in Virginia in 1785 and the new law provided for all heirs, both male and female, to equally inherit the land.

In North Carolina, the law was abolished in 1784 and replaced with a law that gave the land equally to the sons, leaving out the daughters. In 1795, the law was changed to include all children, male and female, and later included the widow's right to one third of the land.

The law was abolished in South Carolina in 1791, with the new law giving the widow one third of the land and the remaining land divided equally among the children (or the children's heirs, if any of the child/children predeceased the land division.)

When a land owner died intestate, a probate/estate record was usually created, with an administrator appointed to oversee the business of settlement the estate, including the disposition of the land of the deceased.

These records may contain anything from a few small receipts to several hundred pages. Many of them are filled with land record documents.

A widow could petition the court for her "dower right" (her one third of the land). (This should not be confused with "dowry" which was personal and/or real property that the bride brought into the marriage.) One may also find a record in which the widow waives her dower right.

Quite often one finds a plat of the land division, showing the land received by each heir. This could prove the relationship between father and child when the children are not listed elsewhere.

Lands after inheritance

If the heirs elected to sell the land, the deed would contain the signature or "X mark" of each of the heirs. Since land left to a married woman also belonged to her husband, his signature or mark was also required, and often a phrase included indicating that the two were man and wife.

For example, a deed might read, "Nancy Sumner, since married to John Ray" or "John Jones and wife Susan." A deed recorded in the index with the name followed by "et al" indicated that more than one person has signed the deed as grantor and usually indicates that all the heirs have signed.

This can be a real treasure for the genealogist, as one can learn the spouses and married name of female family members, and even the children of deceased siblings from such a deed.

We should note that when a woman married, her property became her spouse's as well. He could not sell the land without her permission, and in the event that the land was sold, the wife would be questioned in private to make certain that she was in agreement with the sale. This is usually a part of the deed, often following the main body of the deed itself.

Researchers can be thankful when there was a dispute involving inherited land, as this usually generated lengthy court cases which in turn generated many documents of value to the researcher, as these may contain family information not found elsewhere.

There are a few terms which researchers need to know to be able to understand some of the terminology in deed records. These include: Femme Sole, an unmarried woman; Free Trader, a married woman with the right to buy and sell property; and release of dower, the waiving of one's dower right to the land.