



Using County and City Court Records

Local records are the most basic resources for investigating Virginia's past. These records document the daily activities of the courts in Virginia's counties and cities. While original county and city records are often held in local courthouses, the Library of Virginia has a substantial collection of records for some localities. These records are divided into eighteen broad categories:

- **Board of Supervisors Records:** minutes of meetings of the administrative branch of local government.
- **Bonds/Commissions/Oaths:** qualifications for office and apprentice indentures.
- **Business Records/Corporations/Partnerships:** records of businesses, such as ledgers, daybooks, and accounts, usually submitted as exhibits in cases before the court.
- **Census Records:** local copies of the federal census.
- **Court Records:** minute and order books, judgments, chancery records, clerk's correspondence, execution books, memorandum books, and docket books.
- **Election Records:** poll books and lists of voters.
- **Fiduciary Records:** appraisals, inventories, estate accounts and audits, estate sales (only when recorded in separate volumes), guardian accounts and bonds, and administrator's and executor's bonds.
- **Free Negro and Slave Records:** free negro registers, lists, and certificates.
- **Justice of the Peace Records:** executions by justices and constables.
- **Land Records:** deeds, processioners' returns, plats, and surveys.
- **Marriage Records and Vital Statistics:** marriage bonds, ministers' returns, and local copies of birth, marriage, and death registers.
- **Military and Pension Records:** militia returns, Revolutionary War and Civil War pension records, and muster rolls.
- **Organization Records:** minutes and accounts for non-business and non-government institutions, including churches, granges, and fraternal societies.
- **Road and Bridge Records:** accounts for building and maintaining roads and bridges.
- **School Records:** lists of students and textbooks used.
- **Tax and Fiscal Records:** local copies of land and personal property tax books and lists of tithables.
- **Wills:** wills and probate records recorded in will books.
- **Miscellaneous Records:** overseers of the poor records, estrays, and lists of physicians.

WILLS

In October 1776, *entail* was abolished, thereby prohibiting the automatic passing of estates through multiple generations. On 1 January 1787, the English system of primogeniture ceased in Virginia. These two events affected the content of probate records. Under *primogeniture*, Virginia wills may not always name the wife or the

eldest son of the *testator*. Their inheritance of real estate was set by law: the widow received her dower, or one-third share, for her lifetime and the eldest son, as heir at law, received the remaining two-thirds share unless otherwise specified in the father's will. After the Revolutionary War, when Virginia's general inheritance law took effect, all heirs of intestate estates inherited equally.

Individuals dying with a written will died *testate*. After the death of an individual, his or her will was brought into court, where two of the subscribing witnesses swore that the document was genuine. After the will was proved, the executor was bonded to carry out his or her duties to settle the estate. The court then ordered the will to be recorded. The executor's bond was also filed with the court. If the witnesses to the will were dead or could not be located, the will was *lodged*. These lodged wills were not recorded, but were kept by the court and the estate was treated as an intestate estate.

Individuals dying without a will died *intestate*. The court appointed an administrator who was bonded and issued an order to appraise the deceased's estate. The court usually appointed four appraisers, any three of whom might serve. They returned an inventory of the decedent's personal property to the court to be recorded. An appraisal listed the personal property and assigned a monetary value to each item. *Accounts current* are the statements of moneys received and paid out by the executor in settling an estate.

Virginia did not require the filing of estate papers documenting each activity of the executor. The assumption was made that the executor settled the estate as directed by the will and by law, and no records were created if the work was done correctly. Consequently, Virginia has no *estate packets* or *probate packets*. If the executor did not act correctly, the offended party could bring suit in chancery. Such chancery suits often generated a detailed record of the disputed part of an estate's administration. Check the **chancery database** on the Library's Web site at <http://www.lva.virginia.gov/siteindex/index.htm#C> and **Research Notes Number 22** for additional information.

Surviving will books for Virginia counties are usually indexed by the testator or decedent, but seldom by the *legatee* or heir. Consolidated indexes to probate records on microfilm are available for most localities. Clayton Torrence's *Virginia Wills and Administrations, 1632–1800*, indexes early wills, inventories, and administrations. A searchable database in the Library's online catalog indexes early wills and administrations for fifty-three Virginia counties and cities. Researchers may also wish to consult *Index of Virginia Estates, 1800–1865*, an ongoing series compiled by Wesley E. Pippenger. The **Lost Records Localities Database**, available on the Library's Web site at <http://www.lva.virginia.gov/whatwehave/local/lost/>, contains a growing collection of local court records, principally deeds and probate records, found while processing chancery cases and other local materials.

LAND RECORDS

The most commonly recorded deed is a deed of *bargain and sale*, in which one individual sells property, usually land, but occasionally personal property, to another individual. Such deeds show the names of the grantor and grantee, the residence of both parties, a description of what is being sold, the consideration (or price), the location of the tract of land, the tract's boundaries, and any limitations on the property being sold. The deed was signed by the grantor, and possibly his wife or anyone else having a claim to the property, and by at least

two witnesses. Appended to the deed may be a memorandum of *livery of seisin*, stating that the property has changed hands and that peaceful possession has taken place.

Deeds of lease and release are often found in the Northern Neck and older counties. The lease, listing a nominal sum, is followed by the release noting the actual sale price. The lease may predate the release by a day, a week, or even a year. Together the two documents make up a legal deed and should not be confused with a simple lease to rent land. *Deeds of gift* transfer property, either real or personal, from one individual to another. They often use the wording “for love and affection.” The degree of kinship, if any, between the grantor and grantee is sometimes stated. *Tripartite deeds* are mortgages or deeds of trust where one party is indebted to another and transfers or mortgages property to a third party to secure the debt. On presentation to the court, deeds were proved and recorded. If the deed was not witnessed, the grantor acknowledged the deed in open court.

Under Virginia law, women relinquished their dower rights to real property being sold. If the wife of the grantor or whoever held the dower claim did not appear in court to relinquish her right, the court appointed two or more individuals to go to her and inquire privately if she did indeed understand and approve of the sale. Such relinquishments were not always recorded with the deeds. They often were recorded later in the deed books and are sometimes found in other record books. Without such dower relinquishment, the purchaser did not have clear title to the property.

Except for a few years early in the eighteenth century, slaves in Virginia were considered personal property and consequently were not usually sold by deed. They were, however, often transferred in deeds of gift or were listed as property in mortgages and deeds of trust. Surveys, plats, and processioneer’s returns are sometimes found in deed books. A plat is a graphic depiction of a survey. Processioneer’s records describe the walking and marking of property boundaries. Pre–Revolutionary War processioneer’s records are found in Anglican Church vestry books. Indexes by grantor (seller) and grantee (purchaser) are usually available on microfilm for the deeds of each locality.

MARRIAGE RECORDS AND VITAL STATISTICS

Prior to 1853, when the Commonwealth began recording vital statistics, Virginia marriages were recorded at the county or city level. Beginning in 1661, in order to be married by license, the groom was required to go before the county court clerk and give bond with security that there was no lawful reason to prevent the marriage. The license issued by the clerk was then given to the minister who performed the service. Written consent from a parent or guardian was needed for individuals younger than twenty-one years.

Marriage could also be accomplished “by publication,” meaning by the reading of banns. After announcing on three consecutive Sundays or holy days the intention of the parties to marry, the minister performed the marriage. Marriages by banns were recorded in the church or parish register. By the time of the Revolutionary War, marriage by banns had fallen into disuse in the Tidewater region, but the practice continued in the western counties until 1848, when this form of marriage became illegal.

Until 1780, marriages could be performed only by ministers of the established (Anglican) church, who were required to record the marriages in the parish register, or by ministers of those denominations that had received

official toleration. Very few of these parish registers have survived. Quaker marriages were entered in the records of the Society of Friends. Dissenting ministers were first permitted to perform marriages in 1780. Ministers' returns were required by law beginning in 1780, so all marriages from that date forward would be on record in the county court clerk's office. Researchers checking for early records may wish to consult *Virginia Marriages, Early to 1800: A Research Tool* (1991).

Very few Virginia marriage records prior to 1715 survive, and most counties have incomplete marriage records prior to the Revolutionary War. Beginning in 1853, statewide registration of marriages was required (see **Research Notes Number 2**). These registers exist for all counties but may be incomplete, especially during the Civil War. The registers list the date of the marriage; both parties' names, ages, marital status, and place of birth and residence; parents' names; the groom's occupation; and the name of the minister performing the marriage. The county marriage registers are usually indexed by the names of both the groom and the bride. In addition, a statewide Bureau of Vital Statistics marriage index, 1853–1935, is available at the Library on microfilm.

Before the disestablishment of the Anglican Church in 1786, there was no legal divorce. In some instances, a financial separation between husband and wife was recorded in a deed book. From 1786 to 1848, divorces were accomplished by legislative petition. A listing of petitions for divorce may be found in the **Legislative Petitions Database** at <http://www.lva.virginia.gov/whatwehave/gov/petitions/index.htm>. After 1848, divorces were recorded in the county or circuit court order books.

COURT RECORDS

County court *order books* or *minute books* have survived for many Virginia counties. They record all matters brought before the court when it was in session and may contain important information not found anywhere else. Generally minute books contain brief entries, while order books provide synopses of cases in a neater, more organized form. These volumes are sometimes internally indexed; more rarely, there is a comprehensive index. A wide variety of information is found in order books, including: appointments of county and militia officers, records of legal disputes heard before the county court, appointments of guardians, apprenticeship of children by the overseers of the poor, naturalizations, road orders, and registrations of free Negroes. Copies of the guide to **"Free Negro and Slave Records at the Library of Virginia"** are at the Archives Reference Desk and in the Manuscript Room.

A locality's loose papers are the raw materials from which order books were created. Civil suits (called judgments, see **Research Notes Number 30**), often for debt, are found here, along with criminal or commonwealth causes and chancery cases.

FIDUCIARY RECORDS

When an individual acts as a trustee for another, the relationship is described as a fiduciary one. The protection of inherited property (both real and personal) was an important reason for the creation of court records. When minor children survived a parent, a guardian was often appointed to protect the estate for the children. Appointments of guardians are recorded in the county court order books. A performance bond was required. In

the index, the guardian appointments may be listed in the name of the orphan, the name of the guardian, or under the general category "orphans."

A guardian was appointed by the court only if there was an estate to protect. At age thirteen, a child was eligible to go into court and choose his own guardian. Orphaned children who were poor did not have guardians and were bound out to learn a trade. In the colonial period, this was handled by the vestry of each Anglican parish. After disestablishment, the orphans were bound out by the overseers of the poor for the county. Records of apprenticeship are found in the county court order books.

Periodically, guardians were required to bring estate accounts into court. These accounts deal with the expenditures of the guardian for the raising of each child, generally on an individual basis. The estate of a deceased person with minor children required the keeping of records (estate or fiduciary) until it was settled. This occurred when the last minor child married or arrived at legal age. Records of this sort, which include all estate expenditures (often including those on orphans), are found in will books, estate account books, and fiduciary or audit books. A comprehensive index to these records is generally available, either as a part of the index to wills or as a separate index if the series is separately recorded.

AVAILABILITY OF RECORDS FOR RESEARCH

In some cases, the original record books and loose papers (suit papers) have remained in the locality where they were created and are kept in the office of the circuit court clerk. There are also extensive holdings of these materials at the Library of Virginia. Our processed holdings are arranged by locality and then divided into the eighteen broad categories cited above. They do not necessarily include records from each locality in each category.

Microfilm copies of extant record books are available at the Library of Virginia from the date of the formation of the county or city to approximately 1865, along with a growing collection of post-Civil War holdings. A guide to Virginia local court records on microfilm may be found on the Library's Web site at http://www.lva.virginia.gov/whatwehave/local/local_rec/index.htm. Microfilm of many records is available through interlibrary loan. The Library of Virginia also has a large collection of published and transcribed county court records of Virginia and other states (primarily states to which Virginians migrated) before 1860.

Compiled by Robert Young Clay and J. Christian Kolbe.

A free informational pamphlet on genealogical research and a variety of research notes and topical bibliographies are available on request from the Library of Virginia, 800 E. Broad Street, Richmond, VA 22319. Visit the Library's Web site for digital collections and related archival publications.

Revised December 2008



LIBRARY OF VIRGINIA