

Supreme Court of Tasmania

Probate Registry

FAQ's page

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Formatting the forms:

Can I reformat the forms?

No.

The forms must remain in their approved format.

The font must be Gill Sans MT. The font size for the body of the document is 12.

Text should not be altered to be **bold**, *italicised* or underlined.

Form guidance, including that in the body of Form 10 and the “Note” section at the end of each form, must be deleted from the final draft.

Is it possible to insert a firm document ID on the approved forms?

Yes, but please ensure that the ID is placed in the footer of the document.

I’m having difficulty downloading the forms, the formatting changes etc. What do I do?

The forms were drafted using Microsoft Word 2000. If you are not using the same version of Word the forms may not download in the same format. You will need to review the approved form and then modify your downloaded forms to comply with the Registry’s requirements (see above point re formatting).

When completing the form I can’t get the details in the right hand side of the document to line up with the left hand side, can you assist?

No, we have not experienced this issue with the forms. It may have arisen when you downloaded the forms.

Whilst you shouldn’t play around with the font, layout etc. you may need to amend the table settings in the form so that the text lines up.

It should be in the order:

When adding additional applicants etc. to an approved form should it be in the order:

Name of Applicant One
Name of Applicant Two
Address of Applicant One
Address of Applicant Two

Name of Applicant One
Address of Applicant One
Name of Applicant Two
Address of Applicant Two

All the details for applicant one should appear first and then all the details for applicant two etc.

Or should it be in the order:

Name of Applicant One
Address of Applicant One
Name of Applicant Two
Address of Applicant Two

Do I have to complete the form footer?

Yes, the form footer must always be completed. If the footer is not completed fully your application will be returned to you.

Can I delete paragraphs if they are not applicable?

As stated in the Note section of the form, if a paragraph is not applicable:

- a. the paragraph must remain; but
- b. all wording must be deleted; and replaced with the words “Not applicable”.

Please do not delete the paragraph completely.

Should I delete the NOTE section at the end of the form?

Yes, it is our preference that the NOTE section at the end of the form is deleted from your final draft.

Should I delete the text which appears in [brackets] and italics?

Yes, as per the NOTE section on the bottom of the form this text should be deleted from your final draft.

Notice of intention to apply (Form 2)

I made an error in my Notice of Intention.

1. do I need to readvertise; and
2. if so how do I go about it?

It will depend on the mistake.

You should email the Registry to find out if readvertising is necessary.

If you do need to readvertise you must send your replacement notice to the Registry, in the standard way, and:

1. confirm the notice is a replacement notice;
2. request the incorrect notice be removed from the website and provide the date that the incorrect notice was published; and
3. request the replacement notice be published.

The 14 day advertising period will re-set upon the replacement notice being published on the website.

When asked for the “address in Will”, if the address which appears in the Codicil is different should I note both?

Yes, note the address in the Will first and then the address in the Codicil e.g.:

“14 Smith Street, Smithton Tasmania (13 Smith Street, Smithton Tasmania in the Codicil)”

How do I complete the forms if there is a codicil?

If there is a Codicil (or multiple Codicils) Form 2 ‘Notice of intention...’ must reflect this, for example: Where the form asks for:

1. The “Date of the Will:” “01/05/2016 (date of Codicil: 05/01/2017)”
2. The “Executor named in Will:” “JOE

BLOGGS JILL SMITH ((Executor named in Codicil))”

2. Under the “TAKE NOTE:” section “...Probate of the Will dated 01/05/2016 and the Codicil dated 05/01/2017...” (this also applies to the “Apply for a grant of:” section of Form 4 “Application for grant...” 4. Where the form asks for the “Address in the Will:” see the FAQ below. “14 Smith Street, Smithton Tasmania (13 Smith Street, Smithton Tasmania in the Codicil))”

Should all executors, including substitute executors, be listed in the Notice of Intention?

Yes, all executors named in the Will must be listed including substitute executors.

How do I clear off, in the Notice of Intention, executors who are not applying?

You don't clear off executors in the Notice of Intention (Form 2).

You clear off executors in your affidavit in support.

If directors, partners or a trustee company are named executors in the Will do I simply state that in the Notice of Intention under “Executor named in Will” or do I state the names of the individuals who are applying?

In the “*Executor named in Will*” section you must confirm what is stated in the Will e.g.:

“two of the directors of Corporation X (ABN: 123456) as at my date of death...”

Then in the “*Full name of applicant*” section you can confirm which individuals are applying e.g.:

“John Smith”

you will then need to confirm, in your affidavit in support, that John Smith is a director of Corporation X etc.

Applications

The Record of Death usually only states the name of the nursing home as the last residential address, without the full street address.

No, hospitals and nursing homes are an exception to the rule.

In instances where the Record of Death only states the name of the home e.g.:

“Ningana Nursing Home, Sorell”

Can I include the full address in the application documents and if I do, do I have to state “in the Record of Death stated as...” after it?

You may recite the full address e.g.:

“Uniting Agewell Sorell Community Ningana / The Circle Sorell Tasmania”

without clarifying that it differs from the Record of Death.

Do I list the Net or Gross value of the estate in Form 4?

The gross value (total assets) of the Tasmanian assets must be listed in Form 4 not the net value (total assets less total liabilities) of the estate.

How do I complete the forms if there is a codicil?

Form 5 (and the relevant paragraphs of Form 6) “Affidavit in support...” must also reflect this, for example:

1. At paragraph 4: “... the true and original last valid Will and Codicil... The Will is dated 01/05/2016 The Codicil is dated 05/01/2017”
2. At paragraph 5: “...witness to the Will and Codicil are...” Full name: JEFFREY JONES Full name: JOHN JONES Full name: MARGARET SMITH Full name: ILLEGIBLE”

	<ol style="list-style-type: none"> 3. At paragraph 6: “...aged 79 and 80 at the date of execution of the Will and Codicil (respectively)...” 4. At paragraph 7: “...the Will and Codicil is necessary” 5. At paragraph 8: “... the Will and Codicil...”
<p>What do I need to do if a list is mentioned in a Will?</p>	<p>PR 50 in Division 2 of the Probate Rules 2017 sets out what you need to do in such circumstances.</p>
<p>What do I put at paragraph 5 of Form 5 if I cannot decipher the names of the witnesses to the Will?</p>	<p>If the names of the witnesses do not appear or are illegible you may state that they are illegible e.g.:</p> <p><i>“Full name: Illegible”</i></p> <p>If there are other identifying details such as occupation you may wish to note that e.g.:</p> <p><i>“Full name: Illegible – Law Clerk”</i></p> <p>Note:</p> <p>The words “<i>Not applicable</i>” are not appropriate here.</p> <p>If you state “<i>illegible</i>” and the Registry can decipher the name the documents will be returned to you. Please make an effort to decipher the name.</p>
<p>Do I need to recite the full relationship history of the deceased at paragraph 9 of Form 5 and 6?</p>	<p>Yes, we require the full relationship history of the deceased (if the form requests it then the section must be completed), however, we will be practical about it.</p>

What if the names of spouses and dates of marriage and divorce are not known?

In circumstances where a change in relationship status may have an effect on a testamentary document we would expect specific names and dates to be provided.

Where changes in relationship status are clearly not going to effect a testamentary document we would still expect the history of the change in status' to be recorded but less detail will be accepted.

For example:

The deceased made a Will a year before he died, in 2016. He first married in approx. 1950 and divorced sometime later and then married again.

In such circumstances it would be sufficient to complete paragraph 9 of Form 5 using less detail:

*“The deceased was:
married in approximately 1950*

divorced in approximately 1970

married to Y on 01/01/1980”

If I am the spouse of the deceased, at paragraph 8 of Form 7 do I clear off all other spouses?

Yes, you should confirm:
that *“there is no other spouse of the deceased within the meaning of the Intestacy Act 2010”*

Can I state “Not applicable” at paragraph 11 of Form 7?

Paragraph 11 is always applicable as there will always be a beneficial interest in the estate under the Intestacy Act 2010.

Even if the only person with a beneficial interest is the applicant they must recite their name as the person with the beneficial interest in the deceased estate.

Can I delete the “Assets outside Tasmania” section of Form 10 if it is not applicable?

If the deceased does not hold any assets outside Tasmania, please delete all form guidance which appears in [square brackets and italics] and write “Not Applicable” or “Nil” in the table.

Do not delete the table.

Should I list a pre-paid funeral as an asset?

In the opinion of the Registry, a pre-paid funeral (through a funeral home) is not an asset of the estate because the funds are held in trust according to the Prepaid Funeral Act 2004 in what’s called a “Funeral Trust” (usually operated by a third party).

The pre-paid funeral can be transferred from home to home quite easily but the agreement can only be terminated and the funds returned to the contributor in very limited circumstances (s 8). Further, the funds are paid directly to the providing funeral home upon an invoice being raised and bypass the estate entirely (s 14).

Therefore, like superannuation paid directly to beneficiaries and not to the estate, the trust funds should not be listed as an asset of the estate (this may or may not be the case with funeral insurance and bonds, depending on individual policies)

If there is a pre-paid funeral should I list the funeral account as a liability?

The funeral account, irrespective of whether the deceased had a pre-paid funeral, remains a

liability of the estate and must be recorded in the Inventory in accordance with PR 35.

Should I list superannuation, life insurance, shares and bank accounts etc. as Tasmanian assets?

Firstly, you must confirm that these assets are in fact assets of the estate e.g. the superannuation is payable to the estate and the bank accounts are held in the sole name of the deceased.

Often these assets are cross-jurisdictional.

If these assets can be administered in Tasmania and you are going to rely on the Tasmanian grant to administer these assets then they should be listed as Tasmanian assets.

If the deceased owned a share portfolio can I simply list that as an asset in the inventory with a total value or must I individually list the shares?

You may list a portfolio as a whole in the inventory only if you annex the portfolio report (detailing the assets held in the portfolio) to the inventory e.g.:

“Shadforth Portfolio account number 123 (annexed and marked “REP-1” is a copy of the Portfolio Report)...per Shadforth valuation.....\$3,000,000”

Otherwise, the shareholdings must be listed individually in the inventory.

The affidavits in support of an application state:

“The values set out in the inventory are fair and reasonable at the date of swearing this affidavit and the liabilities set forth in the inventory are justly due at the date of swearing this affidavit.”

However, P 35(2)(c) and (d) of the Probate Rules 2017 state:

The relevant paragraph in the affidavit will be amended in due course to make it clear that:

1. assets must be listed as at date of death;
2. liabilities must be listed as at date of swearing the affidavit.

In the interim, you may change the paragraph in the affidavit to confirm the above e.g.:

“The inventory of the assets and liabilities is to be in an approved form and is to include particulars of the following matters:

(c) an assessment of the fair and reasonable gross value of each item of the real and personal estate of the deceased, as at the date of death of the deceased;

(e) the amount of each liability, if any, owed by the deceased as at the date of the swearing of the affidavit supporting the application for a grant in relation to the estate;”

“The values [of the assets] set out in the inventory [are as at the deceased’s date of death and] are fair and reasonable at the date of swearing this affidavit and the liabilities set forth in the inventory are justly due at the date of swearing this affidavit.”

If there is an incapacitated executor do I need to file a Form 16 (Consent to a grant by a beneficiary or interested party) and a Form 28 (Supplementary Affidavit - by medical practitioner) in every instance?

No, If the incapacitated executor has appointed an enduring attorney they may renounce on behalf of the executor pursuant to s 31(2A)(k) or (l) of the *Powers of Attorney Act 2000*.

PR 25 may be used in a number of circumstances including where an incapacitated executor has not appointed an enduring attorney.

The Form 9 - Affidavit of Caveat Search indicates a practitioner can make the Affidavit. Can a paralegal or clerk provide their details instead?

Yes, a paralegal or law clerk (employed and acting on behalf of a law firm) may provide their details in the footer instead of an Australian Legal Practitioner.

Similarly they may undertake the caveat search and swear/affirm the Affidavit of Caveat Search instead of an Australian Legal Practitioner.

Executing / Filing applications

Can I still exhibit the Will using a sticker which recites the exhibit clause?

Yes, stickers with the exhibit or annexure clause printed on it may be used.

Can I also use stickers on the annexures?

Obviously the sticker should be placed over a blank part of the document.

Exhibit or annexure certificates/pages must not be used.

Do my exhibit and annexure clauses need to be exactly the same as the samples provided at the training?

No, they don't need to be exactly the same.

Can the annexure clause which appears on the Form 10 - inventory:

1. be used for other annexures to the affidavit?

a. Yes, the same wording may be used on all the annexures or you may wish to use different wording (if you have an annexure stamp already etc.)

2. be amended?

b. No, the annexure clause on the inventory is part of the approved form and should not be amended.

If documents are sworn or affirmed outside Tasmania what should the words of oath or affirmation be?

If the deponent is affirming the documents rather than swearing them:

- the body of the document;
- jurat; and
- annexure and exhibit clauses must reflect this
(and vice versa).

If the deponent is affirming the documents outside of Tasmania e.g. in another state or territory:

- the body of the document must be updated to recite the correct affirmation under the relevant state or territory act e.g.: in South Australia the *Oaths Act 1936* applies and the words of affirmation should be

“I truly and solemnly affirm...”

in accordance with s 14 of the Act.

If documents are sworn or affirmed outside Tasmania who can witness them?

See PR 30 and SCR 511 and 512.

Do I have to provide a copy of the Will with my application?

Yes, in accordance with Circular 14 of 2017 each application for Probate or Letters of Administration (with the Will annexed) must be accompanied with a completed A4 double-sided, unstapled and legible copy of the Will (and any other testamentary document e.g. Codicil).

If you do not provide a copy of the Will (and other testamentary documents) the Registry will either:

- a. request a copy and your application will not progress until one is provided; or
- b. issue a requisition.

Can I apply as soon as I publish my notice under PR 33 and sign my documents?

An application cannot be filed until 14 days after your notice of intention is published on the website. If you file your application within 14 days it will be returned to you and you will have to resubmit it after the 14 day period has expired.

Can the application documents be signed by the applicant during the 14 day notice period?

Yes. Probate Rules 33 and 61 only state that the application cannot be filed until 14 days after the notice is published.

The guidance in the forms is incorrect and will be amended in due course.

This is not the case for reseals. See section 49 of the *Administration and Probate Act 1935*.

Caveats / citations

Can I send caveats to the probate.notices mailbox?

No, all documents must be filed in original form except for the Notice of Intention (form 2) which must be emailed, in PDF format, to the probate.notices mailbox.

No other correspondence should be sent to the probate.notices mailbox. Importantly, no action will be taken on it if it is.

Do I have to get a Form 21 ‘Statement of grounds of objection to grant’ sealed before I can serve it?

No. Form 21 is not sealed by the Probate Registry. It also doesn’t need to be filed at and date stamped by the Probate Registry prior to service.

PR 80(2)(a) states “...the caveator – (i) serves on the applicant, or the Australian legal practitioner acting for the applicant; and (ii) files with the Registrar – a statement under rule 81 of the grounds of his or her objection to the issue of the grant;...”

Do I need to file an affidavit of service?

Yes. PR 80(2)(a)(i) requires that Form 21 is served on the applicant. The Probate Registry requires evidence of service by way of affidavit. Therefore, in order to comply with PR 80 the caveator needs to file both an affidavit of service and Form 21 with the Probate Registry.

When does the 28 days commence after I have served Form 21 ‘Statement of grounds of objection to grant’?

The 28 days commences when Form 21 is filed with the Probate Registry.

PR 80(3)(a) states:

(3) A caveat in force under subrule (2)(a) will lapse if the caveator fails to –

(a) commence proceedings under Part 29 of the Supreme Court Rules 2000 within 28 days after the filing of a statement of the grounds of objection under rule 81;

What if Form 21 is filed with the Probate Registry prior to the affidavit of service?

The 28 days still runs from the date Form 21 is filed with the Probate Registry.

Searches / exemplifications / certified copies

How do I obtain a copy of documents held by the Registry?

Searches must be made using the current request form available on our searches page.

If you are a legal practitioner acting on another’s behalf and you select item 12 on the form you must advise the Registry which category your client falls within and your clients name (see the form) otherwise the request will not progress.

How do I request a certified copy or exemplification?

Requests for certified copies of documents or exemplifications of grants must be made using the current request form available on our searches page.