

# SUPREME COURT OF TASMANIA

## CIRCULAR TO PRACTITIONERS

No 14 of 2017

31 October 2017

### PROBATE PRACTICE AND PROCEDURE

Practitioners are advised that the Probate Rules 2017 (“the 2017 Rules”) will commence on 8 November 2017. The Probate Rules 2017 are available on-line at this link prior to commencement: [Probate Rules 2017](#).

Practitioners are advised of the following issues that will apply upon commencement.

#### I. Transition period

- a. For a period of two months from the date of commencement the following transitional provisions apply:
  - the Probate Registry will accept applications and supporting documents that comply with the 1936 Rules and use the existing forms if the application was signed or prepared by the applicant/s prior to the commencement date of the 2017 Rules;
  - otherwise all applications dated on or after the commencement date must comply with the 2017 Rules and use the Probate Forms 2017 (“the 2017 Forms”).
- b. Requisition fees will continue to apply upon the introduction of the 2017 Rules.

The only exceptions are errors that, in the discretion of the Registrar, are reasonable errors in the interpretation of the 2017 Rules and Forms.

#### 2. The 2017 forms

The 2017 Forms are now available on the Supreme Court website to download at this link: [Probate Forms 2017](#).

The 2017 Forms:

- contain notes to assist in completion;

- are **not to be amended** except as specified in the ‘note’ section contained in the form e.g. there must not be any amendments to the layout of the forms including font, text size or paragraphing etc; and
- must be submitted without backing sheets or any other unnecessary pages.

### 3. Queries about forms and rules

The Probate Registry requests that all queries about the 2017 Rules and Forms be submitted by email to [probate@supremecourt.tas.gov.au](mailto:probate@supremecourt.tas.gov.au).

Answers to frequently asked questions will then be provided to practitioners and trustee companies.

### 4. Notice of Intention

In accordance with the 2017 Rules, a notice of intention to apply for a grant must be published on the Supreme Court’s website at least 14 days prior to lodging an application for a grant (see rule 33 and 61 of the 2017 Rules and form 2):

- a. The notice page is now available on the Supreme Court’s website at the following link: [Notice of Intention page](#).
- b. Notices must be emailed to the Probate Registry in PDF format with the file name containing the full name of the deceased in the following format:

“BLOGGS James John.pdf”

to [probate.notices@supremecourt.tas.gov.au](mailto:probate.notices@supremecourt.tas.gov.au);

- c. with the full name of the deceased in the subject line of the email in the following format:

“BLOGGS James John – Notice of Intention to Apply”

Notices will be published daily at approximately 10 am.

A notice emailed to the Probate Registry after 8 am will not be published on the Court’s website until approximately 10 am the following business day.

Practitioners should confirm that a notice has been published before completing the remainder of their application. If a notice has been emailed correctly and has not been published please contact the Probate Registry.

### 5. Search requests

A reminder to all practitioners:

- search requests should now be made using the standard search request form which is available on the Supreme Court’s website at the following link: [Searches page](#). The search request form will be updated on the commencement date of the 2017 Rules.
- exemplification and certified copy requests should now be made using the standard request form which is also available on the [Searches page](#).

## 6. Information kits

Practical guidance on making an application in the Probate Registry can be found in our information kits which are available on the Supreme Court’s website at the following link: [Information Kits page](#). The Information Kits and the Information Kits page will be updated on the commencement date of the 2017 Rules.

## 7. Grants

Grants, reseals and exemplifications will continue to issue in the same format. The only change to the content is the marital status of the deceased will no longer appear on the grant, reseal or exemplification.

## 8. Fees

The probate fees are set out in Schedule 1 of the 2017 Rules. Please note although the fees have not changed at the date of this Circular they will be listed in fee units and will increase annually on 1 July in accordance with the *Fee Units Act 1997*.

The fees currently payable are:

	<b>ITEM</b>	<b>Fee unit</b>	<b>Fee \$</b>
1.	For provisional assessment of application documentation by Registrar	96 (per provisional assessment)	150 (per provisional assessment)
2.	For assessment of draft citation document by Registrar	96 (per provisional assessment)	150 (per provisional assessment)
3.	For a requisition	32	50
4.	For granting probate or letters of administration or for resealing a foreign grant-	280	435

	a) if the gross value of the estate in Tasmania as stated in the short form affidavit is less than \$50,000	506	785
	b) if that gross value is equal to or greater than \$50,000 but is less than \$250,000	548	850
	c) if that gross value is equal to or greater than \$250,000 but is less than \$500,000	690	1070
	d) if that gross value is equal to or greater than \$500,000 but is less than \$1,000,000	874	1355
	e) if that gross value is equal to or greater than \$1,000,000 but is less than \$2,000,000	993	1540
	f) if that gross value is equal to or greater than \$2,000,000 but is less than \$5,000,000	1193	1850
	g) if that gross value is equal to or greater than \$5,000,000		
5.	For filing an election to administer an estate	77	120
6.	Searches, copies or certificates –		
	a) for a search	19	30
	b) for exemplification	174	270
	c) for an office copy of a document	0.64 (each page or part of a page)	1 (each page or part of a page)
	d) for preparation and certification of certified copies of documents	32	50
7.	For lodging a caveat	32	50
8.	For correcting a grant where the source of the error was not the Registry	32	50

## 9. Additional training

The Probate Registry will conduct training sessions on the 2017 Rules on the 2<sup>nd</sup> and 3<sup>rd</sup> of November 2017 through the Law Society of Tasmania. To find out more please visit the following link: [Law Society of Tasmania](#). In addition, the Probate Registry may conduct further training sessions in early 2018 if there is sufficient demand.

## **10. Caveat list**

A list of current caveats is now available on the Supreme Court's website at the following link: [Caveats page](#).

The list will be updated when a new caveat is filed or when a caveat lapses.

Practitioners should check the list in order to conduct a caveat search as required by r 64 of the 2017 Rules and s 49 of the Administration and Probate Act 1935.

## **11. Security for Letters of Administration**

Part 10 of the 2017 Rules gives the Registrar discretion to require an applicant for letters of administration to provide security for proper administration of the estate.

If security is required in respect of an application, the Registrar will advise the applicant or the practitioner acting for the applicant in writing.

## **12. Replaced circulars.**

The following circulars have now been rescinded:

No 3 of 2017	Probate Amendment Rules 2017
No 4 of 2016	Probate Practice & procedure
No 9 of 2016	Payment of Probate fees by EFT
No 14 of 2015	Probate procedure
No 3 of 2015	Probate practice and procedure
No 8 of 2012	Amendments to Probate Rules
No 7 of 2011	Amendments to Probate Rules
No 14 of 2010	Probate Amendment Rules 2010
No 3 of 2007	Probate Applications
No 7 of 2005	Probate Amendment Rule 2005

## **13. Reminders of practical issues previously advised in earlier circulars**

### **a. Invoicing**

All tax invoices for probate application fees will continue to be emailed to applicants (rather than posted, sent via DX, or put in the Supreme Court correspondence boxes).

All tax invoices will be emailed to the law firm's office email address, as recorded with the Law Society.

#### **b. Copies of testamentary papers**

Applications for Probate or Letters of Administration (with the Will annexed) which do not include a copy of the testamentary papers will be returned to the Applicant with an expectation that the application will be re-lodged with a copy of the testamentary papers.

Practitioners are reminded that the copy testamentary papers should be A4 size, double-sided, and unstapled.

#### **c. Inventory of assets and liabilities – superannuation**

If superannuation or life insurance is to be paid to a beneficiary under a binding nomination, or at the trustee's discretion, such funds should not be listed in the Inventory.

If superannuation or life insurance is listed in the Inventory, it should be immediately followed by confirmation that it is payable to the estate, i.e. "XYZ Superannuation Fund A/C # 1234 (payable to the estate) \_\_\_\_\_ \$000,000".

#### **d. Inventory of assets and liabilities - jointly owned assets**

Jointly owned assets should not be included in the Inventory of assets and liabilities with the exception of assets held jointly as tenants in common.

If a property, held as tenants in common, is listed in the Inventory, it should be immediately followed by confirmation of how the property is held i.e. "(held as tenants in common in equal shares)".

#### **e. Administrators domicile and bonds**

Amendments to the *Administration and Probate Act 1935* brought about by the *Justice and Related Legislation (Miscellaneous Amendments) Act 2015* came into effect on 13 October 2015.

The amendments affect the practice in relation to non-contentious probate by:

- permitting the Court to grant Letters of Administration to adults whether or not they reside in Tasmania; and
- removing the requirement for the recipient of a grant of administration to provide an Administration Bond to the Registrar.

The legislation affects all applications for grants where the estate arose from deaths of persons on and from 13 October 2015.

**f. Record of death – incorrect date of death**

If the date of death or the marital status is incorrect on the Record of Death please either obtain an amended copy with the correct date or marital status or swear a supplementary affidavit, exhibiting the Record of Death, correct the statement about the date of death/marital status and otherwise adopt the contents of the Record of Death.

**g. Invoicing and payment of fees by Electronic Funds Transfer**

The Probate Registry can accept electronic funds transfer for payment of probate fees.

Practitioners seeking to make payment by electronic funds transfer are required to make their payment to the following bank account:

Account Name: Department of Justice Operating Account  
Bank: Westpac  
BSB: 037-001  
Account No.: 267793  
Reference: Probate

Once payment is made to the above bank account, practitioners must send a remittance advice by email to:

[probate@supremecourt.tas.gov.au](mailto:probate@supremecourt.tas.gov.au)

To enable timely reconciliation of EFT payments, the email should include the following details:

1. Practice name;
2. Date of payment;
3. Amount of payment;
4. Probate file reference number, the name of the estate or such other information to enable the correct and timely receipting.
5. Transaction receipt number from the firm's financial institution.

Subject to any requisitions being satisfactorily answered a grant of probate will issue after the remittance advice is matched with the invoice.