

Supreme Court of Tasmania

Probate Rules 2017

FAQ's page

	Question	Answer
1.	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.
2.	What do I put at paragraph 5 of Form 5 if I cannot decipher the names of the witnesses to the Will?	<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>
3.	Can I reformat the forms?	No.

	<p>The forms must remain in their approved format.</p> <p>The font must be Gill Sans MT. The font size for the body of the document is 12.</p> <p>Text should not be altered to be bold, <i>italicised</i> or <u>underlined</u>.</p> <p>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.</p>
<p>4. Should I list superannuation, shares and bank accounts etc. as Tasmanian assets?</p>	<p>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.</p> <p>Often these assets are cross-jurisdictional.</p> <p>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.</p>
<p>5. Do I have to complete the form footer?</p>	<p>Yes, the form footer must always be completed. If the footer is not completed fully your application will be returned to you.</p>
<p>6. Do I have to provide a copy Will?</p>	<p>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</p>

	<p>copy of the Will (and any other testamentary document e.g. Codicil).</p> <p>If you do not provide a copy of the Will (and other testamentary documents) the Registry will either:</p> <ol style="list-style-type: none"> a. request a copy and your application will not progress until one is provided; or b. issue a requisition.
<p>7. How do I file a search request?</p>	<p>Searches must be made using the current request form available on our searches page.</p> <p>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.</p>
<p>8. How do I request a certified copy or exemplification?</p>	<p>Requests for certified copies of documents or exemplifications of grants must be made using the current request form available on our searches page.</p>
<p>9. I am having difficulty downloading the forms, the formatting changes etc. What do I do?</p>	<p>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).</p>

10.	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 <i>“there is no other spouse of the deceased within the meaning of the Intestacy Act 2010”</i>
11.	Should all executors, including substitute executors, be listed in the Notice of Intention (Form 2)?	Yes, all executors named in the Will must be listed including substitute executors.
12.	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?	<p>In the <i>“Executor named in Will”</i> section you must confirm what is stated in the Will e.g.:</p> <p><i>“two of the directors of Corporation X (ABN: 123456) as at my date of death...”</i></p> <p>Then in the <i>“Full name of applicant”</i> section you can confirm which individuals are applying e.g.:</p> <p><i>“John Smith”</i></p> <p>you will then need to confirm, in your affidavit in support, that John Smith is a director of Corporation X etc.</p>
13.	How do I clear off, in the Notice of Intention (Form 2), executors who are not applying?	<p>You don’t clear off executors in the Notice of Intention (Form 2).</p> <p>You clear off executors in your affidavit in support.</p>
14.	What do I need to do if a list is mentioned in the Will?	Rule 50 in Division 2 of the Probate Rules 2017 sets out what you need to do in such circumstances.
15.	The Record of Death usually only states the name of the nursing home as the last residential address, without the full street address.	<p>No, hospitals and nursing homes are an exception to the rule.</p> <p>In instances where the Record of</p>

<p>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?</p>	<p>Death only states the name of the home e.g.:</p> <p><i>“Ningana Nursing Home, Sorell”</i></p> <p>you may recite the full address e.g.:</p> <p><i>“Uniting Agewell Sorell Community Ningana / The Circle Sorell Tasmania”</i></p> <p>without clarifying that it differs from the Record of Death.</p>
<p>16. Can we still exhibit the Will using a sticker which recites the exhibit clause?</p> <p>Can we also use stickers on the annexures?</p>	<p>Yes, stickers with the exhibit or annexure clause printed on it may be used.</p> <p>Obviously the sticker should be placed over a blank part of the document.</p>
<p>17. Do my exhibit and annexure clauses need to be exactly the same as the samples provided at the training?</p>	<p>No, they don’t need to be exactly the same.</p>
<p>18. I made an error in my Notice of Intention (Form 2).</p> <p>1. do I need to readvertise; and</p> <p>2. if so how do I go about it?</p>	<p>It will depend on the mistake. You should email the Registry to find out if readvertising is necessary.</p> <p>If you do need to readvertise you must send your replacement notice to the Registry, in the standard way, and:</p> <ol style="list-style-type: none"> 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.

19. Do I need to recite the full relationship history of the deceased in the affidavit in support of application?

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

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.

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

		<i>married to Y on 01/01/1980”</i>
20.	<p>If the deceased owned a share portfolio can I simply list that as an asset in the inventory with a total value?</p>	<p>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.:</p> <p><i>“Shadforth Portfolio account number 123 (annexed and marked “REP-1” is a copy of the Portfolio Report)....per Shadforth valuation.....\$3,000,000”</i></p> <p>Otherwise, the shareholdings must be listed individually in the inventory.</p>
21.	<p>Should shares and bank accounts be listed as Tasmanian assets in the Inventory?</p>	<p>Tasmanian shares and bank accounts must be listed in the Tasmanian asset section of the inventory.</p> <p>Shares listed on the ASX and bank accounts with nationwide banking corporations may be listed in the Tasmanian asset section, given they are cross jurisdictional in nature.</p>
22.	<p>The affidavits in support of an application state:</p> <p><i>“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.”</i></p> <p>However, Rule 35(2)(c) and (d) of the Probate Rules 2017 state:</p> <p><i>“The inventory of the assets and liabilities is to be in an approved form and is to include</i></p>	<p>The relevant paragraph in the affidavit will be amended in due course to make it clear that:</p> <ol style="list-style-type: none"> 1. assets must be listed as at date of death; 2. liabilities must be listed as at date of swearing the affidavit. <p>In the interim, you may change the paragraph in the affidavit to confirm the above e.g.:</p>

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.”

23.

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*.

24.

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

Or should it be in the order:

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

It should be in the order:

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.

25.	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.
26.	Where the approved form asks for the “address in Will”, if the address which appears in the Codicil is different should I note both?	<p>Yes, note the address in the Will first and then the address in the Codicil e.g.:</p> <p><i>“14 Smith Street, Smithton Tasmania (13 Smith Street, Smithton Tasmania in the Codicil)”</i></p>
27.	The footer of the documents ask for the name of the practitioner acting. The Affidavit of Caveat Search indicates a practitioner can make the Affidavit. Can a paralegal or clerk provide their details instead?	<p>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.</p> <p>Similarly they may undertake the caveat search and swear/affirm the Affidavit of Caveat Search instead of an Australian Legal Practitioner.</p>
28.	<p>Can the annexure clause which appears on the inventory:</p> <ol style="list-style-type: none"> a. be used for other annexures to the affidavit? b. be amended? 	<ol style="list-style-type: none"> 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.) b. No, the annexure clause on the inventory is part of the approved form and should not be amended.
29.	Can I send caveats and other documents to the probate.notices mailbox?	<p>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.</p> <p>No other correspondence should be sent to the probate.notices</p>

		mailbox. Importantly, no action will be taken on it if it is.
30.	Should I delete the text which appears in [brackets] and <i>italics</i> ?	Yes, as per the NOTE section on the bottom of the form this text should be deleted from your final draft.
31.	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.
32.	When completing the form I cannot get the details in the right hand side of the document to line up with the left hand side, can you assist?	<p>No, we have not experienced this issue with the forms. It may have arisen when you downloaded the forms.</p> <p>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.</p>
33.	If there is an incapacitated executor do I need to file Form 16 (Consent to a grant by a beneficiary or interested party) and Form 28 (Supplementary Affidavit - by medical practitioner) in every instance?	<p>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.</p> <p>Rule 25 may be used in a number of circumstances including where an incapacitated executor has not appointed an enduring attorney.</p>