

SUPREME COURT OF TASMANIA

CIRCULAR TO PRACTITIONERS

No. 3 of 2015

22 April 2015

PROBATE PRACTICE AND PROCEDURE

Probate practitioners' attention is drawn to the following matters:

- A. Grants of Probate and Letters of Administration issued by the Probate Registry will no longer have a special backing sheet when supplies are exhausted. This is in accordance with the practice in other jurisdictions.
- B. Probate Registry staff have noted that the following are common deficiencies in applications received, which result in requisitions being issued, and causing delays in issuing grants:

General

1. If the name of the deceased or an executor/administrator differs from that appearing in the Will or the Record of Death, a statement should be inserted in all documents after the name of the deceased/executor as follows e.g. "in the Will called" or "incorrectly noted in the Record of Death as", or "also known as"
2. Practitioners should ensure that the date and place of swearing are stated in the jurats on the documents; and that they should be signed by the executor/administrator and the Justice(s) of the Peace/Solicitor(s).

Executor's Oath

3. Rights of executors with prior or equal right must be cleared off if not applying for a grant due to renunciation, reserving leave, or predeceasing. Please note that the Oath must stand alone. In order to clear off a predeceased executor the Oath must state:

"That I/we am/are the (relationship to the testator) and the substituted executor/s named in the Will; and that the instituted executor named in the Will died on/renounced his/her executorship on/reserved his/her right to apply"
4. Divorce details must be stated if the Will is dated prior to 1 March 2009 and the date of the decree absolute occurred prior to that date.

5. If the deceased was in a significant relationship and/or the will refers to their partner a statement must be included as to whether or not a Deed of Relationship had been registered.
6. The relationship of the executors to the deceased must be stated and also a statement as to whether they are the instituted/substituted/surviving etc. executor.
7. There must be an exhibit clause on the Will; and it must contain the same date as the Oath. Ensure it is signed by the executor/s and the same Justice(s) of the Peace or Solicitor(s) who witnessed the Oath.

Short Form Affidavit

8. The correct date of death, place of death and age at death must be stated in paragraph 1 of the Short Form Affidavit.
9. The annexure clause on Inventory "A" should contain the same date as the affidavit and should be signed by both the Justice of the Peace or Solicitor and the executor/administrator(s).
10. Jointly owned assets should not be included in Inventory "A". If a property is held as tenants in common a statement should be inserted after the description of the relevant property e.g. "Held as tenants in common in equal shares".
11. Superannuation which is to be paid to a nominated beneficiary should not be included in Inventory "A". If superannuation is to be included in Inventory "A" the following statement should be included after the description "- to be paid to the estate".
12. The total value of the assets and the liabilities is to be included on Inventory "A".

Administrators Oath

13. As a minimum, evidence as to a search for a Will in paragraph 3 should include:
 - (a) there has been a search of personal papers and effects for a will;
 - (b) enquiries have been made of the two Tasmanian trustee companies, i.e. Tasmanian Perpetual Trustees Limited and the Public Trustee, and
 - (c) enquiry of Tasmanian legal firms by conducting in the Tasmanian Law Newsletter a search request for a will. This newsletter issues each Wednesday to firms and an email to info@taslawsociety.asn.au is the Law Society's preferred method of communication.
14. All persons with a prior or equal right to apply for letters of administration must be cleared off in paragraph 5 of the Oath. If a spouse is applying, the oath must include the statement that "There was no other spouse within the meaning of the Intestacy Act 2010".
15. An annexure clause should be inserted on Annexure "A" – the copy notice of intention to apply.

Bond

16. The gross value of assets should be inserted in paragraph I.
17. The date should be inserted in the Bond under “Sealed with my seal/our seals”, not in the attestation clause.
18. The correct attestation clause should be inserted at the end of the Bond, i.e.

"Signed, sealed and delivered by
the within-named
in the presence of –

A JUSTICE OF THE PEACE"

19. Please check that the terms I/we, my/our etc. are used correctly throughout the bond.

Record of Death

20. 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 an affidavit of death, exhibiting thereto the Record of Death, correct the statement about the date of death/marital status and otherwise adopt the contents of the Record of Death.

C. WILLS AMENDMENT (INTERNATIONAL WILLS) ACT 2012

Practitioners are advised that the abovementioned Act commenced on 11 March 2015 applying within the Tasmanian jurisdiction the *Annex to the Convention providing a Uniform Law on the Form of an International Will 1973*.

When complying with the Convention an International Will in prescribed form is accepted as valid between countries that are parties to that Convention. This avoids the necessity that has previously applied to prove the validity of an International Will by reference to additional evidence and the internal law of the other jurisdiction.

When an International Will is the subject of an application for a Grant of Probate the applicant(s) seeking the grant will need to satisfy the Registrar that the Will is from a country that is a party to the Convention and the Will complies with the Convention requirements as set out in the Act.