



Administration with the Will Annexed Checklist

Part 78 Supreme Court Rules 1970 (SCR)

Probate and Administration Act 1898 (PAA)

Succession Act 2006 (SA)

Note: Chapter 2 commenced on 1 March 2008. See transitional provisions for wills made before this date.

This checklist is intended as a guide for more straight forward applications for letters of administration with the will annexed. For wills made before 1 March 2008, or if the deceased died before that date, you should refer to the transitional clauses in Schedule 1 of the *Succession Act 2006*. For more complex applications it is recommended that you refer to Geddes, Rowland & Studdert, *Wills, Probate & Administration Law in NSW* (soon to be updated) and Mason & Handler, *Succession Law & Practice (NSW)* available on LexisNexis.

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1. Who may apply when there is no Executor?

- Where there is a **will but no executor** appointed, the instituted executor and substituted executor has died, renounced, refused to apply, is frail and elderly or lacks capacity, or the wording of the will does not allow the substituted executor to apply, there are only certain persons who may apply. In most cases the applicant must have an interest under the will, but in some cases the person may apply in a representative capacity for a person with an interest.
- The beneficiaries under the will** are the customary applicants where a named executor is not available.
- Beneficiaries who **survive the deceased** (by 30 days after 1 March 2008) are entitled to apply unless there is a contrary intention in the will or they are incapable, eg they lack capacity or are a minor: s 35 SA.
- All persons entitled should apply, or **notice** served on all beneficiaries not joining, or their consents obtained: r 19 SCR.
- Where only one of the persons entitled applies the Court prefers to make a grant to the person with the **major interest**.
- If a person is entitled (“the beneficiary”) in an estate **but dies before obtaining a grant** (in the “first estate”) and there is no person entitled to apply, the persons entitled to the beneficiary’s estate cannot apply in the first estate without first obtaining a grant of probate or administration in the beneficiary’s estate. Once appointed, the executors or administrators, in their capacity as “legal personal representatives” may apply for letters of administration with the will annexed in the first estate.

2. Publication of Online Notice – r 3 SCR, s 42 PAA, Form 116

- “Applicant” is the proposed administrator (not the solicitor). Include the name of all persons who are applying.
- Ensure **spelling** of deceased’s name and other details are correct as creditors, interested parties and the Court rely on word searches to find the deceased on the online website (your entry also becomes the official record on Justicelink).
- Where deceased was known by **more than one name** the proper practice is to refer to the person by the name in the will (unless it is misspelt), then in brackets include any alias eg Jane Anne Smith (also known as Annika Smyth).
- Your **case number** is the number generated by the online notice. A copy of the notice does not need to be filed.

3. Standard Documents – Part 78 SCR

<input type="checkbox"/> Form 111 – Summons for Administration with the will annexed	→ file original only, no copies	r 8
<input type="checkbox"/> File original will and any codicils	→ do not staple to other docs	s 30 PAA
<input type="checkbox"/> Form 120 – Affidavit of applicant for administration with will annexed	→ file original only, no copies	r 12
<input type="checkbox"/> Death certificate of deceased	→ file original or certified copy	r 10
<input type="checkbox"/> Form 117 – Inventory of property (annexed to affidavit of applicant)	→ file original only, no copies	r 10
<input type="checkbox"/> Form 112 – 2 SETS of the Draft grant, copy of sworn inventory and copy of will, each set stapled together		r 10
<input type="checkbox"/> Stamped or DX self-addressed A4 envelope		r 10
<input type="checkbox"/> Form 125 – Consents (Note: no approved form of notice)	→ file original only, no copies	r 19
<input type="checkbox"/> Form 135 – Notice and Form 134 Consents (informal documents)	→ file original only, no copies	r 42
<input type="checkbox"/> Form 41 – Affidavit of service of notice (also see rr 19, 39, 42)	→ file original only, no copies	r 19
Other documents as required including:		
<input type="checkbox"/> Form 123 – Renunciation of executor	→ file original only, no copies	r 18
<input type="checkbox"/> Affidavit of service of notice on non-applying executor	→ file original only, no copies	r 17
<input type="checkbox"/> Certificates of death, marriage, birth and divorce (decree absolute)	→ file original or certified copy	r 10
<input type="checkbox"/> Form 41 – Affidavit of service of notice	→ file original only, no copies	r 19
<input type="checkbox"/> Form 125 – Consents (Note: no approved form of notice)	→ file original only, no copies	r 19
<input type="checkbox"/> Form 133 – Consent (Interested witness) Notice is Form 140	→ file original only, no copies	r 39
<input type="checkbox"/> Forms 134 and 135 – Notice and Consent (Informal documents)	→ file original only, no copies	rr 14, 42
<input type="checkbox"/> Form 130 – Administration bond : s 64 PAA	→ file original only, no copies	r 23
<input type="checkbox"/> Form 131 – Surety two should be filed: r 23 SCR	→ file original only, no copies	
<input type="checkbox"/> Undertaking – Protocol for Minors (in lieu of bond: see Court Announcement on website 7/6/18) – May be adapted for incapable persons. See Section 12 below.		
<input type="checkbox"/> Form 140 – Notice of proceedings . Necessary for interested witnesses, rectification or contested proceedings		rr 39, 57, 64
<input type="checkbox"/> Form 151 – Affidavit confirming [personal] service of notice of proceedings	→ file original only, no copies	
<input type="checkbox"/> Form 40 – Affidavits setting out additional evidence	→ file original only, no copies	rr 14-24
Please note:		rr 10, 12
<input type="checkbox"/> Do not file more than one of each document except 2 x draft grants (Form 112) and annexures.		
<input type="checkbox"/> Each form should be stapled individually (Forms 111, 120 & 2 x 112) and annexures stapled to affidavit.		
<input type="checkbox"/> The will should be filed separately and not attached to any document.		
<input type="checkbox"/> Please do not file loose pages or put one giant staple through the entire application.		
<input type="checkbox"/> If you want an original death certificate returned file it separately, attach a certified copy to the affidavit of applicant and attach a post-it note to the death certificate requesting its return.		

4. Common Issues

Affidavits:

- Evidence:** When completing a pro-forma affidavit it is acceptable to use the wording provided but where an open-ended question is asked or when furnishing further evidence by affidavit the rules of evidence apply. For example:
 - **Identifying the will (Para 2 Form 118):** It is not enough to state that you “knew the deceased” in response to “how do you identify the will”. The deponent should explain how long they’ve known the deceased, whether they saw the deceased sign their name, whether (as a result) they recognise the deceased’s signature and whether or not the signature on the will is the deceased’s. It is not enough to “know” the deceased or even that you are able to recognise his or her signature if you do not also confirm whether or not the signature on the will belongs to the deceased.

<p>→ Affidavit of attesting witness: <i>The purpose of filing an affidavit of attesting witness is to prove due execution of the will. A witness swearing that the signature on the will is theirs does not provide evidence of due execution. The deponent must depose to matters in s 6 SA.</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> Ensure that all pages of the affidavit are signed by the applicant/s and the witness. <input type="checkbox"/> Nobody may sign on behalf of another person. <input type="checkbox"/> The front page of each annexure must be certified by the witness. 	
<p>Witnesses:</p> <ul style="list-style-type: none"> <input type="checkbox"/> A JP or Australian legal practitioner may witness an affidavit; s 151 PAA. <input type="checkbox"/> A solicitor without a practising certificate may not be a witness. <input type="checkbox"/> For authorised witnesses outside NSW see s 26 <i>Oaths Act 1900</i>. 	<p>s 151 PAA s 26 OA</p>
<p>Address for service:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Applicants may apply for letters of administration with the will annexed if they are outside NSW but within Australia but must provide an address for service within NSW: s 97 PAA. <input type="checkbox"/> An applicant may <i>not</i> apply for letters of administration with the will annexed if they reside outside Australia. The proper application is for a beneficiary who is resident in Australia to apply. If there is no beneficiary willing or able to apply who is resident in Australia, the beneficiary residing outside Australia may appoint a Power of Attorney pursuant to s 72 PAA. An attorney grant is limited until the beneficiary returns to the jurisdiction. <input type="checkbox"/> The Court will not make a "composite grant", that is, where one person is entitled to a full grant and the other is only entitled to a limited grant, eg a beneficiary and an attorney. <input type="checkbox"/> A Power of Attorney pursuant to s 72 PAA must be resident in NSW and may only be appointed when the beneficiary appointing them is outside NSW. See Section 7 below. <input type="checkbox"/> An Enduring Power of Attorney who is resident in NSW, may apply on behalf of an executor or beneficiary who is resident in NSW and has lost capacity. See Section 7 below. <input type="checkbox"/> Include your email address as the primary contact address for inclusion on the court's record. 	<p>s 97 PAA s 72 PAA</p>
<p>Caveats:</p> <p>If a caveat has been filed against the estate your options are:</p> <ol style="list-style-type: none"> (1) To wait for the caveat to lapse and as long as the caveator doesn't extend the caveat, the grant can be made without Court proceedings. Note: a caveat lapses after 6 months. (2) The caveator may withdraw the caveat. This may happen as a result of negotiation between the parties. (3) If you feel that the caveator doesn't have a legitimate interest you may file a notice of motion to have the caveat cease to be in force pursuant to r 73 SCR. (4) If the caveat is lodged pursuant to r 68 SCR you may file a summons (Form 4A or B) without naming the caveator as a defendant. You will then be required to prove the will in solemn form in Court. The caveator has a right to cross-examine on due execution. (5) If the caveat is filed pursuant to rr 66 or 67 and the caveator has a legitimate interest, then you (or the caveator) should commence contentious proceedings by way of statement of claim. <ul style="list-style-type: none"> <input type="checkbox"/> The matters in (3)-(5) will be listed before the Registrar for case management and a timetable for evidence. 	<p>Div 10 of Pt 78 SCR, ss 144- 148 PAA</p>
<p>Consent:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Where a consent is obtained the person whose consent is required must have capacity at law to give that consent and the consents must be filed. <input type="checkbox"/> If the applicant for a grant of administration with the will annexed is the legal guardian applying on behalf of a minor or the financial manager or enduring power of attorney applying on behalf of an incapable person, he or she may not consent to dispense with the bond and must file an administration bond and two sureties or comply with the Protocol for Minors (adapted for incapable persons where appropriate). See Section 12 below. 	<p>r 23 SCR Forms 125, 133, 134 s 64 PAA</p>
<p>Notices:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Where notices are served the person in receipt of the notice must have capacity at law to understand the effect of the notice. <input type="checkbox"/> The written consent of the legal guardian of a minor, or the consent of the financial manager or enduring power 	<p>rr 19, 57, 61 SCR Forms 135, 140</p>

of attorney of an incapable person, must be filed before an administration bond can be dispensed with or before a variety of applications, set out in this checklist, can proceed. A tutor may need to be appointed.	
<p>If an administration bond cannot be obtained:</p> <ul style="list-style-type: none"> <input type="checkbox"/> If an administration bond is required and cannot be obtained the applicant may comply with the Protocol for Minors. This provides for the funds due to the minor (or incapable person) to be deposited with the NSW Trustee & Guardian until the minor achieves their majority. See Section 12 below. 	r 23 SCR s 64 PAA
5. Summons for Administration with the Will Annexed – Form 111, r 8 SCR	
<ul style="list-style-type: none"> <input type="checkbox"/> The filing fee is calculated on the gross value of the estate. Property owned as joint tenants or property outside the jurisdiction is not included in the gross value of the estate. <input type="checkbox"/> Check with the superannuation or insurance provider to confirm whether or not the funds are estate assets. Normally superannuation is a non-estate asset. <input type="checkbox"/> If a grant of probate or administration with the will annexed has been made but the executor or administrator is unable to complete the administration and a new grant is necessary, the filing fee is calculated on the value of the unadministered estate at the date of the filing of the new summons. 	S 29 SA s 44 PAA
<ul style="list-style-type: none"> <input type="checkbox"/> Ensure that the “relief claimed” clearly sets out what you are applying for, including your claim for administration with the will annexed plus any additional claim for revocation, rectification, declaration under s 8, administration of the unadministered estate, passing over a person not entitled eg under the forfeiture rule. 	UCPR 6.12
<ul style="list-style-type: none"> <input type="checkbox"/> Ensure you correctly state in what capacity the applicant is applying. See Section 7 below. 	
6. File the Original Will (and any codicils) – UCPR 3.13, s 30 PAA	
<ul style="list-style-type: none"> <input type="checkbox"/> File the original will separately. Do not attach it to any other documents. 	s 30 PAA
<p>Where a person will not release the original will:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Please note that the Court will not grant Letters of Administration with the Will Annexed of a copy will when the whereabouts of the original is known. <input type="checkbox"/> A summons may be filed to commence proceedings seeking orders for production of testamentary documents or if proceedings are on foot a notice of motion may be filed. 	s 150 PAA s 54 SA
<p>If the original will is lost and you have a copy:</p> <ul style="list-style-type: none"> <input type="checkbox"/> You will need to propound (prove) a copy will. If the original was last with a person other than the deceased that person should swear an affidavit to that effect. <input type="checkbox"/> In the absence of proof as to who last held the original will it is assumed to have been in the testator's possession and the will is presumed to have been revoked unless the presumption of destruction <i>animo revocandi</i> is rebutted. An affidavit must be filed to overcome the presumption of revocation. <input type="checkbox"/> File the consent of, or serve notice on, all persons who would be adversely affected; r 19 SCR (note that there is no approved form of notice) and file an affidavit of service of notice (Form 41). Adversely affected persons include all persons who would be adversely affected if the copy will was admitted to probate and may include beneficiaries under the will or those entitled on intestacy including <i>de facto</i> (file Form 126 if appropriate) <input type="checkbox"/> The applicant must give an undertaking to prove the original will if it is found. <p>Basis of grant: “Letters of administration of copy will annexed. Beneficiary [or other] under the will. [Name] the executor appointed under the will [predeceased/renounced/unable to apply/refused to apply]. Limited until the original will is proved.”</p>	rr 19, 32 s 11 SA
<p>If the original will is lost and you do not have a copy of it:</p> <ul style="list-style-type: none"> <input type="checkbox"/> You will need to propound (prove) a lost will. If the original was last with a person other than the deceased that person should swear an affidavit to that effect. <input type="checkbox"/> In the absence of proof as to who last held the original will it is assumed to have been in the testator's possession and the will is presumed to have been revoked unless the presumption of destruction <i>animo revocandi</i> is rebutted. An affidavit must be filed to overcome the presumption of revocation. <input type="checkbox"/> Furnish affidavit evidence to show: 1/ that there was a will or a document purporting to embody the testamentary intentions of a deceased 2/ document revoked previous wills 3/ the will was not revoked 4/ its terms 5/ evidence of execution (affidavit of attesting witness) or that the deceased intended the document to constitute his or her will; <i>Cahill v Rhodes/Rhodes v Cahill</i> [2002] NSWSC 561 per Campbell J at [55]. See also 	rr 19, 32 s 11 SA

<p>r 32 SCR and s 11 SA.</p> <ul style="list-style-type: none"> <input type="checkbox"/> File a reconstruction of the will. <input type="checkbox"/> File the consent of, or serve notice on, all persons who would be adversely affected; r 19 SCR (note that there is no approved form of notice). <input type="checkbox"/> Adversely affected persons includes all persons named in the copy/lost will (in the event they challenge the terms contained in the lost will or claim the will is revoked) and those entitled on intestacy including <i>de facto</i> (file Form 126 if appropriate). <input type="checkbox"/> The applicant must give an undertaking to prove the original will if it is found. <p>Basis of grant: "Letters of administration of reconstruction of the will annexed. Beneficiary [or other] under the will. [Name] the executor appointed under the will [predeceased/renounced/unable to apply/refused to apply]. Limited until the original will or a more authentic copy is proved."</p>	
<p>If the original will is held by a foreign Court, probate has not been granted and the practice in that jurisdiction is not to release the will:</p> <ul style="list-style-type: none"> <input type="checkbox"/> File a court-authorised/sealed copy of the will. A certified copy is not sufficient. <input type="checkbox"/> File a certified translation if the will is in a language other than English. <input type="checkbox"/> A copy of the will, and any translation, is attached to the draft grant (Form 112). <input type="checkbox"/> A person who is familiar with the jurisdiction must swear an affidavit confirming that the practice of the court or jurisdiction is not to release the original wills and you will need to satisfy the Court of searches to prove that it is the last will of the deceased. <input type="checkbox"/> You may need to address matters pursuant to r 13 SCR in respect of the domicile of the deceased, and Part 2.4 SA in respect of wills under foreign law. <p>Basis of grant: "Letters of administration with the authorised copy of the [#notarised] will held by [name of court] annexed. Beneficiary under the will. [Name] executor appointed under the will predeceased/renounced/unable to apply/refused to apply."</p>	<p>r 13 Pt 2.4 SA</p>
<p>If Letters of Administration with the Will Annexed has been granted in a foreign jurisdiction and the original will is held by the foreign court [and the grant cannot be resealed]:</p> <ul style="list-style-type: none"> <input type="checkbox"/> File the original grant (note that it will not be returned) or an exemplification of the full foreign grant, ie a court authorised/sealed copy. A certified copy is not sufficient. <input type="checkbox"/> File a certified translation if the will is in a language other than English <input type="checkbox"/> A copy of the will only, and any translation, is attached to the draft grant (Form 112). <input type="checkbox"/> You may need to address matters pursuant to r 13 SCR in respect of the domicile of the deceased and Part 2.4 SA in respect of wills under foreign law. <p>Basis of grant: "Letters of administration of the [#the notarised] will as contained in the grant of [Probate or Letters of Administration with the Will Annexed] from [name of Court] annexed. Beneficiary [or other] under the will. [Name], executor appointed under the will [predeceased/renounced/unable to apply/refused to apply]."</p>	<p>r 13 Pt 2.4 SA</p>
<p>7. Administration with the Will Annexed – who can apply?</p>	
<ul style="list-style-type: none"> <input type="checkbox"/> See Section 1 above. <input type="checkbox"/> Furnish evidence to explain why none of the appointed executors are applying. <input type="checkbox"/> File renunciations, death certificates or affidavits with medical evidence annexed as appropriate for all non-applying executors or serve notice on them and file an affidavit of service in accordance with r 17 SCR, unless the application is made pursuant to s 75 PAA. <input type="checkbox"/> Adapt "Basis of grant" in draft grant and relief claimed in summons as necessary. 	
<p>Beneficiary applying</p> <ul style="list-style-type: none"> <input type="checkbox"/> All executors must have renounced, reserved leave, lack capacity, have predeceased the testator or refused to apply and been served with notice (unless an application is made pursuant to s 75 PAA). <input type="checkbox"/> An application for Letters of Administration with the Will Annexed may be made by a beneficiary. <input type="checkbox"/> The Court prefers to make a grant to a person with a major interest and a person without an interest may not apply (unless special circumstances are shown). Note: from 1 March 2008 entitlement is 30 days after date of death, unless otherwise stated in the will: s 35 SA. 	<p>rr 17, 18 & 19 ss 41, 75 PAA s 35 SA</p>

<ul style="list-style-type: none"> <input type="checkbox"/> Notice of the application must be served on all non-applying beneficiaries who are <i>sui juris</i>, or consent filed. <input type="checkbox"/> An administration bond and two sureties must be filed for the share of each non-applying beneficiary unless: <ul style="list-style-type: none"> <input type="checkbox"/> the notice on, or consent of, <i>sui juris</i> beneficiaries includes a recital to dispense with the bond, or <input type="checkbox"/> the legal guardian of a minor beneficiary, or the financial manager or enduring power of attorney of an incapable beneficiary, consent in writing to the dispensation of the bond. <input type="checkbox"/> Where appropriate file renunciations, death certificates of deceased executors, affidavit of service of notice to apply and/or affidavit evidence of failure to apply, failure to locate or lack of capacity. <p>Basis of grant: "Letters of administration with the will annexed. Beneficiary under the will. [Name of executor], the instituted executor appointed under the will [predeceased the testator/renounced probate/is unable to apply/refused to apply or as is appropriate]. [Name of substituted executor] the substituted executor appointed under the will [predeceased the testator/renounced probate/is unable to apply/refused to apply or as is appropriate]."</p>	
<p>Major beneficiary is a corporation</p> <ul style="list-style-type: none"> <input type="checkbox"/> If no executor is applying, a corporation is a major beneficiary, there is no person nominated in the will to represent the corporation and the corporation is not authorised by statute to be appointed executor or administrator, the corporation may appoint a syndic, at a meeting of the directors, and that person can then apply for Letters of Administration with the Will Annexed for the use and benefit of the corporation. <input type="checkbox"/> Notice of the application must be served on all non-applying beneficiaries who are <i>sui juris</i>, or consent filed. <input type="checkbox"/> An administration bond and two sureties must be filed for the share of each non-applying beneficiary unless: <ul style="list-style-type: none"> <input type="checkbox"/> the notice on, or consent of, <i>sui juris</i> beneficiaries includes a recital to dispense with the bond, or <input type="checkbox"/> the legal guardian of a minor beneficiary, or the financial manager or enduring power of attorney of an incapable beneficiary, consent in writing to the dispensation of the bond. <input type="checkbox"/> The instrument appointing the syndic must be filed. <input type="checkbox"/> If the corporation is a beneficiary under the will, the instrument should include a recital that the company is not in liquidation, under management or in receivership, has not assigned or encumbered its interest in the estate and, if appropriate, that the company consents to dispensing with the administration bond. <p>Basis of grant: "Letters of administration with the will annexed. Syndic of [name of corporation], for the use and benefit of the [name of corporation] [Beneficiary under the will, if appropriate]."</p>	rr 23, 24 SCR s 64 PAA
<p>Sole instituted executor is not the sole beneficiary, survived 30 days but died before obtaining probate, but</p> <p>→ the wording of the will does not allow the substituted executor to apply eg instituted executor may only be replaced if he or she predeceases the testator.</p> <ul style="list-style-type: none"> <input type="checkbox"/> The substituted executor cannot apply. <input type="checkbox"/> A beneficiary under the will may apply for Letters of Administration with the Will Annexed. <input type="checkbox"/> Notice of the application must be served on all non-applying beneficiaries who are <i>sui juris</i>, or consent filed. <input type="checkbox"/> An administration bond and two sureties must be filed for the share of each non-applying beneficiary unless: <ul style="list-style-type: none"> <input type="checkbox"/> the notice on, or consent of, <i>sui juris</i> beneficiaries includes a recital to dispense with the bond, or <input type="checkbox"/> the legal guardian of a minor beneficiary, or the financial manager or enduring power of attorney of an incapable beneficiary, consent in writing to the dispensation of the bond. <p>Basis of grant: "Letters of administration with the will annexed. Beneficiary under the will. [Name of deceased executor] the instituted executor survived the deceased but died before obtaining a grant."</p>	
<p>Sole instituted executor who is the sole beneficiary, survived 30 days but died before obtaining probate, but</p> <p>→ the wording of the will does not allow the substituted executor to apply, eg the will doesn't allow the substituted executor to apply if the instituted executor is "unable to apply".</p> <ul style="list-style-type: none"> <input type="checkbox"/> The substituted executor cannot apply. <input type="checkbox"/> A grant of probate or administration must be made in the sole executor/beneficiary's estate first. <input type="checkbox"/> Only then can the "legal personal representative/s" of the sole executor/beneficiary make an application for Letters of Administration with the Will Annexed in the original estate. <input type="checkbox"/> An administration bond and two sureties must be filed for the share of each non-applying beneficiary in the deceased sole executor/beneficiary's estate unless: 	rr 19, 23 s 64 PAA Forms 130, 131

<ul style="list-style-type: none"> ○ A notice is served on, or the consent obtained from, all beneficiaries who are <i>sui juris</i> and the notice or consent includes a recital to dispense with the bond, or ○ the legal guardian of a minor beneficiary, or the financial manager or enduring power of attorney of an incapable beneficiary, consent in writing to the dispensation of the bond. <p>Basis of grant: "Letters of Administration with the will annexed. Legal personal representative/s of [name of deceased executor/beneficiary], executor appointed under the will who survived the deceased but died before obtaining a grant."</p>	
<p>Sole instituted executor <i>is the sole beneficiary, is alive and has capacity but is old and frail, but</i></p> <p>→ the wording of the will does not allow the substituted executor to apply, ie there are no words in the will which allows the substituted executor to apply when the instituted executor is "unable or unwilling to apply"</p> <ul style="list-style-type: none"> <input type="checkbox"/> The substituted executor may not apply <input type="checkbox"/> The sole beneficiary should not renounce probate because no other person has standing to apply. <input type="checkbox"/> The sole executor/beneficiary may appoint a nominee by affidavit. Evidence of their informed consent may be required. <input type="checkbox"/> The nominee may apply for Letters of Administration with the Will Annexed. An affidavit furnishing evidence of the executor's frailty must be filed. Evidence of independent legal advice may be required. <p>Basis of grant: "Letters of administration with the will annexed. Nominee of [name of executor], executor appointed under the will, for the use and benefit of [name of executor] limited until he/she recovers from his/her disability and comes in and obtains a grant."</p>	<p>rr 17, 18, 19 s 41 PAA</p>
<p>Sole instituted executor <i>is not sole beneficiary, is alive but does not have capacity, but</i></p> <p>→ the wording of the will does not allow the substituted executor to apply (ie there are no words in the will such as "unable or unwilling" which would allow them to decline the appointment):</p> <ul style="list-style-type: none"> <input type="checkbox"/> The substituted executor may not apply. <input type="checkbox"/> Another beneficiary under the will may apply for Letters of Administration with the Will Annexed but they must file medical evidence of the instituted executor's incapacity. <input type="checkbox"/> Notice of the application must be served on all non-applying beneficiaries who are <i>sui juris</i>, or consent filed. <input type="checkbox"/> An administration bond and two sureties must be filed for the share of each non-applying beneficiary unless: <ul style="list-style-type: none"> ○ the notice on, or consent of, <i>sui juris</i> beneficiaries includes a recital to dispense with the bond, or ○ the legal guardian of a minor beneficiary, or the financial manager or enduring power of attorney of an incapable beneficiary, consent in writing to the dispensation of the bond. <p>Basis of grant: "Letters of administration with the will annexed. Beneficiary under the will. [Name of instituted executor] the instituted executor was unable to apply. For the use and benefit of [name of instituted executor], limited until [name of instituted executor] recovers from their disability and obtains a grant."</p>	<p>rr 17, 18, 19, 23 ss 41, 64 PAA Forms 130, 131</p>
<p>Sole instituted executor <i>is the sole beneficiary, and is alive but does not have capacity, but</i></p> <p>→ the wording of the will does not allow the substituted executor to apply (ie there are no words in the will such as "unable or unwilling" replaced) which would allow him or her to be</p> <ul style="list-style-type: none"> <input type="checkbox"/> An application may be made seeking Letters of Administration with the Will Annexed, for the use and benefit of the executor, limited until he or she recovers from his or her disability, by one of the follow people, groups of people or entities: <ol style="list-style-type: none"> (1) The executor's financial manager (if one has been appointed) (2) The executor's enduring power of attorney (if one has been executed) (3) The person/s appointed executor in executor's will (if a will has been executed prior to loss of capacity) (4) Those entitled to the executor's estate on intestacy (5) An appointment of the NSW Trustee and Guardian <input type="checkbox"/> The above list is in order of priority, so for example, a power of attorney may not apply if a financial manager has been appointed and the appointment has not been revoked. <input type="checkbox"/> An affidavit furnishing current medical evidence of the executor's incapacity must be filed in categories (2) to (5) above. <input type="checkbox"/> If the application is by the financial manager file evidence that the appointment has not been revoked. 	<p>rr 19, 23, 24 SCR s 64 PAA Forms 130, 131</p>

<ul style="list-style-type: none"> <input type="checkbox"/> File a copy of the instrument appointing the applicant for categories (1) to (3) or certificate evidence proving entitlement in (4). <input type="checkbox"/> A recital should be included in categories (1) to (4) which confirms that neither the beneficiary nor the applicant is an undischarged bankrupt and the former has not assigned or encumbered their interest in the estate. <p>Note:</p> <ul style="list-style-type: none"> <input type="checkbox"/> In the case of a financial manager applying in category (1) above, he or she must serve notice of the incapable person's entitlement on NSW TG in accordance with the requisition at "Annexure A" attached. <input type="checkbox"/> In categories (2) and (3) notice should be served on the executors and beneficiaries named in the beneficiary's will and an affidavit of service filed. <input type="checkbox"/> In category (4) notice should be served on all persons who would be entitled to the beneficiary's estate on intestacy and an affidavit of service filed. <input type="checkbox"/> In categories (2) to (4) above, an administration bond is required: See Section 12 below or see Court's Protocol for Minors which can be adapted for an incapable person (See the announcement of Lindsay J on 7 June 2018 "Protocol for a Minor's Share on Intestacy" on the Court's website, under "Older announcements"). <input type="checkbox"/> A recital should be included in categories (1) to (4) which confirms that neither the instituted executor nor the applicant is an undischarged bankrupt and neither has assigned or encumbered their interest. <p>Basis of grant: "Letters of administration with the will annexed. [Capacity of applicant] of [name of incapable executor] for the use and benefit of [name of incapable executor], limited until he/she recovers from his/her disability and obtains a grant."</p>	
<p>Attorney: appointed by executor or beneficiary who is outside the jurisdiction – s 72 PAA</p> <ul style="list-style-type: none"> <input type="checkbox"/> The original Power of Attorney must be filed. <input type="checkbox"/> The Power of Attorney must <i>not</i> be revoked. <input type="checkbox"/> The Attorney must be resident within NSW and the principal must be resident outside NSW. <input type="checkbox"/> Notice of the application must be served on all non-applying beneficiaries who are <i>sui juris</i>, or consent filed. <input type="checkbox"/> An administration bond and two sureties must be filed for the share of each non-applying beneficiary unless: <ul style="list-style-type: none"> o the notice on, or consent of, <i>sui juris</i> beneficiaries includes a recital to dispense with the bond, or o the legal guardian of a minor beneficiary, or the financial manager or enduring power of attorney of an incapable beneficiary, consent in writing to the dispensation of the bond. <input type="checkbox"/> It should be noted that the Court prefers to make a full grant to a limited grant, therefore it would prefer to make a full grant to a person entitled who is resident in NSW than a limited grant to an attorney. <input type="checkbox"/> The Court will not make a "composite grant", that is, where one person is entitled to a full grant and the other is only entitled to a limited grant, eg a beneficiary and an attorney. <input type="checkbox"/> File renunciations, death certificates, affidavit evidence of failure to apply or lack of capacity to account for all non-applying executors. <p>Basis of grant: "Letters of administration with the will annexed. Attorney of [name of executor/beneficiary] for the use and benefit of [name of executor/beneficiary], limited until they return to the jurisdiction and obtain a grant."</p>	rr 17, 18, 19 SCR ss 41, 72 PAA
<p>Creditor: Application by creditor – r 5 SCR</p> <p>A creditor's right is seen as inferior to all others: r 5, s 82 PAA. All persons entitled to apply must be served with notice. The following procedure applies:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Notice to apply for probate (Form 138) must be served personally on all executors under the will. <ul style="list-style-type: none"> o If the instituted executors have died or renounced the Notice to apply for probate must be served personally on all substituted executors. o If the executors do not file an Answer to notice to apply for probate (Form 139) within 14 days (or 28 days if outside NSW), the creditor may make an application for letters of administration with the will annexed and file an affidavit of personal service on the executors and an affidavit of serve (by post or personal) on all beneficiaries under the will. <input type="checkbox"/> If there are no executors appointed under the will or all executors have renounced or died the creditor must serve a sealed Notice to apply for letters of administration with the will annexed (Form 136) personally on all beneficiaries under the will. 	rr 5, 19, 23 SCR s 82 PAA ss 64, 150 PAA s 54 SA

<ul style="list-style-type: none"> ○ If the beneficiaries under the will do not file an Answer to notice to apply for administration (Form 137) within 14 days (or 28 days if outside NSW) the creditor may make an application for letters of administration with the will annexed. The creditor must file an affidavit of personal service of notice. □ If the creditor is not aware of the existence of a will an affidavit setting out the searches for a will in the personal effects of the deceased, and enquiries for a will with the solicitors and banks of the deceased and with the NSW Trustee & Guardian must be filed. □ If the creditor does not locate a will, he or she must serve a sealed Notice to apply for administration (Form 136) personally on all next of kin of the deceased, including de facto. <ul style="list-style-type: none"> ○ If the next of kin do not file an Answer to notice to apply for administration (Form 137) within 14 days (or 28 days if outside NSW) the creditor may proceed with an application for administration. The creditor must file an affidavit of personal service of notice. <p>Note:</p> <ul style="list-style-type: none"> □ All Notices to apply for Probate or Administration should be served personally, prior to commencing proceedings: see rr 5, 53 and 64 SCR. The application may only proceed if persons validly served fail to comply with the notice by filing an Answer to notice to apply. Issues may arise if persons entitled cannot be identified. □ See rr 61 and 63 SCR which provide for service of notices on disabled persons. □ The affidavit in support of a creditor's application must prove that a debtor/creditor relationship existed at the date of death of the deceased and annex evidence to prove the debt. □ If the creditor is not able to obtain the original will he or she may need to file a notice of motion seeking production of the will: s 150 PAA or s 54 SA. □ If the notices do not include notice of intention to dispense with the bond or beneficiaries object or are incapable, the creditor must file a bond and two sureties equal to the share of each beneficiary. □ Notice of the application should be served on other creditors. <p>Basis of grant: "Letters of administration with the will annexed. Creditor of the deceased."</p>	
8. Read the Will (and any codicils) → Who are the beneficiaries?	
<input type="checkbox"/> Are any deceased beneficiaries children of the deceased? If so, does s 41 SA apply or is there a contrary intention in the will?	s 41 SA
<input type="checkbox"/> Is all property disposed of by the will? If not, is a partial intestacy created or does s 42 SA apply? <input type="checkbox"/> If a partial intestacy is created by the will, file an affidavit setting out all those entitled to that part of the estate, on intestacy including <i>de facto</i> . Certificate evidence and an administration bond and sureties are required as an executor is <i>not</i> applying. See Section 12 below.	s 42 SA
<input type="checkbox"/> If the will was executed outside NSW and does not comply with the law for wills in NSW , an expert in the jurisdiction where the will was made must file an affidavit stating whether or not the will complies with the law of that place.	r 13 SCR s 48 SA Pt 2.4 SA
<input type="checkbox"/> Was the deceased domiciled outside NSW at the date of death? If yes, the law of the domicile applies to any moveable property that creates a partial intestacy. NSW law applies to any immoveable property.	r 13 SCR s 33 SA
9. Read the Will (and any codicils) – execution, date, interested witness, rectification	
DUE EXECUTION – ss 6, 14 Succession Act 2006	
<ol style="list-style-type: none"> (1) Was the document signed or acknowledged by the deceased in the presence of two witnesses and was the document then signed by the two witnesses in the presence of the testator? (the witnesses don't need to see each other sign)? (2) Were any alterations made prior to execution and if so, were they initialed by the deceased and both witnesses at the time of execution: R 29 SCR? (3) Were any alterations made since execution of the will, and if so, were they signed in accordance with s 6 SA and dated? If so, the date of the will changes to the date of execution of the alterations? (4) Do any informal documents exist, eg handwritten notes, which appear to be testamentary in nature but were not executed in accordance with s 6 SA above? 	s 6 SA rr 26 & 29 SCR
<p>Note: If documents or alterations are not duly executed they are not admitted to probate without the Court making a declaration pursuant to s 8 SA, that it is satisfied that the deceased intended the document or alteration</p>	

<p>to form his/her will/codicil or alteration to his/her will/codicil. Even if you do not wish to propound the informal changes you must disclose the document to both beneficially and adversely affected persons. Adapt and answer the standard requisition below to suit the circumstances of your application.</p>	
<p>Informal documents – Standard requisition where a document or alteration has not been duly executed</p> <ul style="list-style-type: none"> <input type="checkbox"/> If you seek to prove the informal document/alterations include a prayer for a declaration pursuant to s 8 SA in the summons. <input type="checkbox"/> File an affidavit of attesting witness (if there is a witness) and in the case of alterations, he or she should confirm whether the alterations existed at the time of execution. File other affidavits going to the facts, circumstances and events surrounding the document/alterations and as to their admissibility including any indications or statements of intention made by the deceased in relation to the document or his/her property. It should be shown that the deceased intended the document/alterations to operate as his/her will. <input type="checkbox"/> Regardless of whether or not you wish to propound (prove) the document/alterations you must disclose it to both beneficially and adversely affected persons, complying with rr 14 and 42 SCR, and file an affidavit of service. The notice or consents should state whether or not the informal document is propounded. Affected persons include persons named in the informal document/alteration, persons named in the unaltered document or any previous duly executed document, or if there is no previously duly executed document those entitled on intestacy including <i>de facto</i>, and their interest under competing documents is different. If an affected person is incapable, the consent of the legal guardian of a minor, or the consent of the financial manager or enduring power of attorney of an incapable person, must be filed. <p>Note: If the document is admitted to probate the Registrar enters an order on the court record declaring that the document, which has not been executed in accordance with Part 2.1 SA, is a will, codicil or alteration to a will or codicil. There is no reference to this declaration under 'basis of grant' nor is a copy of the order attached to grant.</p>	<p>rr 14, 26, 29, 42 SCR ss 6, 8, 14 SA</p>
<p>Attestation clause: Is there an attestation clause?</p> <ul style="list-style-type: none"> <input type="checkbox"/> The absence of an attestation clause does not make the will invalid but you must file an affidavit of attesting witness to prove due execution. 	<p>r 26</p>
<p>Undated will – Is the will undated?</p> <ul style="list-style-type: none"> <input type="checkbox"/> If so file an affidavit which establishes the date of execution, or as close as possible to it. <input type="checkbox"/> If the date of the will cannot be established with precision you must furnish evidence of searches for other wills during the period within which the undated will was believed to be created. 	<p>r 28</p>
<p>Interested witness – Beneficiary witnesses will – s 10 Succession Act 2006</p> <p>Is a beneficiary an attesting witness? If YES</p> <ul style="list-style-type: none"> <input type="checkbox"/> Serve notice of proceedings (Form 140) personally on all beneficiaries adversely affected by the gift. <input type="checkbox"/> Depending on the wording of the will adversely affected persons may be limited to residuary beneficiaries. <input type="checkbox"/> File the consents of all persons adversely affected by the gift to the interested witness: r 40 SCR. <input type="checkbox"/> Persons whose consent is required must have capacity at law to give that consent. The legal guardian of a minor, or the financial manager or enduring power of attorney of an incapable person, may consent. <input type="checkbox"/> The onus is upon the person wishing to take the benefit of this provision to seek and obtain that consent. <input type="checkbox"/> The gift will be allowed if all the persons who would benefit directly from the avoidance of the disposition consent in writing to its distribution according to the will: s 10(3)(b) SA. <input type="checkbox"/> If consents are <i>not</i> obtained an application may be made to the Court to prove that the deceased knew and approved the disposition and freely and voluntarily gave or made it: s 10(3)(c). This application may be made by way of summons (Form 4A or B) to commence proceedings, or if proceedings are on foot, a notice of motion. 	<p>rr 38-40 + 57, 64 s 10 SA</p>
<p>Rectification:</p> <ul style="list-style-type: none"> <input type="checkbox"/> If a will does not appear to carry out the intentions of the deceased, because of a clerical error or it doesn't represent the deceased's instructions, an application for rectification can be made. <p>Note: It is not enough that the will does not carry out the testator's intentions. The reason it does not carry out the testator's instructions must fall within s 27(1)(a) or (b) SA.</p> <ul style="list-style-type: none"> <input type="checkbox"/> The summons (Form 111) should seek probate and rectification and set out the exact form of the order.. <input type="checkbox"/> The summons should be filed within 12 months of the death of the deceased. If an application is made for an extension to apply it will be listed in the probate list and referred to the Probate Judge for determination. 	<p>s 27 SA rr 39, 40, 57, 61, 64</p>

<ul style="list-style-type: none"> <input type="checkbox"/> File the consents of all persons adversely affected by the rectification: r 40 SCR. <input type="checkbox"/> Persons whose consent is required must have capacity at law to give that consent. The legal guardian of a minor, or the financial manager or enduring power of attorney of an incapable person, may consent. <input type="checkbox"/> Serve notice of proceedings (Form 140) personally on any beneficiaries who do not consent: rr 39, 57, 64 SCR. File an affidavit of service of notice. A tutor may need to be appointed for an incapable person. <input type="checkbox"/> An affidavit must be filed which sets out the matters in support of rectification pursuant to s 27 SA and should attach evidence in support, such as file notes of instructions. <input type="checkbox"/> If the application is uncontested it will be dealt with by a registrar in chambers as long as it is filed within twelve months of the date of death of the deceased. 	
10. Affidavit of Applicant, with the Will Annexed – original only, no copies – Form 120	
<ul style="list-style-type: none"> <input type="checkbox"/> Para 1: Refer to the date of will, and signing of the will in the margin. [Where applicants are in different states the applicant with the will should sign the original in the margin and send a copy to the other applicants. The affidavit should name the applicants who have signed a copy of the will.] <input type="checkbox"/> Disclose all documents created after the will propounded, including informal documents, which appear to be represent the testamentary intentions of the deceased: <ul style="list-style-type: none"> <input type="checkbox"/> If a document appears to have been executed in accordance with Part 2.1 SA but it is claimed that it is invalid and should be passed over because: <ul style="list-style-type: none"> • the testator lacked testamentary capacity • the testator lacked knowledge and approval or • there were suspicious circumstances surrounding its preparation or execution, the application must be listed in Court where it will be referred to the Probate Judge for determination. <input type="checkbox"/> Serve notice of proceedings personally on all persons who would be adversely affected if the document were not admitted to probate and file an affidavit confirming service of notice of proceedings. <input type="checkbox"/> Exceptions: If a will is deemed to be invalid because it is inoperative, was revoked by marriage or evidence can be furnished to satisfy the Court that it was revoked by the deceased, the application can be dealt with by a registrar in chambers. <p>Note: If a document has <i>not</i> been executed in accordance with Part 2.1 SA the applicant must disclose the document to the Court, whether or not it is propounded, and serve notice on all persons who would be beneficially or adversely affected by the document. An affidavit of service must be filed: s 8 SA, rr 14 & 42.</p>	ss 6, 8 SA rr 14, 42 SCR
<ul style="list-style-type: none"> <input type="checkbox"/> Para 2: What is the relationship of the deponent and deceased? Has the deponent seen the deceased sign their name before? Does the deponent recognise the signature of the deceased? <input type="checkbox"/> In light of the above, is the signature on the will that of the deceased? <input type="checkbox"/> If the applicant does not recognise the deceased’s signature an affidavit of attesting witness should be filed or an affidavit from a person who recognises the deceased’s handwriting and/or signature. 	R 26
<ul style="list-style-type: none"> <input type="checkbox"/> Para 4: If there is no cause of death on the death certificate and the death is pending a decision of the coroner, include a paragraph in the affidavit of applicant which: <ol style="list-style-type: none"> (1) describes briefly the circumstances of the deceased’s death and whether any charges have been brought in respect of his/her death. (If charges have been laid against a beneficiary for the unlawful killing of the deceased the grant is usually delayed until the case is finalised. The forfeiture rule applies if a beneficiary is convicted of murder and the estate can be distributed as if the convicted person predeceased the testator. If the person is found not guilty by reason of mental illness or guilty of a lesser charge than murder, his or her share should be held on trust until the period has lapsed in which he or she, or an interested person, can make an application pursuant to the <i>Forfeiture Act 1995</i>), and (2) discloses if the testator suffered from dementia or some other cognitive disability (and this is likely to be listed as a “cause of death”). <input type="checkbox"/> If dementia or other cognitive disability is named as a cause of death, check the date of execution of the will and furnish evidence of capacity if this is in question. <input type="checkbox"/> If the deceased died overseas a translation of the death certificate is required and a person who knew the deceased and saw the body must file an affidavit confirming their death. 	ss 40A, 40B PAA

<input type="checkbox"/> If the body of the deceased has not been recovered, he or she is referred to as the “propositus”, and the grant should be sought on presumption of death . The online notice should be to this effect and further evidence will be required setting out fully the facts and circumstances supporting a presumption of death: ss 40A, 40B PAA. Unless there is clear evidence as to when death was likely to have taken place the propositus is presumed to be dead as at the date of commencement of the proceedings. Note that this may affect those entitled.	
<input type="checkbox"/> Para 5: If the testator married after the will was executed, the will must be in contemplation of marriage or it is revoked by the marriage, except for any gift to the person the deceased was married to at the date of death. <input type="checkbox"/> If the will was not in contemplation of marriage but a gift was made to a person who the deceased was married to at the date of death, the will is revoked except for the gift. Attach certified copy of marriage certificate. <input type="checkbox"/> If the testator divorced since the will was executed the appointment of the previous spouse as executor and any gift under the will is revoked unless a contrary intention appears. Attach certified copy of decree absolute.	r 15, ss 12,13 SA
<input type="checkbox"/> Para 6: Distinguish between property owned as joint tenants and tenants in common. The former is not the subject of Probate as it devolves automatically to the survivor; s 101 <i>Real Property Act 1900</i> . It should be disclosed in a separate table but not form part of estate. <input type="checkbox"/> Assets must be described with sufficient particularity to be able to identify them. See Section 11 below. <input type="checkbox"/> If additional assets come to your attention after the application is filed, but before a grant issues you should file an affidavit with an amended inventory, not an affidavit of additional assets.	s 101 RPA
<input type="checkbox"/> Para 7: A bankrupt or person who has disclaimed or assigned their interest in the estate may not be appointed. <input type="checkbox"/> If an attorney, nominee, LPR or other appointee is applying on behalf of a beneficiary a recital should be included which confirms that neither the applicant nor the person represented is an undischarged bankrupt and neither has assigned or encumbered their interest in the estate.	
<input type="checkbox"/> Para 8: You must explain why any executors entitled to apply are not applying and file the relevant death certificates, renunciations, medical evidence. See Section 7 above.	rr 17, 18
<input type="checkbox"/> Para 9: Entitlement is 30 days after the date of death (after 1 March 2008) unless there is a contrary intention in the will. Where a child of the deceased predeceased or did not survive the deceased by 30 days, look at the wording of the will and ss 35, 41 and 42 SA to establish if the children or grandchildren receive the share of the deceased child or if a partial intestacy is created. <input type="checkbox"/> File an affidavit of service of notice on all beneficiaries not joining the application.	ss 35, 41, 42 SA r 19 SCR
<input type="checkbox"/> Para 12: Distinguish between property owned as joint tenants and tenants in common . The former is not the subject of probate as it devolves automatically to the survivor. It should be disclosed in a separate table but not form part of estate. <input type="checkbox"/> In cases where the deceased and a person owned property as joint tenants and died together , the order of death must be established with affidavit evidence from persons who were first to attend the scene or conducted conclusive enquiries, such as ambulance or police officers. Only when all available evidence is furnished and the order of death cannot be ascertained does s 35 of the <i>Conveyancing Act 1919</i> apply invoking a presumption that the deceased persons died in order of seniority. <input type="checkbox"/> Assets must be described with sufficient particularity to be able to identify them eg bank account details.. <input type="checkbox"/> If additional assets come to your attention after the application is filed, but before a grant issues you should file an affidavit with an amended inventory, not an affidavit of additional assets.	rr 10, 91 SCR, s 81A PAA s 35 CA
<input type="checkbox"/> Para 14: The gross value is the total value of all assets owned solely by the deceased. The net value is the gross value after liabilities have been deducted.	
Additional paragraphs where necessary: <input type="checkbox"/> Rule 13 – Domicile <input type="checkbox"/> Rule 15 – Divorce, s 13 SA and Marriage, s 12 SA, Schedule 1 SA. Note amendments re same sex marriage <input type="checkbox"/> Rule 19 – Notice must be served on all beneficiaries who are not joining the application <input type="checkbox"/> Rule 27 – Blind, illiterate testators and when a person has signed the will at the testator’s direction <input type="checkbox"/> Rule 29 – Informal documents – alterations or interlineations to will <input type="checkbox"/> Rule 30 – Documents referred to or attached	ss 12, 13 and Schedule 1 SA

<ul style="list-style-type: none"> <input type="checkbox"/> Rule 31 – Where part of the will has been torn or cut off <input type="checkbox"/> Rule 32 – Where the will has been burnt, torn or there is some other sign of revocation <input type="checkbox"/> Rule 33 – Inoperative wills 	
11. Annexures and Other Documents	
<p>Death Certificates and other certificate evidence</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death certificates of the deceased and any deceased executors must be filed. In some cases certificate evidence of marriage or divorce (decree absolute) need to be filed. Certified copies are acceptable. <input type="checkbox"/> Death certificates are not evidence of birth of children nor are they evidence of marriage/divorce etc as, except for the death of the deceased, these forms are self-reporting and often contain errors or omissions. 	r 10
<p>Inventory of assets – Form 117, ss 81A, 81B PAA, ss 4, 29-31 SA</p> <ul style="list-style-type: none"> <input type="checkbox"/> Only property solely owned by the deceased is the subject of probate, not property owned as joint tenants. A deceased may own a share of property, eg 25%, and this is included in property solely owned by them. Only the value of their share is included in the total value of the estate. <input type="checkbox"/> Property of the deceased outside NSW or owned as joint tenants should be disclosed in a separate table but it is not included in the total value of the estate. <input type="checkbox"/> Property must be described with sufficient particulars to identify it. This means bank account details, property addresses, number of shares and type and the name of insurance or superannuation provider. 	r 10
12. Administration Bond and Sureties	
<p>Bond and sureties for the share of all persons not joining the application</p> <ul style="list-style-type: none"> <input type="checkbox"/> On an application for administration with the will annexed the applicants must file an administration bond (Form 130) and two sureties (Form 131) equal to the value of the share of each beneficiary who is not applying. <input type="checkbox"/> The applicant and both sureties must swear the administration bond. The two sureties must each swear a surety, which sets out the real estate which they can call upon to service the bond if required to do so. <input type="checkbox"/> If a surety owns property as joint tenant the other joint tenant must also swear the bond and surety. <input type="checkbox"/> The applicant may not be a surety to the bond. <input type="checkbox"/> The applicant may dispense with the bond for beneficiaries who are <i>sui juris</i> if a notice of his or her intention to dispense with the bond is served on them. <input type="checkbox"/> A person under a legal incapacity may not consent. A notice may be served on the legal guardian of a minor or the financial manager or enduring power of attorney of an incapable person, but a recital to dispense with the bond has no effect without the consent of the guardian, financial manager or enduring power of attorney. In some cases a tutor may need to be appointed: See r 61 SCR. <input type="checkbox"/> The bond will not be dispensed with if the applicant is the representative of an incapable person who is a beneficiary, eg the legal guardian of a minor, or the financial manager or enduring power of attorney of a person lacking capacity. If a bond and sureties cannot be obtained the applicant may comply with the Protocol for Minors (adapted as necessary). See the announcement of Lindsay J on 7 June 2018 “Protocol for a Minor’s Share on Intestacy” on the Court’s website, under “Older announcements”. 	rr 23, 61 SCR ss 64 PAA Div 4, Part 7 UCPR
13. Draft Grant – Form 112 – “2 x Sets” – r 10 SCR	
<p>IMPORTANT → File 2 x draft grants (Form 112) with a copy of the will and inventory annexed.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Annex a copy of the sworn inventory and a copy of the will signed in the margin to each draft grant. <input type="checkbox"/> Check deceased’s name is spelt correctly. <input type="checkbox"/> Check the applicant’s names are spelt correctly and their addresses are included. <input type="checkbox"/> Check date of death and date of will are correct. <input type="checkbox"/> Ensure “Basis of grant” is correctly stated on Form 112 → see Section 7 above. 	r 10

Louise Brown
Registrar in Probate
Supreme Court of NSW
June 2019

Annexure “A”

Procedure for Notice on NSWTG of beneficiary’s entitlement by Financial Manager

The Court's usual practice when a grant is made in a representative capacity where the beneficiary does not have the ability to consent to the appointment or to the dispensation of the bond, is to order that an administration bond and two sureties be filed, to the value of the beneficiary's share. However, as you are the financial manager of the protected person you may, as an alternative to a bond, do the following:

- 1) Serve a letter on Client Establishment, NSWTG at NSW Trustee and Guardian, Level 6, 160 Marsden Street, Parramatta, Attention of Client Establishment, which:
 - Names the applicant/financial manager and the protected person
 - Provides details of the appointment of the financial manager, and attaches a copy of the order or other evidence appointing the financial manager
 - Confirms the most recent date when accounts were produced to NSWTG on behalf of the protected person.
 - Advises NSWTG that the protected person is a beneficiary under the will, or on intestacy, in the estate of [name of deceased]
 - Advises NSWTG of the estimated value due to the protected persons and attaches a plan of management of the funds
 - Attaches a copy of the inventory and will (or in the case of an intestacy, a list of persons entitled on intestacy)
 - Confirms that the funds will be subject to the supervision of NSWTG and agrees to produce accounts as and when required by NSWTG.

- 2) Please request that NSWTG confirm:
 - receipt of the above notice and
 - that previous accounts have been produced by the financial manager as and when requested,
 - by sealing, signing and dating a copy of the letter and posting, DX or emailing it the Registrar in Probate at:

The Supreme Court of NSW, Law Courts Building, Queens Square, 184 Phillip Street,
Sydney NSW 2000, or
DX 829 Sydney, or
sc.probate@justice.nsw.gov.au

- 3) Upon receipt of this confirmation by NSWTG the grant will be issued.