



## Probate Checklist

Part 78 Supreme Court Rules 1970 (SCR)  
*Probate and Administration Act 1898* (PAA)  
*Succession Act 2006* (SA)

Note that 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 probate. 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* (to be updated) and Mason & Handler, *Succession Law & Practice (NSW)* available on LexisNexis.

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

- “Applicant” is the executor (not the solicitor). Include the name of all executors 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 the 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.

### 2. Standard Documents – Part 78 SCR

<input type="checkbox"/> Form 111 – Summons for Probate	→ file original only, no copies	r 8
<input type="checkbox"/> File <b>original will</b> and any codicils	→ do not staple to other docs	s 30 PAA
<input type="checkbox"/> Form 118 – <b>Affidavit of executor</b>	→ 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 executor)	→ file original only, no copies	r 10
<input type="checkbox"/> Form 112 – <b>2 SETS</b> 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 <b>A4</b> envelope		r 10

### Other documents as required including:

- Form 123 – **Renunciation** of executor → file original only, no copies r 18

<input type="checkbox"/> Affidavit <b>reserving leave</b> sworn by non-joining executor, or <input type="checkbox"/> Affidavit of service of notice on non-joining executor → file original only, no copies	r 17
<input type="checkbox"/> <b>Certificates</b> of death, marriage, birth and divorce (decree absolute) → file original or certified copy	r 10
<input type="checkbox"/> Form 41 – Affidavit of <b>service of notice</b> (rr 19, 39, 42 SCR) → file original only, no copies	
<input type="checkbox"/> Form 125 – <b>Consents</b> (Note: no approved form of notice) → file original only, no copies	r 19
<input type="checkbox"/> Form 133 – Consent ( <b>Interested witness</b> ) Notice is form 140 → file original only, no copies	r 39
<input type="checkbox"/> Forms 134 and 135 – Notice and Consent ( <b>Informal documents</b> ) → file original only, no copies	rr 14, 42
<input type="checkbox"/> Form 130 – Administration <b>bond</b> + Form 131 – <b>Sureties</b> (x2) (s 64 PAA) → file original only, no copies	r 23
<input type="checkbox"/> Undertaking – <b>Protocol for Minors</b> (in lieu of bond: see Court Announcement on website 7/6/18) – May be adapted for incapable persons. See Section 12 in Letters of Administration with the will annexed checklist.	
<input type="checkbox"/> Form 140 – <b>Notice of proceedings</b> . Necessary for interested witnesses, rectification or contested proceedings <input type="checkbox"/> Form 151 – Affidavit confirming [personal] service of notice of proceedings → file original only, no copies	rr 39, 57, 64
<input type="checkbox"/> Form 40 – <b>Affidavits</b> setting out additional evidence → file original only, no copies	rr 14-24
<b>Please note:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Do not file more than one of each document except 2 x draft grants (Form 112) and annexures.</li> <li><input type="checkbox"/> Each form should be <b>stapled individually</b> (Forms 111, 118 &amp; 2 x 112) and annexures stapled to the affidavit.</li> <li><input type="checkbox"/> The will should be filed separately and not attached to any document.</li> <li><input type="checkbox"/> Please do not file loose pages or put one giant staple through the entire application.</li> <li><input type="checkbox"/> If you want an original death certificate returned file it separately, attach a certified copy to the affidavit of executor and attach a post-it note to the death certificate requesting its return.</li> </ul>	rr 10, 12
<b>3. Common Issues</b>	
<b>Affidavits:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> When completing a pro-forma affidavit it is acceptable to use the wording provided but responses to questions or other affidavit evidence should conform to the rules of evidence. For example: <ul style="list-style-type: none"> <li>→ <b>Identifying the will</b> (Para 2 Form 118): <i>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.</i></li> <li>→ <b>Affidavit of attesting witness:</b> <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></li> </ul> </li> <li><input type="checkbox"/> Ensure that <b>all pages of the affidavit are signed</b> by all applicants and the witness.</li> <li><input type="checkbox"/> Nobody may sign an affidavit on behalf of another person.</li> <li><input type="checkbox"/> The front page of each annexure must be certified by the witness.</li> </ul>	
<b>Witnesses:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> A JP or Australian legal practitioner may witness an affidavit; s 151 PAA.</li> <li><input type="checkbox"/> A solicitor without a practising certificate may not be a witness.</li> <li><input type="checkbox"/> For authorised witnesses outside NSW see s 26 <i>Oaths Act 1900</i>.</li> </ul>	s 151 PAA s 26 OA
<b>Address of applicant</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Executors may apply for probate if they are outside NSW, including outside Australia, but must provide an address for service within NSW. Include an email address as the primary contact address on Court database.</li> <li><input type="checkbox"/> Include an <b>email address</b> as the primary contact address for inclusion on the court’s record.</li> </ul>	ss 97 PAA

<p><b>Caveats:</b></p> <p>If a <b>caveat</b> has been filed against the estate your options are:</p> <ol style="list-style-type: none"> <li>(1) To wait for the caveat to lapse and as long as the caveator doesn't file a new caveat or extend the caveat, the grant can be made without Court proceedings. Note: a caveat lapses after 6 months.</li> <li>(2) The caveator may withdraw the caveat. This may happen as a result of negotiation between the parties.</li> <li>(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.</li> <li>(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.</li> <li>(5) If the caveat is filed pursuant to rr 66 or 67 SCR and the caveator has a legitimate interest, then you (or the caveator) should commence contentious proceedings by way of statement of claim.</li> </ol> <p><input type="checkbox"/> The matters in (3)-(5) will be listed before the Registrar for case management and a timetable for evidence.</p>	<p>Div 10 of Pt 78 SCR. ss 144-148 PAA</p>
<p><b>Consent:</b></p> <p><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.</p>	<p>Forms 125, 133, 134.</p>
<p><b>Notices:</b></p> <p><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. If a person does not have legal capacity a notice may be served on their tutor or legal guardian.</p> <p><input type="checkbox"/> Service of a notice on an incapable person's representative does not entitle the applicant to dispense with an administration bond. The consent of the representative must be filed. See Section 11 below.</p> <p><input type="checkbox"/> A legal guardian may consent on behalf of a minor except if the guardian is the applicant.</p>	<p>rr 19, 57. Forms 135, 140.</p>
<p><b>Composite grant:</b></p> <p><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 executor and an attorney (for another executor).</p>	
<p><b>Chain of representation: s 13 Imperial Acts Application Act 1969</b></p> <p><input type="checkbox"/> If an executor of an estate dies (executor A), his or her executor (executor B) has a duty to administer the original estate. A new grant is not required in the original estate. If executor B dies and an executor (executor C) is appointed in executor B's estate, executor C has a duty to continue the administration in the original estate and in the estate of executor A (this chain continues <i>ad infinitum</i>). It is easier to think of as a chain of executors.</p> <p><input type="checkbox"/> If the original estate is not fully administered it must be proven that the chain of representation is broken before a new grant can be made in the original estate. The chain is broken if a deceased executor does not have a will or if a grant of letters of administration with the will annexed is made in their estate.</p> <p><input type="checkbox"/> If executor C does not have a grant in executor B's estate, it must be established that executor C, or any other executor named in executor B's will, has not and will not apply in executor B's estate. This must be proven by affidavit evidence before a new grant can be made in the original estate.</p>	<p>s 13 IAAA</p>
<p><b>4. Summons for Probate – Form 111, r 8 SCR</b></p>	
<p><input type="checkbox"/> The <b>filing fee</b> 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.</p> <p><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.</p> <p><input type="checkbox"/> In an application is made for a grant of cessate probate, eg if the original will is found after the grant of a copy will, or if an application for double probate is made, the filing fee is calculated on the value of the unadministered estate.</p>	<p>s 29 SA s 44 PAA</p>
<p><input type="checkbox"/> Ensure that the "<b>relief claimed</b>" clearly sets out what you are applying for, including your claim for probate plus any additional claim for revocation, rectification, declaration under s 8, passing over a person not entitled pursuant to the forfeiture rule etc.</p>	<p>UCPR 6.12</p>

<input type="checkbox"/> Ensure you correctly state in what <b>capacity</b> the applicant is applying. See section 6 below.	
<b>5. File the Original Will (and any codicils) – UCPR 3.13, s 30 PAA</b>	
<input type="checkbox"/> File the original will separately. Do not attach it to any other documents.	s 30 PAA
<b>Where a person will not release the original will</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Please note that the Court will not grant probate of a copy will when the whereabouts of the original is known.</li> <li><input type="checkbox"/> A summons may be filed to commence proceedings <b>seeking orders for production</b> of testamentary documents or if proceedings are on foot a notice of motion may be filed.</li> </ul>	s 150 PAA s 54 SA
<b>If the original will is lost and you have a copy</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> You will need to propound (prove) a <b>copy will</b>. If the original was last with a person other than the deceased that person should swear an affidavit to that effect.</li> <li><input type="checkbox"/> In the absence of proof as to who last held the will it is assumed to have been in the testator's possession and the will is presumed to have been revoked unless the <b>presumption of destruction <i>animo revocandi</i></b> is rebutted. An affidavit must be filed to overcome the presumption of revocation.</li> <li><input type="checkbox"/> File the <b>consent of, or serve notice</b> 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)</li> <li><input type="checkbox"/> The executor must give an <b>undertaking</b> to prove the original will if it is found.</li> </ul> <p><b>Basis of grant:</b> "Probate of copy will. Executor/Substituted executor appointed under the will. Limited until the original will is proved."</p>	rr 19, 32 s 11 SA
<b>If the original will is lost but you do not have a copy of it</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> You will need to propound (prove) a <b>lost will</b>. If the original was last with a person other than the deceased that person should swear an affidavit to that effect.</li> <li><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.</li> <li><input type="checkbox"/> Furnish <b>affidavit evidence</b> to show: 1/ that there was a will or a document purporting to embody the testamentary intentions of the 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 r 32 SCR and s 11 SA.</li> <li><input type="checkbox"/> File a <b>reconstruction</b> of the will.</li> <li><input type="checkbox"/> File the <b>consent of, or serve notice</b> on, all persons who would be adversely affected; r 19 SCR (note that there is no approved Form of notice).</li> <li><input type="checkbox"/> <b>Adversely affected persons</b> 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).</li> <li><input type="checkbox"/> The executor must give an <b>undertaking</b> to prove the original will or a more authentic copy if it is found.</li> </ul> <p><b>Basis of grant:</b> "Probate of reconstructed will. Executor/Substituted executor appointed under the will. Limited until the original will is proved or a more authentic copy is found."</p>	rr 19, 26, 32 SCR s 11 SA
<b>If the original will is held by a foreign Court, probate has not been granted</b> and the practice in that jurisdiction is not to release the will: <ul style="list-style-type: none"> <li><input type="checkbox"/> File a <b>court-authorized/sealed copy</b> of the will. A certified copy is not sufficient.</li> <li><input type="checkbox"/> File a certified <b>translation</b> if the will is in a language other than English.</li> <li><input type="checkbox"/> A copy of the will, and any translation, is attached to the draft grant (Form 112).</li> <li><input type="checkbox"/> A person who is familiar with the jurisdiction must swear an <b>affidavit</b> 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</li> </ul>	r 13 Pt 2.4 SA

<p>the last will of the deceased.</p> <p><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> <p><b>Basis of grant:</b> "Probate of authorised copy of [#the notarised] will held by [name of court]. [Executor or Substituted executor/s] appointed under the will. [account for non-applying executors]"</p>	
<p><b>If Probate has been granted in a foreign jurisdiction and the original will is held by the foreign Court [and the grant cannot be resealed]</b></p> <p><input type="checkbox"/> File the original grant (note that it will not be returned) or an exemplification of the <b>full foreign grant</b>, ie a court authorised/sealed copy. A certified copy is not sufficient.</p> <p><input type="checkbox"/> File a certified <b>translation</b> if the will is in a language other than English.</p> <p><input type="checkbox"/> A copy of the <b>will only</b>, and any translation, is attached to the draft grant (Form 112).</p> <p><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> <p><b>Basis of grant:</b> "Probate of [#the notarised] will as contained in the grant of probate from [name of Court]. [Executor/Substituted executor] appointed under the will [account for non-applying executors]."</p>	<p>r 13 Pt 2.4 SA</p>
<p><b>6. Read the Will (and any codicils) – who is the executor and can they be substituted?</b></p>	
<p><b><u>INSTITUTED EXECUTOR/S APPLYING</u></b> (the first-named executor in the will)</p> <p><input type="checkbox"/> If some only of the instituted executors apply you need to account for any non-applying instituted executors.</p>	
<p><b>If all named instituted executors are applying</b></p> <p><input type="checkbox"/> Executors must be a natural person or authorised by statute to act as executor, be at least 18 yrs of age, have capacity and not be disqualified from applying eg by the effect of divorce or the forfeiture rule.</p> <p><b>Basis of grant:</b> "Probate of will. Executor/s appointed under the will."</p>	
<p><b>Some only of the instituted executors are applying, others are deceased, reserve leave or renounce?</b></p> <p><input type="checkbox"/> All non-applying instituted executors must be accounted for. File all renunciations, death certificates, affidavits reserving leave and affidavits setting out details of any refusals to apply or notices served.</p> <p><b>Basis of grant:</b> "Probate of will. Executor appointed under the will. [Name] the other executor [predeceased/survived the deceased but died before obtaining probate/renounced probate/reserves leave to apply]."</p>	<p>r 17 ss 41, 69, 75 PAA</p>
<p><b>The "partners" or "partnership" of a firm</b></p> <p><input type="checkbox"/> Unless there is a contrary intention in the will, the appointment is of the partners or partnership at the date of execution of the will.</p> <p><input type="checkbox"/> If the partnership has been incorporated by the time of the application the corporation may appoint a syndic at a meeting of directors, and the syndic may apply for letters of administration with the will annexed. See below.</p> <p><b>Basis of grant:</b> "Probate of will. Executor/s appointed under the will."</p>	
<p><b>Office-holder of organisation eg treasurer, secretary etc</b></p> <p><input type="checkbox"/> Unless there is a contrary intention in the will, the office-holder is the person holding the office at date of death.</p> <p><b>Basis of grant:</b> "Probate of will. Executor/s appointed under the will."</p>	
<p><b>Corporation appointed executor: but is not authorised by statute to act as executor → syndic</b></p> <p><input type="checkbox"/> If a corporation is appointed executor or is a major beneficiary under the will and no person is named in the will to represent the corporation, <b>it may appoint a syndic</b>, at a meeting of the directors, and that person can then apply for <b>Letters of Administration with the Will Annexed</b> for the use and benefit of the corporation or accept the gift on behalf of the corporation.</p> <p><input type="checkbox"/> If <b>no executor</b> is applying and the corporation applies in its capacity as a major beneficiary, the applicant must file the <b>consent</b> of all beneficiaries to the appointment of the syndic and serve <b>notice</b> on any non-consenting beneficiaries. An affidavit of service of notices must be filed.</p> <p><input type="checkbox"/> Administration bonds and sureties may be required for the share of incapable beneficiaries or for any</p>	<p>rr 19, 23 s 64 PAA Forms 130, 131</p>

<p>beneficiaries where the notice does not include a recital of the applicant's intention to dispense with the bond.</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The <b>instrument</b> appointing the syndic must be filed.</li> <li><input type="checkbox"/> If the corporation is a <b>beneficiary</b> 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. See Section 11.</li> </ul> <p><b>Basis of grant:</b> "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>	
<p><b><u>CAN SUBSTITUTED EXECUTOR/S APPLY</u></b></p> <ul style="list-style-type: none"> <li>→ Substituted executors may <b>only apply if the wording of the will allows them to</b>.</li> <li>→ If the instituted executor is alive but is unable to take probate, the substituted executor cannot apply if the will only allows the substituted executor to apply upon the death of the instituted executor. In this case: <ul style="list-style-type: none"> <li>○ If the instituted executor is the sole beneficiary no other person has an interest in the estate, therefore a person must apply in a representative capacity. See below.</li> <li>○ If the instituted executor is not the sole beneficiary another beneficiary can apply. See below.</li> </ul> </li> </ul>	
<p><b>Instituted executor predeceased and substituted executor is applying</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> File instituted executor's death certificate and depose to this in paragraph 8 of affidavit of executor (Form 118). Refer to applicant as "Substituted executor" in summons and draft grant.</li> </ul> <p><b>Basis of grant:</b> "Probate of will. Substituted executor/s appointed under the will. [Name of deceased executor] the instituted executor predeceased the testator."</p>	
<p><b>Sole instituted executor <i>is not</i> the sole beneficiary, survived 30 days but died before obtaining probate, <i>and</i></b></p> <ul style="list-style-type: none"> <li>→ the wording of the <b>will allows the substituted executor to apply</b> eg instituted executor may be replaced if he or she is "unable to apply":</li> <li><input type="checkbox"/> The substituted executor may apply.</li> </ul> <p><b>Basis of grant:</b> "Probate of will. Substituted executor/s appointed under the will. [Name of deceased executor] the instituted executor survived the deceased but died before obtaining a grant."</p>	
<p><b>Sole instituted executor <i>is not</i> the sole beneficiary, survived 30 days but died before obtaining probate, <i>but</i></b></p> <ul style="list-style-type: none"> <li>→ the wording of the <b>will <i>does not</i> allow the substituted executor to apply</b> eg instituted executor may only be replaced if he or she predeceases the testator.</li> <li><input type="checkbox"/> The substituted executor cannot apply.</li> <li><input type="checkbox"/> A beneficiary under the will may apply for <b>Letters of Administration with the Will Annexed</b>.</li> <li><input type="checkbox"/> Notice of the application must be served on all non-applying beneficiaries who are <i>sui juris</i>, or consent filed.</li> <li><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"> <li>○ the notice on, or consent of, <i>sui juris</i> beneficiaries includes a recital to dispense with the bond, or</li> <li>○ 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. See Section 11 below.</li> </ul> </li> </ul> <p><b>Basis of grant:</b> "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>rr 19, 23 s 64 PAA Forms 130, 131</p>
<p><b>Sole instituted executor <i>is not</i> sole beneficiary, is alive but does <i>not</i> have capacity, <i>but</i></b></p> <ul style="list-style-type: none"> <li>→ the wording of the <b>will <i>does not</i> allow</b> 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):</li> <li><input type="checkbox"/> The substituted executor may not apply.</li> <li><input type="checkbox"/> Another beneficiary under the will may apply for <b>Letters of Administration with the Will Annexed</b> but they must file medical evidence of the instituted executor's incapacity.</li> <li><input type="checkbox"/> Notice of the application must be served on all non-applying beneficiaries who are <i>sui juris</i>.</li> <li><input type="checkbox"/> An administration bond and two sureties must be filed for the share of each non-applying beneficiary unless:</li> </ul>	<p>rr 19, 23 s 64 PAA Forms 130, 131</p>

<ul style="list-style-type: none"> <li>○ the notice on, or consent of, <i>sui juris</i> beneficiaries includes a recital to dispense with the bond, or</li> <li>○ 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. See Section 11 below.</li> </ul> <p><b>Basis of grant:</b> "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 his/her disability and obtains a grant."</p>	
<p><b>Sole instituted executor who is the sole beneficiary, survived 30 days but died before obtaining probate, and</b></p> <p>→ the will <b>does</b> include words <b>allowing the substituted executor to apply</b>, eg if the instituted executor is "unable to apply".</p> <p><input type="checkbox"/> The substituted executor may apply.</p> <p><b>Basis of grant:</b> "Probate of will. Substituted executor/s appointed under the will. [Name of instituted executor/beneficiary] the instituted executor survived the deceased but died before obtaining a grant."</p>	
<p><b>Sole instituted executor who is the sole beneficiary, survived 30 days but died before obtaining probate, but</b></p> <p>→ the wording of the will <b>does not allow the substituted executor to apply</b>, eg the will doesn't allow the substituted executor to apply if the instituted executor is "unable to apply".</p> <p><input type="checkbox"/> The substituted executor cannot apply.</p> <p><input type="checkbox"/> A grant of probate or administration <i>must</i> be made in the sole executor/beneficiary's estate first.</p> <p><input type="checkbox"/> All persons appointed in the sole executor/beneficiary's estate can then apply in the original estate in their capacity as "<b>legal personal representative/s</b>" and make an application for <b>Letters of Administration with the Will Annexed</b>.</p> <p><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:</p> <ul style="list-style-type: none"> <li>○ 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</li> <li>○ 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. See Section 11 below.</li> </ul> <p><b>Basis of grant:</b> "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>rr 19, 23 s 64 PAA Forms 130, 131</p>
<p><b>Sole instituted executor is the sole beneficiary, is alive and has capacity but is old and frail, and</b></p> <p>→ the wording of will <b>does allow</b> the substituted executor to apply, eg if instituted executor is "unable to apply".</p> <p><input type="checkbox"/> The instituted executor may renounce and the substituted executor may apply.</p> <p><b>Basis of grant:</b> "Substituted executor appointed under the will. [Name of instituted executor] the instituted executor renounced probate."</p>	
<p><b>Sole instituted executor is the sole beneficiary, is alive and has capacity but is old and frail, but</b></p> <p>→ the wording of the will <b>does not allow</b> the substituted executor to apply, ie there are no words in the will which allow the substituted executor to apply when the instituted executor is "unable or unwilling to apply".</p> <p><input type="checkbox"/> The substituted executor may not apply.</p> <p><input type="checkbox"/> <b>The sole beneficiary should not renounce</b> probate because no other person has standing to apply.</p> <p><input type="checkbox"/> Sole executor/beneficiary may appoint a <b>nominee</b> by affidavit. Evidence of informed consent may be required.</p> <p><input type="checkbox"/> The <b>nominee</b> may apply for <b>Letters of Administration with the Will Annexed</b>. An affidavit furnishing evidence of the executor's frailty must be filed. Evidence of independent legal advice may be required.</p> <p><b>Basis of grant:</b> "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><b>Sole instituted executor <i>is</i> the sole beneficiary, is alive but <i>does not</i> have capacity, <i>and</i></b></p> <p>→ the wording of the will <b>allows the substituted executor to apply</b>, eg if instituted executor is “unable to apply”</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The substituted executor may apply.</li> <li><input type="checkbox"/> An affidavit attaching current medical evidence of the instituted executor’s incapacity must be filed.</li> <li><input type="checkbox"/> <b>Basis of grant:</b> “Probate of will. Substituted executor appointed under the will. [Name of incapable executor] the instituted executor is unable to apply. For the use and benefit of [incapable executor], limited until he/she recovers from his/her disability and comes in and obtains a grant”</li> </ul>	
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<p><b>Sole instituted executor <i>is</i> the sole beneficiary, is alive but <i>does not</i> have capacity, <i>but</i></b></p> <p>→ the wording of the will <b>does not allow the substituted executor to apply</b> eg if there are no words in the will such as “unable to apply” which would allow substituted executor to replace instituted executor.</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> An application may be made seeking <b>Letters of Administration with the Will Annexed</b>, 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: <ul style="list-style-type: none"> <li>(1) The executor’s financial manager (if one has been appointed)</li> <li>(2) The executor’s enduring power of attorney (if one has been executed)</li> <li>(3) The person/s appointed executor in executor’s will (if one has been executed prior to loss of capacity)</li> <li>(4) Those entitled to the executor’s estate on intestacy</li> <li>(5) An appointment of the Trustee and Guardian</li> </ul> </li> <li><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.</li> <li><input type="checkbox"/> An affidavit furnishing current medical evidence of the executor’s incapacity must be filed in categories (2) to (5) above.</li> <li><input type="checkbox"/> If the application is by the financial manager file evidence that the appointment has not been revoked.</li> <li><input type="checkbox"/> File a copy of the instrument appointing the applicant for categories (1) to (3) or certificate evidence proving entitlement in (4).</li> </ul> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li><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 NSWTG in accordance with the requisition at “<b>Annexure A</b>” attached.</li> <li><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.</li> <li><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.</li> <li><input type="checkbox"/> In categories (2) to (4) above, an administration bond is required: See Section 11 below or see the 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”).</li> <li><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.</li> </ul> <p><b>Basis of grant:</b> “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>	rr 19, 23 s 64 PAA Forms 130, 131
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<b>7. Read the Will (and any codicils) – who are the beneficiaries?</b>	
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<ul style="list-style-type: none"> <li><input type="checkbox"/> Are any <b>deceased beneficiaries</b> children of the deceased?</li> <li><input type="checkbox"/> If so, does s 41 SA apply or is there a contrary intention in the will?</li> </ul>	s 41 SA
<ul style="list-style-type: none"> <li><input type="checkbox"/> Is all property disposed of by the will?</li> <li><input type="checkbox"/> If not, is a <b>partial intestacy</b> created or does s 42 SA apply?</li> <li><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 is <i>not</i> required if the executor is applying.</li> </ul>	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
<b>8. Read the will (and any codicils) – execution, date, interested witness, rectification</b>	
<p><b>DUE EXECUTION – ss 6, 14 Succession Act 2006</b></p> <p>(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)?</p> <p>(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?</p> <p>(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?</p> <p>(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?</p> <p><b>Note: If documents or alterations are not duly executed</b> they are not admitted to probate without the Court making a <b>declaration pursuant to s 8</b> of the <i>Succession Act 2006</i>, that it is satisfied that the deceased intended the document or alteration 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 <b>must disclose the document</b> to both beneficially and adversely affected persons. Adapt and answer the standard requisition below to suit the circumstances of your application.</p>	s 6 SA rr 26 & 29 SCR
<p><b>Informal documents – Standard requisition where a document or alteration has not been duly executed</b></p> <p><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.</p> <p><input type="checkbox"/> File an <b>affidavit of attesting witness</b> (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.</p> <p><input type="checkbox"/> Regardless of whether or not you wish to propound (prove) the document/alterations <b>you must disclose it to both beneficially and adversely affected persons</b>, 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. <b>Affected persons</b> 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 <b>affected person is incapable</b>, 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> <p><b>Note:</b> 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>	rr 14, 26, 29, 42 SCR ss 6, 8, 14 SA
<p><b>Attestation clause: Is there an attestation clause?</b></p> <p><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><b>Undated will – Is the will undated?</b></p> <p><input type="checkbox"/> If so file an affidavit which establishes the date of execution, or as close as possible to it.</p> <p><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><b>Interested witness – Beneficiary witnesses will – s 10 Succession Act 2006</b></p> <p><b>Is a beneficiary an attesting witness? If YES</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Serve <b>notice of proceedings</b> (Form 140) <b>personally</b> on all beneficiaries adversely affected by the gift.</li> <li><input type="checkbox"/> Depending on the wording of the will adversely affected persons may be limited to residuary beneficiaries.</li> <li><input type="checkbox"/> File the <b>consents</b> of all persons adversely affected by the gift to the interested witness: r 40 SCR.</li> <li><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.</li> <li><input type="checkbox"/> The onus is upon the person wishing to take the benefit of this provision to seek and obtain that consent</li> <li><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.</li> <li><input type="checkbox"/> <b>If consents are <i>not</i> obtained</b> 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.</li> </ul> <p><b>Note:</b> If the deceased died on or after 1 March 2008 a professional who is entitled to “reasonable remuneration” under the will may witness the will. If the deceased died prior to 1 March 2008 however a professional entitled to a benefit under the will, such as a solicitor-executor entitled to charge for legal services, should not have witnessed it.</p>	<p>rr 26, 38-40, 57 SCR s 10 SA</p>
<p><b>Rectification – if testator died on or after 1 March 2008</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> If a will does not appear to carry out the intentions of the deceased, <b>because</b> of a clerical error or it doesn't represent the deceased's instructions, an application for rectification can be made.</li> </ul> <p><b>Note:</b> 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"> <li><input type="checkbox"/> The summons (Form 111) should seek probate and rectification and set out the exact form of the order required to correct the defect.</li> <li><input type="checkbox"/> The summons should be <b>filed within 12 months</b> 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.</li> <li><input type="checkbox"/> <b>File the consents</b> of all persons adversely affected by the rectification: r 40 SCR.</li> <li><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.</li> <li><input type="checkbox"/> <b>Serve notice of proceedings</b> (Form 140) <b>personally</b> 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.</li> <li><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.</li> <li><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.</li> </ul>	<p>s 27 SA rr 39, 40, 57, 61, 64</p>
<p><b>9. Affidavit of Executor – Form 118 – original only, no copies</b></p>	
<ul style="list-style-type: none"> <li><input type="checkbox"/> <b>Para 1:</b> Refer to the date of the will, and signing of the will in the margin. [Where documents need to be posted to an executor for signing, the executor with the will should sign the original in the margin and send a copy to the other executor. The affidavit should name the executors who have signed a copy of the will]</li> <li><input type="checkbox"/> <b>Disclose all documents</b> created after the will propounded, including informal documents, which appear to represent the testamentary intentions of the deceased: <ul style="list-style-type: none"> <li>o If a document appears to have been <b>executed in accordance with Part 2.1 SA</b> but it is claimed that it is invalid and should be passed over because: <ul style="list-style-type: none"> <li>▪ the testator lacked testamentary capacity</li> <li>▪ the testator lacked knowledge and approval or</li> <li>▪ there were suspicious circumstances surrounding its preparation or execution,</li> </ul> the application must be listed in Court where it will be <b>referred to the Probate Judge</b> for determination. </li> <li>o <b>Serve notice of proceedings personally</b> on all persons who would be adversely affected if the document</li> </ul> </li> </ul>	<p>rr 14, 42</p>

<p>were not admitted to probate and file an affidavit confirming service of notice of proceedings.</p> <ul style="list-style-type: none"> <li>○ <b>Exceptions:</b> 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.</li> </ul> <p><b>Note:</b> If a document has <i>not</i> been executed in accordance with Part 2.1 SA the applicant <b>must disclose the document</b> 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 &amp; 42.</p>	
<ul style="list-style-type: none"> <li><input type="checkbox"/> <b>Para 2:</b> 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?</li> <li><input type="checkbox"/> <b>In light of the above,</b> is the signature on the will that of the deceased?</li> <li><input type="checkbox"/> If the executor does not recognise the deceased's signature a separate affidavit should be filed by a person who does or an affidavit of attesting witness filed.</li> </ul>	s 6 SA
<ul style="list-style-type: none"> <li><input type="checkbox"/> <b>Para 4:</b> If there is <b>no cause of death</b> on the death certificate and the death is <b>pending a decision of the coroner</b>, include a paragraph in the affidavit of executor which: <ul style="list-style-type: none"> <li>(1) describes briefly the circumstances of the deceased's death and whether any charges have been brought in respect of his/her death. (The forfeiture rule may apply if a beneficiary or executor is responsible for the unlawful killing of the deceased), and</li> <li>(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").</li> </ul> </li> <li><input type="checkbox"/> If <b>dementia</b> or other cognitive disability is named as a cause of death, check the date of execution of the will and furnish evidence of capacity at the date of execution of the will if this is in question.</li> <li><input type="checkbox"/> If the deceased <b>died overseas</b> a certified translation of the death certificate is required and a person who knew the deceased and saw the body must file an affidavit confirming his or her death.</li> <li><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 <b>presumption of death</b>. 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 have ramifications for those entitled under the will.</li> </ul>	ss 40A, 40B PAA
<ul style="list-style-type: none"> <li><input type="checkbox"/> <b>Para 5:</b> If the <b>testator married</b> 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 named in the will to whom the deceased was married at the date of death.</li> <li><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.</li> <li><input type="checkbox"/> If the <b>testator divorced</b> 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.</li> </ul>	r 15, ss 12,13 SA Sch 1 SA
<ul style="list-style-type: none"> <li><input type="checkbox"/> <b>Para 6:</b> Distinguish between <b>property</b> 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.</li> <li><input type="checkbox"/> Assets must be described with sufficient particularity to be able to identify them. See Section 10 below.</li> <li><input type="checkbox"/> If <b>additional assets</b> come to your attention after the application is filed, but before a grant issues you should file an affidavit with an amended inventory, <b>not</b> an affidavit of additional assets. The latter is only appropriate after a grant has issued.</li> </ul>	s 101 RPA
<ul style="list-style-type: none"> <li><input type="checkbox"/> <b>Para 7 + 8:</b> See Section 6 above. If the instituted executor is applying then delete paragraph 8. If only one of the instituted executors or the substituted executor is applying this should be stated in paragraph 7 and the circumstances described in para 8, with death certificates, renunciations etc annexed where necessary.</li> </ul>	rr 17, 18
<ul style="list-style-type: none"> <li><input type="checkbox"/> <b>Para 11:</b> See Section 7 above. Entitlement is 30 days after the date of death 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 to establish if the children or grandchildren receives the share of the</li> </ul>	ss 35, 41, 42 SA

deceased child or if a partial intestacy is created.	
<ul style="list-style-type: none"> <li><input type="checkbox"/> <b>Para 12:</b> Distinguish between property owned as <b>joint tenants and tenants in common</b>. 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 the estate.</li> <li><input type="checkbox"/> In cases where the deceased and a person owned property as joint tenants and <b>died together</b>, 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.</li> <li><input type="checkbox"/> Assets must be described with <b>sufficient particularity</b> to be able to identify them eg bank account details and addresses of real estate.</li> <li><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, <b>not</b> an affidavit of additional assets. The latter is only appropriate after a grant has issued.</li> </ul>	rr 10, 91 SCR, s 81A PAA s 35 CA
<ul style="list-style-type: none"> <li><input type="checkbox"/> <b>Para 14:</b> 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.</li> </ul>	
<p><b>Additional paragraphs where necessary:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Rule 13 – Domicile</li> <li><input type="checkbox"/> Rule 15 – Divorce, s 13 SA and Marriage, s 12 SA. Note Schedule 1 re same sex marriage</li> <li><input type="checkbox"/> Rule 17 – Where executor renounces probate or reserves leave to apply</li> <li><input type="checkbox"/> Rule 27 – Blind or Illiterate testators and when a person has signed the will at the testator's direction</li> <li><input type="checkbox"/> Rule 29 – Informal documents – alterations or interlineations to will</li> <li><input type="checkbox"/> Rule 30 – Documents referred to or attached</li> <li><input type="checkbox"/> Rule 31 – Where part of the will has been torn or cut off</li> <li><input type="checkbox"/> Rule 32 – Where the will has been burnt, torn or there is some other sign of revocation</li> <li><input type="checkbox"/> Rule 33 – Inoperative wills</li> </ul>	ss 12, 13 and Schedule 1 SA
<b>10. Annexures and Other Documents</b>	
<p><b>Death Certificates and other certificate evidence</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death certificates of the deceased and any deceased executors must be filed. In some cases marriage certificates or decree absolutes need to be filed. Certified copies are acceptable.</li> <li><input type="checkbox"/> If you want an original returned, attach a certified copy to the affidavit of executor and put a post-it note on the original requesting that it be returned with the grant.</li> </ul>	r 10
<p><b>Inventory of assets – Form 117, ss 81A, 81B PAA, ss 4, 29-31 <i>Succession Act 2006</i></b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Only property <b>solely owned by the deceased</b> 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.</li> <li><input type="checkbox"/> Property of the deceased <b>outside NSW or owned as joint tenants</b> should be disclosed in a separate table but it is not included in the total value of the estate.</li> <li><input type="checkbox"/> Property must be <b>described with sufficient particulars</b> to identify it. This means bank account details, property addresses, number and type of shares and the name of insurance or superannuation provider.</li> </ul>	r 10
<b>11. Administration Bond and Sureties – partial intestacy</b>	
<p><b>Bond and sureties for the share of all persons not joining the application</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Where a partial intestacy is created by the will or an application is made for administration with the will annexed, the applicants may be required to file an administration bond (Form 130) and two sureties (Form 131) equal to the value of the share of each beneficiary.</li> <li><input type="checkbox"/> The applicant and both sureties must swear the administration bond. The two sureties must each swear a</li> </ul>	rr 23, 61 SCR ss 64 PAA Div 4, Part 7 UCPR

<p>surety, which sets out the real estate which they can call upon to service the bond if required to do so.</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> If a surety owns property as joint tenant the other joint tenant must also swear the bond and surety.</li> <li><input type="checkbox"/> The applicant may not be a surety to the bond.</li> <li><input type="checkbox"/> The applicant may <b>dispense with the bond</b> 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.</li> <li><input type="checkbox"/> A <b>person under a legal incapacity</b> 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: r 61 SCR.</li> <li><input type="checkbox"/> <b>The bond will not be dispensed with if the applicant is the representative of an incapable person</b> 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".</li> </ul>	
<b>12. Draft Grant – Form 112 – “2 x Sets”</b>	
<p><b>IMPORTANT → File 2 x draft grants (Form 112) with a copy of the will and inventory annexed.</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Annex a copy of the sworn inventory and a copy of the will signed in the margin to each draft grant.</li> <li><input type="checkbox"/> Check deceased's name is spelt correctly.</li> <li><input type="checkbox"/> Check the executor's names are spelt correctly and their addresses are included.</li> <li><input type="checkbox"/> Check date of death and date of will are correct.</li> <li><input type="checkbox"/> Ensure "Basis of grant" is correctly stated → see Sections 5 &amp; 6 above for examples.</li> </ul>	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](mailto:sc.probate@justice.nsw.gov.au)
  
- 3) Upon receipt of this confirmation by NSWTG the grant will be issued.