

SUPREME COURT OF QUEENSLAND

AMENDED PRACTICE DIRECTION NUMBER 14 OF 2023

WILLS AND ESTATES LIST (AND FAMILY PROVISION APPLICATIONS)

Wills and Estates List

1. The purpose of the Wills and Estates List (**List**) is to effect the just, expeditious and efficient resolution of proceedings brought in respect of a will or an estate and to reduce the costs of such proceedings.
2. A proceeding will only be placed on the List if its nature and complexity warrants judicial supervision. Priority will be given to proceedings requiring urgent determination. This Practice Direction does not apply to wills and estates proceedings which can be conveniently disposed of in the Applications jurisdiction.
3. Subject to paragraph 31, this Practice Direction applies only in relation to proceedings commenced in, or transferred to, the Brisbane Registry. A wills or estate matter filed in another region will be subject to case management as considered appropriate in that region.
4. To the extent that it is consistent with the just and expeditious determination of cases, supervision of a proceeding on the List seeks to:
 - (a) ensure that, at the trial, the parties focus on matters genuinely in issue;
 - (b) minimise time spent at trial proving matters not genuinely in issue;
 - (c) ensure that evidence at trial is presented as efficiently as is consistent with a fair hearing of the case;
 - (d) ensure that the prospects of settlement, whether of the whole proceeding, or some issue or issues in it, have been fully explored before dates are allocated for the trial of the matter;
 - (e) ensure that a case is properly ready before trial dates are allocated to it;
 - (f) minimise the risk of an adjournment of the trial; and
 - (g) to the extent consistent with a just hearing, ensure that the cost of litigation is reduced; and
 - (h) ensure that the parties do not use the resources of an estate in a manner that is out of proportion to the size of the estate or any provision that may be made in a family provision proceeding.

Wills and Estate List Judge and List Manager

5. The Chief Justice in consultation with the Senior Judge Administrator will from time to time allocate a judge to conduct the Wills and Estates List (the **Wills and Estates List Judge**).
6. The Wills and Estates List Manager, within the Registry, is responsible to the Wills and Estates List Judge for the administration and management of the Wills and Estates List.¹

Listing proceedings

7. A proceeding may be placed on the List by order of the Wills and Estates List Judge, or by any judge, upon a request being made by a party to the proceeding (as to which see paragraphs 12-14 below). A proceeding may also be placed on the List by order of the Wills and Estates List Judge, following a referral from the Resolution Registrar.
8. Proceedings which may be placed on the List include proceedings in which the following relief is sought:
 - (a) relief in respect of a will, including contentious probate proceedings and proceedings involving a promise to make a will or mutual wills;
 - (b) an order for a statutory will to be made on behalf of a person;
 - (c) relief in respect of the estate, and the administration and distribution of the estate, of a deceased person, including by way of family provision, proceedings for compensation and accounting made pursuant to the *Powers of Attorney Act 1998* and the *Guardianship and Administration Act 2000* and applications relating to testamentary trusts made pursuant to section 96 of the *Trusts Act 1973*;
 - (d) relief in respect of a personal representative or trustee of the estate of a deceased person, including the payment of executor's commission and the removal of personal representatives;
 - (e) relief in respect of the superannuation death benefits of a deceased person;
 - (f) claims seeking to set aside *inter vivos* transactions undertaken by a deceased person;
 - (g) any other relief pursuant to the *Succession Act 1981* in relation to the estate of a deceased person or testamentary trust.
9. In determining whether to order a proceeding be placed on the Wills and Estates List, relevant considerations include the complexity of the issues in dispute, the nature and size of the estate and whether the matter can be appropriately determined in the Applications List.

¹ Contact details for the List Manager and the associate to the List Judge are set out at the end of this Practice Direction.

10. Where a proceeding is ordered to be placed on the List, the judge's associate is to immediately advise the Wills and Estates List Manager and, if another judge has made the order, the associate to the Wills and Estates List Judge, of the making of the order.

Requesting that a proceeding be placed on the List

11. A party may request the Wills and Estates List Judge to place a proceeding on the Wills and Estates List.
12. Unless otherwise directed, a request by a party to have a proceeding listed on the Wills and Estates List may be made only:
 - (a) after the claim or originating application has been served on the defendants or respondents;
 - (b) after the views of the other parties as to its listing have been sought by the applicant for listing (including as to whether any other party requires an oral hearing in relation to the request to list).
13. Unless otherwise directed, a request for listing is to be supported by a document made in accordance with this Practice Direction (a **listing statement**). The listing statement must include:
 - (a) a succinct statement of the nature of the dispute;
 - (b) brief particulars of the issues said to arise;
 - (c) a statement whether or not the other party or parties agree that the proceeding should be listed;
 - (d) a statement, avoiding undue formality, of the applicant's contentions in relation to the proceedings, which should identify:
 - (i) the general facts on which the applicant relies in seeking relief;
 - (ii) the legal grounds, including statutory rights, relied on;
 - (e) details of any considerations of urgency;
 - (f) a timetable for progress to resolution, including estimated trial length and costs of the proceeding (to date, and to trial); and
 - (g) an explanation as to why the proceeding cannot be conveniently determined on the Applications List,and be accompanied by a draft order setting out the directions to be sought.
14. The request for listing and listing statement are to be provided to the court by email sent to the associate to the Wills and Estate List Judge and copied to the Wills and Estate List Manager.

15. Upon a request being made by a party (in accordance with paragraphs 12-14 above), the Wills and Estates List Judge will determine whether the proceeding is appropriate to be placed on the List. The request will be determined on the papers, unless any party indicates an oral hearing is required. The associate to the Wills and Estates List Judge will inform the parties whether or not the proceeding has been placed on the List, and of any directions made on the papers.

Directions

16. The Wills and Estates List Judge may make such orders or give such directions as appropriate to ensure the just, efficient and expeditious disposition of proceedings on the List.
17. Parties are expected to attempt to reach agreement about whether and when they should engage in alternative dispute resolution (**ADR**); the form of ADR; and arrangements for undertaking ADR. They should inform the Wills and Estates List Judge of any agreement reached, or explain the areas of dispute. If the parties are unable to resolve the proceeding, they should attempt to resolve individual issues.
18. The parties should attempt to reach agreement and, if necessary, seek directions, including in relation to:
 - (a) appointment of experts by parties jointly, pursuant to [rule 429L](#) of the *Uniform Civil Procedure Rules 1999* (**UCPR**), to prepare a report on an issue arising in the proceeding;
 - (b) experts' conferences and joint reports, pursuant to [rule 428](#) UCPR; and
 - (c) whether early determination of an issue in the proceeding is appropriate.

Reviews

19. Review hearings will be listed at the direction of the Wills and Estates List Judge.
20. Parties are expected to confer at least one week before any review, to attempt to reach agreement on the directions to be sought at the upcoming review.
21. Where parties reach agreement about the directions to be made, they are to provide:
 - (a) a copy of the agreed directions; and
 - (b) evidence of each party's agreement (either in the form of a signed consent order, or an email from the party),by email to the associate to the Wills and Estates List Judge.
22. If the Wills and Estates List Judge considers it appropriate to do so, agreed directions may be made on the papers.
23. If the parties are unable to agree about directions, each party is to provide a copy of that party's draft of the directions sought, by email to the associate to the Wills and Estate List Judge.

24. Directions and orders made at review hearings should nominate specific dates by which particular steps are to be complied with.
25. Reviews will generally be limited to the determination of directions to progress the matter, involving only limited disputes. Substantial interlocutory disputes will not be determined at a review and are to be dealt with in the Applications List.

Trial

26. Once a proceeding is placed on the Wills and Estates List, it will not be allocated trial dates unless a request for trial date is filed, or a judge otherwise orders.
27. Once a request for trial date has been filed, or a judge has made an order listing a matter for trial, the proceeding will be referred to the Resolution Registrar, who will arrange for the parties to attend a pre-trial case conference for the purpose of agreeing directions to ensure the matter proceeds to trial in an efficient and cost-effective manner.
28. Following the making of such directions, the proceeding will be managed by the judge allocated to hear the trial.

Removal from List

29. A proceeding may be removed from the Wills and Estates List once it has been allocated to another judge for trial, or by order of a judge at any time. Otherwise, a proceeding may be removed from the List by the Wills and Estates List Manager where:
 - (a) the whole of the proceeding (including any counterclaim and any appeal) has been determined; or
 - (b) the proceedings have been discontinued by the plaintiff or applicant filing a notice of discontinuance under [rule 309](#) UCPR or giving written notice that the proceeding has been settled under [rule 308A](#) UCPR.

Sanction of settlement

30. If a matter on the Wills and Estates List is resolved and court orders are required to give effect to the settlement, the parties should advise the associate to the Wills and Estates List Judge of the settlement and the orders sought. The parties may provide, by email to the associate, an affidavit(s) evidencing the compromise and brief submissions. If the Wills and Estates List Judge considers it appropriate, the orders may be made on the papers, without the need for any appearance. Otherwise, the parties will be informed that an application should be filed in the ordinary way to be heard in the Applications List.

Family Provision applications

31. The following paragraphs apply to all originating applications under s 41 of the *Succession Act 1981* (Qld) (**family provision applications**) filed in the Supreme Court.
32. A family provision application will be set down for a directions hearing no later than 28 days after the date of filing (**first directions hearing**).²
33. The following documents must be filed with a family provision application:
 - (a) an affidavit by the applicant satisfying the requirements for the making of the application and identifying the provision the applicant seeks from the estate; and
 - (b) an affidavit by the applicant's solicitor (if the applicant is represented by a solicitor) estimating the applicant's costs and disbursements, calculated on both the standard basis and the indemnity basis, up to and including the completion of a mediation.
34. The applicant must serve the following documents on the respondent not less than 14 days before the first directions hearing:
 - (a) the originating application;
 - (b) the applicant's supporting affidavits; and
 - (c) a notice listing all persons (and their contact details, including their address, telephone number and email) known to the applicant who are, or who may be:
 - (i) eligible to make a family provision application; and
 - (ii) a beneficiary under the will or on the intestacy of the deceased.
35. If all the parties agree on the directions for the conduct of the proceeding, they may request the court to make directions by consent on the papers and for the first directions hearing to be de-listed. The request is to be made by email by 4:00 pm on the day before the first directions hearing.³ The parties must provide a draft consent order, signed by the solicitor acting for each party (or the party, if they are not represented by a solicitor).
36. If the parties have not agreed on the directions for the conduct of the proceeding, they are each to provide their respective proposed directions to each other party by email by 4:00 pm on the day before the first directions hearing.
37. At the first directions hearing, the Court will make directions:
 - (a) for the conduct of the proceeding, including for:
 - (i) the determination of any preliminary issues; and

² In Brisbane, the first directions hearing will be listed in the Applications list. In Cairns, Townsville or Rockhampton, the first directions hearing will be listed in the manner convenient to the Court.

³ In Brisbane, the request is to be sent to the associate to the senior Judge sitting in Applications and to the Applications list manager. In Cairns, Townsville or Rockhampton, the request is to be made to the associate to the relevant Judge hearing applications in the given week.

- (ii) the identification and joinder of any necessary or proper parties;
- (b) for the purpose of making information available at the earliest practicable date so that the parties may make a realistic assessment of their respective cases; and
- (c) to encourage the early resolution of the proceeding.

Appendix A contains draft directions that may be appropriate for consideration at a first directions hearing.

- 38. If appropriate, a family provision application will be referred to mediation at the earliest practical time.
- 39. If a family provision application is not referred to mediation or is not compromised at mediation, the parties should:
 - (a) request that the application be placed on the Wills and Estates List and listed for review; or
 - (b) list the application, in the appropriate Applications List, for further directions (“**further directions hearing**”).
- 40. At the further directions hearing, the Court will make directions for a trial of the family provision application, including directions about the preparation of a realistic trial plan, statement of agreed facts, chronology, list of issues and/or list of facts and issues not in dispute.
- 41. Unless the Court orders otherwise, or reasonable notice is given that strict proof is necessary, parties may agree to give evidence in a family provision application as follows:
 - (a) a kerbside appraisal by a real estate agent of any real property;
 - (b) an estimate of the value, or a monetary amount, for the non-monetary assets of the estate other than real estate;
 - (c) a description by the applicant or beneficiary, of any physical, intellectual, or mental disability, from which it is alleged the applicant or beneficiary, or any dependent of the applicant or beneficiary, is suffering, together with a copy of any medical or other report in support of the condition alleged.
- 42. In a family provision application, the Court may make orders capping the costs that may be recovered by a party in circumstances including, but not limited to, cases in which the net distributable value of the estate (excluding the costs of the proceeding) is less than \$500,000.

Contact details

The Wills and Estates List Manager: willsandestateslist@justice.qld.gov.au
Current Associate: Associate.WilliamsJ@courts.qld.gov.au
Resolution Registrar: Resolution.Registrar@courts.qld.gov.au
Applications List manager: ApnManager@justice.qld.gov.au



H Bowskill
Chief Justice
14 June 2024

Version History:

14 June 2023 - Practice Direction 14 of 2023 issued.
14 June 2024 - Practice Direction revised and reissued.

Appendix A

Sample Directions for Family Provision Applications

The following are sample directions that may be considered for family provision applications. They should be adapted and supplemented to suit the circumstances of the particular case.

[BY CONSENT] THE COURT DIRECTS THAT:

1. On or before [*date*], the respondent is to file and serve an affidavit (**personal representative's initial affidavit**) containing or exhibiting:
 - (a) a copy of any grant of probate or letters of administration made to the respondent [*if not already exhibited to the applicant's affidavit filed in support of the originating application*];
 - (b) a copy of the will of the deceased [*if not already annexed to the grant or exhibited to the applicant's affidavit filed in support of the originating application*];
 - (c) an estimate, formed from the evidence available to the respondent, of the assets, liabilities and value of the estate of the deceased as at:
 - (i) the date of death; and
 - (ii) the date of the respondent's initial affidavit (**estate assets and liabilities estimate**).
2. On or before [*date*], the respondent is to serve by way of [*personal/ordinary*] service:
 - (a) notice in the relevant form **annexed** to this order;
 - (b) a copy of the originating application;
 - (c) a copy of the applicant's affidavit or affidavits filed in support of the originating application;
 - (d) a copy of the personal representative's initial affidavit; and
 - (e) a copy of this order,on the following persons:
 - (f) [*name each person eligible to apply for family provision*] (each an eligible person);
 - (g) [*name each beneficiary under the will or on intestacy*] (each a beneficiary).
3. Within seven days after service is effected on the last eligible person and beneficiary, the respondent is to file an affidavit of service on the eligible persons and beneficiaries.

4. On or before [*date*]:
 - (a) any eligible person who also wishes to make an application for provision or further and better provision to be made for them out of the estate of the deceased, is to file and serve:
 - (i) an application seeking to be joined as an applicant in the proceeding;
 - (ii) an affidavit by the eligible person, identifying the provision the person seeks from the estate;
 - (iii) an affidavit by the eligible person's solicitor (if they are represented by a solicitor) estimating the eligible person's costs and disbursements, calculated on both the standard and indemnity basis, up to and including the completion of a mediation; and
 - (b) any beneficiary who wishes to be separately represented in the proceeding, is to file and serve an application seeking to be joined as a respondent.
5. The applications for joinder by any eligible person or beneficiary will be heard on [*date*].
6. On or before [*date*], each respondent is to file and serve any affidavits upon which they intend to rely at trial, which must contain an estimate of each respondent's costs and disbursements, calculated on the standard and indemnity basis, up to and including the completion of mediation.
7. The parties are directed to attend, participate in and act reasonably and genuinely in a mediation to be conducted on or before [*date*].
8. The mediator is [*name*].
9. The period of the mediation is fixed at a maximum of half a day and may extend beyond that period only with the agreement of the parties.
10. The parties are to negotiate a fee with the mediator.
11. The mediator's fee and the costs of the mediation venue hire are in the first instance to be paid out of the estate of the deceased, but otherwise are reserved to the trial judge.
12. Not less than five business days before the mediation:
 - (a) each applicant must give each other party and the mediator a statement containing an up-to-date estimate of each applicant's costs and disbursements, incurred and estimated to be incurred and calculated on the standard and indemnity basis, up to and including the completion of the mediation;
 - (b) each respondent apart from the personal representatives must give each other party and the mediator a statement containing an up-to-date estimate of each respondent's costs and disbursements, incurred and estimated to be incurred and calculated on the standard and the indemnity basis, up to and including the completion of the mediation; and
 - (c) the personal representatives must give the other parties and the mediator:

- (i) an up-to-date estate assets and liabilities estimate; and
 - (ii) an up-to-date estimate of the personal representatives' costs and disbursements, incurred and estimated to be incurred and calculated on the indemnity basis, up to and including the completion of the mediation.
13. If the proceeding is resolved at the mediation, then an application for [*sanction and*] final orders is to be filed and listed for hearing on or before [*date*].
14. If the proceeding is not resolved at mediation, then the proceeding is to be listed for further directions on a date to be agreed on or before [*date*].

[BY CONSENT] THE COURT ORDERS THAT:

15. The parties have liberty to apply on three business days' notice.
16. Costs are reserved.

ANNEXURE

Notice of claim *[to eligible person]*

1. The applicant has commenced proceeding S *[number]* of *[year]* in the Supreme Court of Queensland seeking a family provision order under the *Succession Act 1981* (Qld) in respect of the estate of *[name]*, deceased, who died on *[date]*.
2. If you are entitled to, and wish to apply for, a family provision order out of that estate, you must file and serve an application to be joined as an applicant in this proceeding on or before *[date from directions order]*. If you do not do so, the Court may deal with the proceeding without considering whether you should also be provided for in any way.
3. You should obtain your own legal advice.
4. Provided to you with this notice is:
 - (a) a copy of the originating application;
 - (b) a copy of the applicant's affidavit or affidavits filed in support of the originating application;
 - (c) a copy of the personal representative's initial affidavit; and
 - (d) a copy of the directions order made by the Court on *[date of order]*.

Dated: *[date]*

Signed: Solicitors for [the personal representatives]

Notice of claim *[to beneficiary]*

1. The applicant has commenced proceeding S *[number]* of *[year]* in the Supreme Court of Queensland seeking a family provision order under the *Succession Act 1981* (Qld) in respect of the estate of *[name]*, deceased, who died on *[date]*.
2. *[Name]* as *[executor/administrator]* of the estate of *[name of deceased]*, deceased, has an obligation to uphold the will, defend the application and place evidence before the court. If you may be able to give any evidence that is relevant to the proceeding, please contact the *[executor/administrator]* *[or: the solicitors for the executor/administrator]*: *[address, phone number and email of executors/administrators or their solicitors]*
3. If you wish to be separately represented, you must file and serve an application to be joined as a respondent in this proceeding on or before *[date from directions order]*. If you do not do so, the Court may deal with the proceeding without further reference to you.
4. You should obtain your own legal advice.
5. Provided to you with this notice is:

- (a) a copy of the originating application;
- (b) a copy of the applicant's affidavit or affidavits filed in support of the originating application;
- (c) a copy of the personal representative's initial affidavit; and
- (d) a copy of the directions order made by the Court on [*date of order*].

Dated: [date]

Signed: Solicitors for [*the personal representatives*]