
LIST OF PROBATE REQUISITIONS

APPLICATION

Application filed prematurely

1. The application is premature. The application may not be filed until the time limit as set out in rule 598(1) and (2) of the *Uniform Civil Procedure Rules 1999* (14 days from last advertising and 7 days after service on the Public Trustee) has expired.

Action required:- Re-file all documents after the time limits have expired. Leave to remove the documents on the condition to return has been granted. If filed by post just send a letter requesting that documents be refiled.

Date of Will incorrect

2. The date of the Will in the application is wrong in that the Will is dated <~Today~>.

Action Required:- Leave granted to amend the application in accordance with rules 377(1)(a) and 382(1) (2) of the *Uniform Civil Procedure Rules 1999*.

Alias of the deceased

3. Any known alias of the deceased must be included in the notice of intention to apply and the headings of all the filed documents. See rule 599(1)(a)(2) of the *Uniform Civil Procedure Rules 1999*.

Action Required:- Re-advertise and re-serve the Public Trustee, and file a fresh affidavit of publication and service if the notice of intention does not reflect this.

A clerk from your office must also attend at the registry counter to amend the headings of the documents already filed to include the alias.

PRIORITY OF APPLICANTS

Persons with a prior right to the grant

4. Persons with a prior right to the grant namely <~Full Name of those entitled~> must first be "cleared off" by evidence of death, renunciation or incapacity by affidavit exhibiting the evidence before the applicant/s can apply.

Action required:- Refer to the requirements of rule 603(4)&(5) or rule 610 (5)&(6) of the *Uniform Civil Procedure Rules 1999* that is applicable to your instance. See also the process as outlined in *Wills, Probate and Administration Practice (Queensland)* by John K de Groot at 405.1 as applicable.

Persons not entitled to a grant (L/A)

5. The <~Name of person NOT entitled~> is not beneficially entitled in the capacity as <~Capacity~>. The guardian of the intestate's children has the first right to apply. Any grant would be for their use and benefit during their minority. The consent of the guardian is required. (Adapt form 13 of the *Uniform Civil Procedure Rules 1999* – Consent of Litigation Guardian). Refer to:

- *Williams & Mortimer (15th & 3rd.ed.)* - page 283; and
- Rule 639 of the *Uniform Civil Procedure Rules 1999*; and
- *Wills, Probate and Administration Practice (Queensland)* by John K de Groot at 425.3.
- See also *Section 6(3) of the Succession Act 1981*.

RENUNCIATION

Renunciation incorrect

6. The renunciation does not comply with form 114/115 of the *Uniform Civil Procedure Rules 1999*.

Action required:- Leave is granted to amend and re-execute the renunciation; or file a fresh renunciation. Leave to remove the renunciation on the condition to return has been granted.

AFFIDAVIT OF APPLICANT/S

Affidavits to be signed by all deponents on each page

7. Affidavits must be signed by all deponents on each page as per rule 432 of the *Uniform Civil Procedure Rules 1999*.

Action required:- Either file a new affidavit of the applicant/s with the appropriate documents as exhibits or re-swear the existing affidavit/s. Leave to remove the documents on the condition to return them has been granted.

Details of marriage of spouse/executor

8. Paragraph 5 of form 105 (v.2) of the *Uniform Civil Procedure Rules 1999* is missing from the affidavit of the applicant/s. (Details relating to marriage between the deceased and the applicant/executor).

Action required:- File a further affidavit by the applicant/s with the details required by para 5 included as per form.

Identification of executors

9. Paragraph 6 of form 105 (v.2) of the *Uniform Civil Procedure Rules 1999* is missing from the affidavit of the applicant/s.

Action required:- File a further affidavit by the applicant/s with the details required by para 6 included as per the form.

Place Date/ Death wrong/missing

10. Details of the Date of Death/Place of Death in the affidavit of the applicant/s do not agree with the Death Certificate.

Action required:- File a further affidavit by the applicant/s craving leave to refer to the earlier affidavit correcting the discrepancy by inserting all the details required in forms 105, 106 or 109 of the *Uniform Civil Procedure Rules 1999*, whichever is applicable.

True and original last Will

11. The affidavit of the applicant/s does not follow form 105/106 of the *Uniform Civil Procedure Rules 1999* in that it does not refer to the Will as "the true and original last Will of".

Action required:- File a further affidavit by the applicant/s craving leave to refer to the earlier affidavit correcting the discrepancy.

Estate in Queensland

12. Did the deceased leave estate in Queensland? See para 2 of forms 105 and 106 and para 1 of form 109 of the *Uniform Civil Procedure Rules 1999*.

Action required:- File a further affidavit by the applicant/s stating, if true, that the deceased left an estate in Queensland.

Name of applicant/s in the affidavit different to the Will

13. The name of the applicant/s in the affidavit of the applicant/s is different to the name/s in the Will.

Action required:- File a further affidavit by the applicant/s craving leave to refer to the earlier affidavit and state, if true, that they are one and the same as the person/s referred to in the Will. See para 6 of form 105 of the *Uniform Civil Procedure Rules 1999*.

De facto Spouse/Partner

14. (a) On and from 1 May 1998, but before 1 April 2003 it is necessary to clear off the defacto spouse.

(b) On and from 1 April 2003, it is necessary to clear off the de facto partner who qualifies as a spouse of the deceased under section 5AA 2 (b) *Succession Act 1981*.

See paragraph 5 of form 109 of the *Uniform Civil Procedure Rules 1999*..

Action required:- File a further affidavit by the applicant with the details required by para 5 included as per the form.

WILL

Copy/lost Will

15. An application to the court is required seeking an order granting probate of the Will (or L/A with the Will) as contained in a copy thereof.

Action required:- File an application to court, form 9 of the *Uniform Civil Procedure Rules 1999*, together with any further supporting affidavit material. See rule 601(1)(c) of the *Uniform Civil Procedure Rules 1999*.

Alteration, interlineation & erasures made to Will

16. The date in the Will has been altered.

Action required:- File an affidavit from one of the witnesses deposing to the execution date of the Will. A photocopy of the **original** Will **MUST** be exhibited to that affidavit. See rule 605 of the *Uniform Civil Procedure Rules 1999*.

Damage to Will

17. There are a number of holes in <-Identify location of damage-> of the Will.

Action required:- An affidavit of plight and condition and finding explaining these holes is required.

The affidavit should be from the person who made same in the Will. If the damage existed at the time the Will was located, an affidavit by the applicant/s or the person who located the Will must be filed and go further to include if there was any other testamentary document attached. See rule 605 and form 111 of the *Uniform Civil Procedure Rules 1999*.

Evidence of proper execution of the Will

18. The attestation clause does not comply with section 10 of the *Succession Act 1981*.

Action required:- File an affidavit from one of the witnesses or such other person permitted by the rules, deposing to the execution of the Will in accordance with section 10 of the *Succession Act 1981*. A photocopy of the **original** Will **MUST** be exhibited to that affidavit. See rule 604 and forms 107, 108 or 110 of the *Uniform Civil Procedure Rules 1999*.

Will made by a blind or illiterate person

19. Where the testator is either blind or apparently illiterate.

Action required:- File an affidavit by one of the witnesses in accordance with the requirements of rule 607 of the *Uniform Civil Procedure Rules 1999*, if necessary. A photocopy of the **original** Will **MUST** be exhibited to that affidavit. See rule 607 of the *Uniform Civil Procedure Rules 1999*.

Certificate of exhibit markings on a separate sheet or on the original will are not permitted

20. Certificate of exhibit markings in accordance with form 47 of the *Uniform Civil Procedure Rules 1999* should be placed on the back of a photocopy of the original will.

Action required:- Photocopy the original will and place the certificate of exhibit on the back of the photocopy either by printing or label.

The original Will/Codicil must be lodged with the affidavit.

Original will not lodged with affidavit

21. The original will/codicil must be lodged with the affidavit, form 105 of the *Uniform Civil Procedure Rules 1999*.

Action Required:- The original will is to be lodged at the registry.

DEATH CERTIFICATE

Photocopy of death certificate

22. A photocopy of the death certificate is not acceptable.

Action required:- The properly certified copy issued by the Registrar of Births Deaths and Marriages must be filed as an exhibit to a further affidavit of the applicant/s.

Cause of death not shown in death certificate

23. A cause of death could be relevant where probate of a will or letters of administration with the will is sought. A particular cause of death may bear on testamentary capacity at the time the will was executed.

Action required: File a further affidavit by the applicant/s with the details required by para 4 of form 105 of the *Uniform Civil Procedure Rules 1999*.

Name of deceased

24. The name of the deceased in the Death Certificate is different to the name in the Will.

Action required:- File a further affidavit by the applicant/s craving leave to refer to the earlier affidavit and state, if true, that the person referred to in the Death Certificate is one and the same as the person named in the Will.

Cause of death - Testamentary capacity

25. A cause of death namely <~State cause of death~> mentioned in the Death Certificate raises a question of testamentary capacity. The duration of this illness specified in the death certificate raises the possibility the will may have been executed during this period.

Action required:- File a further affidavit by the applicant/s with the details as required by para 4 of form 105 of the *Uniform Civil Procedure Rules 1999*.

PUBLICATION AND SERVICE

Service of Notice on Public Trustee

26. Service on the Public Trustee is required. See rule 598(2) of the *Uniform Civil Procedure Rules 1999*.

Action required:- Serve the Public Trustee. File an affidavit, form 104 of the *Uniform Civil Procedure Rules 1999*, to that effect and exhibit to that affidavit a copy of the notice as served.

Notice of intention to apply - incorrect form

27. The Notice of Intention is not in the correct form. It should be as per form 103 of the *Uniform Civil Procedure Rules 1999*.

Action required:-

1. Re-Advertise;
2. Re-Serve the Public Trustee;
3. File further affidavit of publication and service.

Notice of intention to apply- Date of Will different to date in notice

28. The date of the Will in the notice is stated as <~State the date in notice~>. The Will is dated <~State actual date~>.

Action required:-

1. Re-Advertise;
2. Re-Serve the Public Trustee;
3. File further affidavit of publication and service.

Change of residence of the deceased

29. As the deceased died at a place not covered by the advertising, was the deceased resident there? If so then advertising in that area is required.

Action required:- If not a resident of that place at the time of death, file an affidavit by the applicant/s stating the details. If the deceased was a resident, advertising in a local newspaper is required. See *Wills, Probate and Administration Practice (Queensland)* by John K de Groot at 412.1.3 & 4.

Newspaper not approved by the Chief Justice by practice direction

30. Advertising must comply with rule 599(3)(b) of the *Uniform Civil Procedure Rules 1999*. Is the <~State name of the Newspaper~> a newspaper approved by the Chief Justice? If not, advertising in the Courier Mail would be sufficient.

The Publication approved by the Chief Justice by practice direction

31. Advertising must comply with rule 599(4) of the *Uniform Civil Procedure Rules 1999*. The publication approved by the Chief Justice under the practice direction is the Queensland Law Reporter. You can contact them on (07) 3236 1855 at the Incorporated Council of Law Reporting.

CAVEATS

Caveat filed

32. Due to a caveat having been filed on <~State the filing date of the Caveat~>, examination of the estate is unable to continue until the caveat process is completed. A notice to caveator and applicant/s were sent on <~State date of forwarding the Caveat~>. At the expiration of time for filing the Notice in Support of Caveat and if no Notice is filed, the application can then be re-examined or the filing of a Notice of Withdrawal of Caveat. See rule 625(6) of the *Uniform Civil Procedure Rules 1999*.

MISC.

Note only

33. Requisitions will be emailed to you if you provide your email address on the documents filed, otherwise they will be set by post.

Note only

34. The Grant can be posted to you if you enclose an A4 size, postage paid, stamped self-addressed envelope. It is suggested that a Registered Post envelope be obtained for this purpose.

Note only

35. A certificate of exhibit should never be made/placed on the original Will/Codicil.

Please note: This publication was produced prior to the current government.