



Supreme Court of Victoria

Practice Note SC CL 6

Trusts, Equity and Probate List

1 INTRODUCTION

- 1.1 The Chief Justice has authorised the issue of the following Practice Note.
- 1.2 The purpose of this Practice Note is to describe the procedures to be followed in the Trusts, Equity and Probate List. The List is a case management list within the Common Law Division of the Court.

2 DEFINITIONS

- 2.1 In this Practice Note:

Act means the *Administration and Probate Act 1958*;

Judge means the Judge in Charge of the List;

List means the Trusts, Equity and Probate List;

List directions day means one of the regular days (generally, each Friday in the Court sitting terms) on which the Judge sits to give directions and hear applications in the List;

Registrar means the Registrar of Probates;

Registry lawyer means the registry lawyer assisting with the List;

Rules means the *Supreme Court (Administration and Probate) Rules 2014*.

3 COMMENCEMENT

- 3.1 This Practice Note was issued and commenced on 12 September 2018 and applies to all proceedings in the List whenever commenced.

4 PROCEEDINGS SUITABLE FOR INCLUSION IN THE LIST

- 4.1 The following types of proceedings should be initiated or included in the List:

- (a) Applications for grants of representation that are referred by the Registrar;
- (b) Caveat proceedings where a summons for directions has been filed pursuant to rule 8.07 of the Rules;
- (c) Applications for limited grants, including grants of letters of administration, *ad colligendum bona*, *ad litem*, *pendente lite*, *durante dementia* or *durante minore aetate*;
- (d) Applications for revocation of grants of representation, rectification of a will, construction of a will and other proceedings pursuant to the *Wills Act 1997*;
- (e) Applications pursuant to the *Trustee Act 1958* that are not appropriate for the Commercial Court;
- (f) Applications for judicial advice pursuant to rule 54.02 of the *Supreme Court (General Civil Procedure) Rules 2015* that are not appropriate for the Commercial Court;
- (g) Applications pursuant to the *Charities Act 1978*;
- (h) Applications for equitable remedies, including the declaration of equitable interests in property, that are not appropriate for the Commercial Court; and
- (i) Proceedings arising under the Act, excluding proceedings arising under Part IV of the Act.

4.2 The following proceedings should not be initiated in the List:

- (a) Applications arising under Part IV of the Act. These applications are managed in the Testators Family Maintenance List; and
- (b) Applications relating to commission under Order 10 of the Rules. These applications are heard and determined by an Associate Judge in accordance with the procedures set out in the Rules.

4.3 For the avoidance of doubt, proceedings of the nature set out in paragraph 4.1 will only be heard in the Practice Court (Common Law) in the circumstances set out in Part 7 of this Practice Note.

5 PROCEDURE FOR ENTRY INTO THE LIST

5.1 Proceedings of the nature set out in paragraph 4.1 should be initiated in the List by indorsing the heading of the originating process "Trusts, Equity and Probate List". The heading of all subsequent documents filed in the proceeding should also be indorsed "Trusts, Equity and Probate List".

5.2 Parties may apply to the Judge in Charge (by contacting the registry lawyer) if they wish to have a proceeding included in the List, notwithstanding that it is not a proceeding of a type referred to in paragraph 4.1.

- 5.3 If at any time after the initiation of a proceeding it appears to the Court that it is appropriate to have the proceeding managed in the List, the proceeding may be transferred into the List on the Court's own motion.
- 5.4 Conversely, a proceeding initiated in the List may be transferred out of the List on the Court's own motion if it appears to the Court that it is appropriate to have the proceeding managed in a different list.
- 5.5 No additional fees will be payable for the inclusion of a proceeding in the List.

6 PRE-TRIAL MANAGEMENT

Obtaining a return date for first hearing

- 6.1 In a proceeding commenced by writ, a first directions hearing will be listed on the Court's own motion. The Court will generally notify the parties of the date and time of the first directions hearing within 14 days of the filing of the first defence.
- 6.2 In a proceeding commenced by originating motion, parties seeking a directions hearing must issue a summons (or, in uncontested proceedings, a notice to produce pursuant to r 28.06 of the *Supreme Court (General Civil Procedure) Rules 2015*). In order to obtain a hearing date, the applicant must forward a completed "Trusts, Equity and Probate List Hearing Date Information Form" (available on the List page on the Court's website) via email to tep@supcourt.vic.gov.au.
- 6.3 Where the Registrar refers a proceeding to the Judge, the proceeding will be heard during List directions. The Registrar will notify the parties of the specific date and time of the hearing at the time the applicant files a notice to produce.
- 6.4 The first hearing in a proceeding in the List will generally be for directions only and it is unlikely substantive applications will be entertained.

Consent minutes

- 6.5 It is expected that standard directions will be dealt with by consent on the papers, and unnecessary attendance at Court may result in orders depriving parties of costs, or costs orders against parties.
- 6.6 The plaintiff's solicitors are encouraged to deliver proposed consent orders to all other parties in advance of any directions hearing, with a view to obtaining orders by consent without the need for a hearing. The parties should email minutes of consent in both Word and signed PDF format to tep@supcourt.vic.gov.au (cc: orders@supremecourt.vic.gov.au) by 12.00pm three days prior to the directions hearing.
- 6.7 The Judge will determine whether orders will be made on the papers, or whether parties will be required to attend the directions hearing. Parties are required to appear at the directions hearing unless otherwise advised by the Court.

- 6.8 Where the parties do not agree on proposed consent orders, attendance at the directions hearing is required by all parties. The parties should each email draft orders to tep@supcourt.vic.gov.au by 12.00pm two days prior to the directions hearing.

Interlocutory applications

- 6.9 For any interlocutory application in the List, the applicant must forward a completed “Trusts, Equity and Probate List Hearing Date Information Form” (available on the List page on the Court’s website) via email to tep@supcourt.vic.gov.au. The applicant will be advised by email of the return date for their application. The application should be filed within 48 hours of the email from the Court or the return date may not be guaranteed. A copy of the confirmation email must be provided when filing.

7 URGENT APPLICATIONS

- 7.1 Parties bringing an urgent application should complete the “Trusts, Equity and Probate List Hearing Date Information Form” (available on the List page of the Court’s website) and contact the registry lawyer in the first instance. The registry lawyer will endeavour to allocate a hearing date before the Judge.
- 7.2 Alternatively, if the application cannot be heard by the Judge within an appropriate timeframe, parties will be directed to arrange for the application to be heard in the Practice Court (Common Law). See Practice Note SC CL 10 for further information about the operation of the Practice Court (Common Law).

8 CIVIL PROCEDURE ACT CERTIFICATES

- 8.1 The filing of grounds of objection in support of a caveat constitute a substantive document for the purposes of the *Civil Procedure Act 2010* and the certification requirements in Part 4.1 of that Act should be complied with when filing the same.

9 USE OF TECHNOLOGY

- 9.1 The provisions of Practice Note SC Gen 5 “Technology in Civil Litigation” apply to proceedings in the List.
- 9.2 For the purposes of paragraph 9.11 of that Practice Note, documentary evidence in excess of 1500 pages is to be considered a large amount of documentary evidence.

10 TRANSCRIPT

- 10.1 The provisions of Practice Note SC Gen 7 “Transcript in Civil Proceedings” apply to proceedings in the List.

- 10.2 For the purposes of Practice Note SC Gen 7, unless in a particular case parties are advised otherwise:
- a) 'Real-Time' transcript is not required for any proceeding in the List;
 - b) 'Running' transcript (as distinct from 'Real-Time' transcript and from 'Deferred' transcript) is required for all trials in the List; and
 - c) transcript is not required at all for directions hearings or interlocutory applications.

11 COMMUNICATIONS WITH THE COURT

- 11.1 At all stages of the proceeding, communications with the Court should be by email to tep@supcourt.vic.gov.au with a copy to all other parties, and should be confined to uncontroversial matters.
- 11.2 Parties are reminded that pursuant to rule 27.03(11)(b) of the *Supreme Court (General Civil Procedure) Rules 2015*, all court documents must include the name and email address of an individual to whom reference can be made in respect of the proceeding. In particular, case management of the List may require the registry lawyer to contact parties by email prior to a List directions day. Accordingly, a valid email address is required for all parties or their legal representatives.

12 FURTHER INFORMATION

- 12.1 The Court's website (www.supremecourt.vic.gov.au) includes a [page dedicated to the List](#) with up to date information about the operation of the List including:
- a) Judicial officers managing the List;
 - b) this Practice Note in Word and PDF formats;
 - c) guidelines for standard orders made in proceedings in the List; and
 - d) the Trusts, Equity and Probate List Hearing Date Information Form.

AMENDMENT HISTORY

30 January 2017: Practice Note CL 6 was issued on 30 January 2017 and replaced Practice Note No 6 of 2016.

12 September 2018: Practice Note CL 6 was reissued with amendments to paragraphs 2, 5, 6, 7, 10 and 12 replacing the version issued on 30 January 2017.

Vivienne Macgillivray
Executive Associate to the Chief Justice
12 September 2018