

## A GUIDE TO PRACTITIONERS

### LIMITED GRANTS OF REPRESENTATION

#### A. Introduction

1. The Supreme Court of Victoria has a broad jurisdiction in relation to deceased estates. The Court has the power to make grants of representation, orders concerning the validity of wills, and orders providing for the appointment and removal of executors and administrators. This jurisdiction also includes the power to make limited grants of representation.
2. Unlike a full grant of representation, which vests general powers in the executor or administrator to act on behalf of the deceased's estate until the administration of the estate is complete, a limited grant typically vests an administrator with confined powers to act on behalf of an estate for a specific purpose or for a specific time.<sup>1</sup>
3. Limited grants are designed to accommodate specific circumstances arising in an estate where it is not possible to obtain a full grant of representation. The limitations placed on such a grant may include a specific power or action that the grant permits and a time frame within which the grant is operable. The limitations of time and purpose or on specific terms are designed to accommodate the special needs of a particular estate.
4. In practical terms the probate jurisdiction is flexible and adaptable to the needs of the moment in the management of estate assets so as to give effect to testamentary intentions, accommodating the interests of the beneficiaries and any challenge to the testamentary intentions and the due administration of an estate.

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<sup>1</sup> There are a number of rarely utilised limited grants that vest full powers of administration on a limited administrator. See section E for further details.

5. This guide is intended to provide information to practitioners in making applications for limited grants of representation, particularly the most common applications, such as letters of administration *ad colligendum bona*, letters of administration *ad litem* and letters of administration *pendente lite*.
6. The following information is a guide only and practitioners must still consider the relevant provisions in the *Administration and Probate Act 1958*, the *Supreme Court (Administration and Probate) Rules 2014* and the *Trusts, Equity and Probate List Practice Note (SC CL 6)* and the applicable case law.

## **B. Applications for a limited grant of administration**

7. Applications for limited grants of administration are filed in the Probate Office and, in most circumstances, are considered by a Judge of the Court. Therefore, a plaintiff must file a notice to produce to obtain a hearing date.
8. Most limited grants take the form of an authenticated Court order where the relevant factual details are set out under 'Other Matters' and the powers conferred on the administrator are then set out.
9. The requirement that the plaintiff post a notice of their intention to apply for the grant on the Court's website is often dispensed with.
10. In order to initiate an application for a limited grant, the plaintiff should email the draft originating motion, draft notice to produce, affidavit material, Trusts, Equity and Probate List hearing date information form<sup>2</sup> and any proposed orders to the Trusts, Equity and Probate Team ('TEP team') at [tep@supcourt.vic.gov.au](mailto:tep@supcourt.vic.gov.au). This information will then be assessed and a return date for the notice to produce will be provided to the plaintiff. If an urgent hearing is required, arrangements will be made

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<sup>2</sup> Available on the Court's website in the Trusts, Equity and Probate List section.

for the matter to be listed on short notice before the Judge in Charge of the Trusts, Equity and Probate List or the Practice Court Judge.

11. In the event the application for a limited grant is unopposed and all of the necessary evidence is before the Court for the grant to be made, it may be possible for the application to be considered on the papers and for the proposed limited grant to be made in chambers. In such circumstances, the hearing is vacated and the associated costs incurred with an appearance are avoided. Where the application is opposed or there are significant deficiencies in the evidence, the Court will require an appearance on the return date.

### **C. Costs of an application**

12. The Court will ordinarily make orders allowing the costs of an application for a limited grant to be paid or retained out of the estate of the deceased, however, it will not allow the estate to bear any unreasonable or unnecessary costs.
13. Typically such costs are incurred when additional evidence is required or the application requires amendment or rectification. Where there are concerns about the quantum of the costs sought by the practitioner, the Court may fix costs or require an itemised bill to be forwarded to the Court.

### **D. Common forms of limited grants**

I. Letters of Administration *ad colligendum bona* (granted for the protection of an estate's assets pending delay in making a general grant)

14. A grant of letters of administration *ad colligendum bona* is the most common form of limited grant. Such a grant allows a person with standing to collect, preserve, and protect assets of a precarious or perishable nature where there is an unavoidable delay in the Court

making a general grant of representation.<sup>3</sup> Consequently, this form of limited grant is ordinarily confined to taking steps to protect the at risk assets of the estate.

15. Applications for administration *ad colligendum bona* are commonly made in circumstances of urgency; for instance, where the deceased entered into a contract for sale of a property and subsequently died before settlement was effected. If the settlement cannot be completed, the estate may be liable for any losses incurred as a result of being in breach of the contract of sale.
16. Another common case is where the deceased died with an outstanding mortgage and payments must be paid under the mortgage, otherwise the estate may default under the mortgage.
17. A further example is where a deceased operated a business at the date of death and the business needs to continue after the death and before a full grant can be obtained. A typical scenario is where the business and its good will needs to be protected to ensure that its value does not deteriorate before it can be sold.<sup>4</sup> As an example, the plaintiff *In the Estate of Rowell* sought to carry on the deceased's legal practice until the practice was sold but required a limited grant of administration in order to make an application under s 50 of the *Legal Practitioners Act 1981 (SA)* authorising her to carry on the legal practice.<sup>5</sup>

#### *Documentation Usually Required*

18. The plaintiff should file the following documents with the Probate Office when commencing an application for letters of administration *ad colligendum bona*:

- (a) an originating motion for letters of administration *ad colligendum bona*;

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<sup>3</sup> *Re Cohen deceased* [1975] VR 187.

<sup>4</sup> *In the Goods of Bolton* [1899] P 186.

<sup>5</sup> *In the Estate of Rowell* [2006] SASC 313.

- (b) a notice to produce with the return date provided by the TEP Team;
- (c) a draft form of orders in conformity with the Court's usual orders, with appropriately detailed recitals: see appendix A for examples; and
- (d) an affidavit in support of the application.

19. The affidavit filed should provide evidence of the facts underpinning the application, which typically includes:

- (a) proof of death e.g. death certificate, medical certificate of cause of death, funeral account;
- (b) copy of the deceased's will, if any;
- (c) copy of the contract of sale, if involving the sale of property assets;
- (d) proof of ownership of the property or other asset, typically a recent Land Victoria title search, or an ASIC search or Share Register for company details;
- (e) written consent to the application by any beneficiaries named in the deceased's will, co-executors if the application is only made by one of the named executors, or intestacy beneficiaries if there is no will;
- (f) copies of any relevant powers of attorney or administration orders made on behalf of the deceased where the contract of sale was executed by someone as a representative of the deceased; and
- (g) an explanation as to why a limited grant is required and why it is not possible or practicable for a full grant to be obtained in the circumstances.

20. In addition, the plaintiff must also provide the written undertakings in the form similar to that required by r 2.04(2)(c) of the *Supreme Court*

(Administration and Probate) Rules 2014 and an undertaking as to how any estate funds will be dealt with pending a full grant of representation.

#### *Commonly Encountered Problems*

21. If the plaintiff making the application does not have an interest in the deceased's estate – as a named executor or as a beneficiary under the will or on an intestacy – he or she would not have standing to apply for this type of limited grant.
22. Health issues, such as dementia, present at the time the will was made may affect the validity of the will on which the plaintiff's standing rests. Similarly, where the date of the will is close to the date of death of the deceased, the validity of the will may be in question. Doubt over the validity of the will may give rise to some concern for the Court in making a limited grant *ad colligendum bona*. Another form of limited grant, such as *pendente lite*, may be more appropriate in such circumstances.
23. The Court ordinarily dispenses with any requirement to advertise intention to apply for a grant on the Court's website. As such, the Court will require the plaintiff to notify any beneficiaries of the estate of the application and seek written consent to the proposed grant. Where a will names more than one executor, the application for an *ad colligendum bona* grant is usually made by one executor, with the written consent of any other named executors included in the application.
24. Where the parties seek a limited grant in order to settle the contract of sale of a property or continue to conduct a business so that it may be sold, the orders should make provision for the proceeds of sale to be held in a trust account, usually the solicitor's trust account, pending a full grant being issued by the Court.
25. In the event the parties have not acted expeditiously in making the application so that the urgency for the grant arises from a failure to apply for a full grant promptly, or the application for a limited grant was made

later than it could have been, an explanation for the delay should be provided to the Court.

26. If the powers sought to be exercised by the limited grant are broad or vaguely defined, the Court will be less likely to grant such an application and will confine the powers of the limited administrator for the appropriate purpose forming the basis of the application.

*Example Orders*

27. See appendix A for example orders.

II. Letters of administration *pendente lite* (granted to permit administration of an estate to continue while litigation of a claim to a full grant is pending)

28. A plaintiff may seek a grant of letters of administration *pendente lite* where there is proceedings in respect of the validity of the deceased's will or where revocation of a grant of probate or letters of administration is pending.<sup>6</sup> The need for such a grant arises as the litigation prevents the estate from being administered.
29. In these circumstances, the Court may grant letters of administration *pendente lite* to an administrator to recover, call in and preserve the estate's assets for the benefit of those ultimately held to be entitled to them pending the outcome of such a proceeding. The administrator's appointment runs for the duration of the proceeding, ending when a judgment has been delivered by the Court.<sup>7</sup>
30. Unlike other grants, the power to make a grant of letters of administration *pendente lite* is expressly provided for in s 22 of the *Administration and Probate Act 1958*.
31. The administrator holds the assets as a stakeholder pending the determination of the relevant legal proceeding. As a result, no

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<sup>6</sup> *Administration and Probate Act 1958* s 22(1).

<sup>7</sup> *Wieland v Bird* [1894] P 262.

beneficiaries have any direct entitlement in the property during the administration *pendente lite*.

32. There is no standard prescribed role for the administrator *pendente lite*.<sup>8</sup> The appointed administrator is constrained by a lack of power to distribute the residue of the estate and by being an appointed officer of the Court.<sup>9</sup> Consequently, the administrator is subject to the Court's control and the Court will make orders that are relevant to the circumstances.
33. The Court has the power to make orders for the remuneration of the appointed administrator as it sees fit.<sup>10</sup>

#### *Documentation Usually Required*

The plaintiff should file the following documents with the Probate Office when commencing an application for letters of administration *pendente lite*:

- (a) an originating motion for letters of administration *pendente lite*;
  - (b) a notice to produce;
  - (c) a draft form of orders in conformity with the Court's usual orders with appropriately detailed recitals (see appendix B); and
  - (d) an affidavit in support of the application.
34. Typically the plaintiff's affidavit should include the following evidence:
- (a) proof of death e.g. death certificate, medical certificate of cause of death, funeral account;
  - (b) copy of the deceased's will, if any;
  - (c) evidence of the litigation concerning the validity of the will or the grant of probate or letters of administration related to the estate;

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<sup>8</sup> *Henderson v Executor trustee Australia Ltd* (2005) 93 SASR 337 at [44].

<sup>9</sup> *Administration and Probate Act 1958* s 22(1).

<sup>10</sup> *Administration and Probate Act 1958* s 22(2).



- (d) written consent to the application by any named beneficiaries or executors in the respective wills, or intestacy beneficiaries if there are no wills;
- (e) an explanation concerning the need for the grant i.e. what will likely occur in respect of the relevant assets of the estate in the event an administrator is not appointed to collect and preserve them; and
- (f) details of the proposed administrator, including their experience, independence from the proceeding concerning the estate, and any proposed remuneration, if applicable.

#### *Commonly Encountered Problems*

35. The Court will not grant powers with a broad ambit or vague definition. Practitioners should restrict the powers sought in their orders to the specific exigency of the circumstances i.e to collect any assets and then hold pending further order. To do otherwise will delay or prevent the Court making a limited grant.
36. The proposed administrator to be appointed for the duration of the litigation must be an individual disinterested and uninvolved in the litigation affecting the will.<sup>11</sup> In *Tomkinson v Hersey*, the plaintiff was refused letters of administration *pendente lite* on the basis that he had an interest in the outcome of the litigation concerning the estate, being the executor of the estate, which paid 7 per cent of the gross residue to the appointed trustee.<sup>12</sup>

#### *Example Orders*

37. See appendix B for example orders.

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<sup>11</sup> *Tomkinson v Hersey* (1983) 34 SASR 181 at 184.

<sup>12</sup> *Tomkinson v Hersey* (1983) 34 SASR 181 at 186.

III. Letters of administration *ad litem* (administration for the suit, granted to provide a person to represent an estate in litigation)

38. A grant of letters of administration *ad litem* is another type of limited grant that arises due to litigation. Despite some similarity to a grant of letters of administration *pendente lite*, *ad litem* grants are conceptually distinct.
39. A grant of administration *ad litem* enables the estate of the deceased to be represented by an administrator for the purposes of defending, commencing and prosecuting legal proceedings.<sup>13</sup> As such, the purpose of such a grant is not to preserve the status quo while there is a dispute concerning the validity of the will or representation of the estate, but rather to empower someone to provide instructions on behalf of the estate, in the event the estate is, or is about to be, a party to a legal proceeding.
40. The duration of the administrator's appointment is limited to the legal proceeding in question.
41. The need for such grant might arise if there is a proceeding underway and there is insufficient time to obtain a full grant. In *Greenway v McKay*, the appellant was granted letters of administration *ad litem* for the prosecution of a claim against the deceased's employer due to the imminent closure of the period within which to bring such a claim.<sup>14</sup>
42. Rule 16.03 of the *Supreme Court (General Civil Procedure) Rules 2015* permits the Court, when litigation is underway, to appoint a representative of the deceased's estate with consent of the appointee for the duration of a proceeding, without the need of a formal grant of letters of administration *ad litem*.<sup>15</sup> An appointment pursuant to r 16.03 is in the discretion of the Court having regard to the nature and significance of

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<sup>13</sup> *Faulkner v Daniel* 67 ER 355 at 359.

<sup>14</sup> *Greenway v McKay* (1911) 12 CLR 310.

<sup>15</sup> Dal Pont [11.4]

the issues involved in the proceeding and the overall circumstances. Factors considered include the relief sought, such as whether the proceeding is for *in personam* relief or for an *in rem* order, the standing of the appointee, the opportunity given to all persons interested in the estate to defend a claim, the effect of the costs on a plaintiff upon appointment, and the terms of such an appointment.<sup>16</sup>

43. Notwithstanding this provision, a grant of letters of administration *ad litem* should be applied for when the estate is intending to commence litigation and a full grant cannot be obtained, where the proceeding concerning the estate is not yet on foot, where disputation in relation to the representation and administration of the estate is foreshadowed or there is no obvious person to appoint pursuant to r 16.03. Further, prudence would dictate that if the outcome of the relevant litigation will affect the value of the estate, a grant of letters of administration *ad litem* should be obtained.

44. The Court will not be inclined to make a grant of administration *ad litem* when it is possible for a person to make an application for a full grant of probate or letters of administration in a timely fashion.

45. A judgment remains binding on an estate under administration *ad litem*.<sup>17</sup>

#### *Documentation Usually Required*

46. The plaintiff should file the following documents with the Probate Office when commencing an application for letters of administration *ad litem*:

- (a) an originating motion for letters of administration *ad litem*;
- (b) a notice to produce;

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<sup>16</sup> *Bayside Council v Estate of Goodman* [2019] NSWSC 530 (13 May 2019) (Robb J) for a discussion of the equivalent NSW rule to r 16.03; *ANZ Banking Group Limited v Estate of Balding* [2016] VSC 728 (1 December 2016) AsJ Derham).

<sup>17</sup> *Supreme Court (General Civil Procedure) Rules 2015* r 16.03(2); *Davis v Chanter* (1848) 41 ER 1054.

- (c) a draft form of orders in conformity with the Court's usual orders (see appendix C); and
- (d) an affidavit in support of the application.

47. The affidavit accompanying the application would typically contain the following evidence:

- (a) proof of death e.g. death certificate, medical certificate of cause of death, funeral account;
- (b) copy of the deceased's will, if any;
- (c) a copy of any relevant court documents in relation to the litigation or proposed litigation that necessitates the grant of letters of administration *ad litem*; and
- (d) written consent to the application by any named beneficiaries or executors in the will, or intestacy beneficiaries if there is no will.

#### *Commonly Encountered Problems*

48. The Court is highly unlikely to appoint an *ad litem* administrator whose interests conflict with the interests of the estate in the relevant legal proceeding.

#### *Example Orders*

49. See appendix C for example orders.

### **E. Less Common Limited Grants**

50. Historically the Court has also had power to issue a variety of limited grants, where the power of the administrator is *not* confined for a particular purpose, but rather, full powers of administration are granted as a result of, or pending, a particular event.

51. These limited grants typically arise when an executor/administrator of an estate is not in a position to discharge their duties in respect of the estate.
52. Due to the provisions of s 34 of the *Administration and Probate Act 1958*, which empowers the Court to remove and appoint an executor/administrator on a variety of grounds, these limited grants are less common than they have been in the past.
53. Unlike the more frequently issued limited grants referred to above, these grants are usually considered and issued by the Registrar of Probates. As such, a notice to produce is not required when filing such an application in the Probate Office.

I. Letters of administration *de bonis non* (where an executor or administrator dies or goes missing before fully administering an estate and a replacement is necessary)

54. The Court can appoint a substitute administrator *de bonis non* to complete the administration of an estate when an executor or administrator who has partially completed the administration of the estate then dies or is proven to have become otherwise incapable of completing their administration duties.
55. This might also occur when the original administrator of an intestate estate is believed dead or has gone missing and additional assets forming part of the estate are discovered.<sup>18</sup>
56. The administrator *de bonis non* has the same authority to deal with what remains to be administered in the estate as the originally appointed executor or administrator.<sup>19</sup>
57. The Court cannot appoint an administrator *de bonis non* if there is nothing in the estate that remains to be administered.<sup>20</sup>

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<sup>18</sup> *In the Estate of Ellen Saker* [1909] 233.

<sup>19</sup> *Catherwood v Chabaud* (1823) 107 ER 56.

<sup>20</sup> *In the Will and Estate of Martin* [1912] VLR 206.

58. The Court's powers under s 34 of the *Administration and Probate Act 1958* have reduced the popularity and utility of this type of limited grant. Further, in the event an executor passes away and the provisions of s 17 of the *Administration and Probate Act 1958* apply, an administrator *de bonis non* would not be necessary as the executor of the deceased's executor's estate would be vested with executorial powers by way of the chain of representation.

## II. Letters of administration *durante minore aetate* (during the minority of an executor or other person entitled to a grant)

59. An executor of an estate must have legal capacity for possessing property so as to be capable of administering the estate.

60. The Court is empowered to grant letters of administration *durante minore aetate* appointing an administrator in circumstances where the nominated executor is not 18 years of age.<sup>21</sup>

61. A minor above the age of 12 may elect the appointee, or the Court may assign an administrator without election.<sup>22</sup>

62. A grant *durante minore aetate* only persists until the designated executor attains the age of majority, and applies for and obtains a grant.<sup>23</sup>

63. The Court's powers to make this grant are enshrined in r 5.03 of the *Supreme Court (Administration and Probate) Rules 2015*.

### *Commonly Encountered Problems*

64. The Court will not appoint an administrator unless satisfied with evidence on affidavit that the proposed administrator is capable of undertaking the role, and that the proposed administrator is either the de facto next of kin of the minor or that the de facto next of kin of the

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<sup>21</sup> *Supreme Court (Administration and Probate) Rules 2014* r 5.01(1).

<sup>22</sup> *Supreme Court (Administration and Probate) Rules 2014* r 5.01(2).

<sup>23</sup> *Jones v Basset* [1701] 24 ER 85; *In Re Johnson* [1931] VLR 60.

minor consents to the appointment of that person as administrator *durante minore aetate*.<sup>24</sup>

III. Letters of administration *durante absentia* (during the absence from the jurisdiction of an executor or other person entitled to a grant)

65. If a deceased person's administrator or executor to whom probate has been granted resides outside the jurisdiction of the estate, at the expiry of 12 months from the date of the deceased person's death, the Court may appoint an administrator *durante absentia* on application by an eligible person.

66. For an applicant to be eligible to apply for letters of administration *durante absentia*, they must be one of either a:

- (a) creditor; or
- (b) person interested in the estate.<sup>25</sup>

IV. Letters of administration *durante dementia* (during the incapacity of an executor or administrator)

67. If the person appointed as executor of the estate under the deceased's will, or the administrator in the event of intestacy, does not possess capacity or loses capacity during the administration of the estate, another person with standing can be made administrator on the grant of administration *durante dementia*.

68. Ordinarily the appointee should be a person entitled to share in the distribution of the estate. Where the incapacitated person is the sole person entitled to share in the estate under the terms of the will or on intestacy, the appointee should be one or more persons entitled to share

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<sup>24</sup> *Supreme Court (Administration and Probate) Rules 2014* r 5.01(3).

<sup>25</sup> *Administration and Probate Act 1958* s 24(1).

in the distribution of that person's estate were they to die intestate. In *Re Shaw*, the deceased's son was appointed administrator of his deceased's father's intestate estate in place of his mother who lacked capacity.<sup>26</sup>

69. A grant of administration *durante dementia* ceases when the originally appointed executor/administrator's incapacity ends.
70. The provisions of s 34(1) of the *Administration and Probate Act 1958*, which allow the Court to remove an incapacitated personal representative of an estate have obviated the need for this form of limited grant in circumstances where a grant has been issued and the legal personal representative becomes incapacitated.

#### **F. Administration Bonds and Guarantees**

71. The *Administration and Probate Act 1958* makes provision for the Court to order an administrator, as a condition to being granted letters of administration, to give an appropriate bond or guarantee to secure the performance of their duties as administrator.<sup>27</sup> This is because the appointment of an administrator is not a deceased's choice, but the act of the Court, and so some additional security for the administrator's functions may be appropriate.
72. As a condition of granting administration to any person in Victoria, the Court or the Registrar of Probates may require one or more sureties to guarantee that they will make good, in an amount not exceeding the amount at which the property of the deceased is valued, any loss which any person interested in the administration of the estate of a deceased may suffer from the administrator's breach of duty.

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<sup>26</sup> In *Re Shaw* [1992] 2 VR 457.

<sup>27</sup> *Administration and Probate Act 1958* s 57



73. The *Supreme Court (Administration and Probate) Rules 2014* set out when a surety may be required, including circumstances where the parties seek a grant of letters of administration *ad colligendum bona, pendente lite* or *ad litem*.<sup>28</sup>
74. The Court has a discretion whether or not to require a guarantee; however, as a matter of practice, the Court may require a guarantee before issuing a limited grant, particularly in circumstances where the proposed administrator's interest in the estate is uncertain.
75. In the event parties seek to dispense with the requirement that a surety guarantee be provided, they should expressly seek an order as part of the proposed limited grant to allow for this.

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<sup>28</sup> *Supreme Court (Administration and Probate) Rules 2014 r 7.01*

**Appendix A:**  
**Letters of administration *ad colligendum bona***

The following orders are examples only and orders should be specifically adapted to the specific circumstances of each case.

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMON LAW DIVISION  
TRUSTS, EQUITY AND PROBATE LIST

S PRB 202X XXXX

IN THE MATTER of the deceased estate of **NAME OF DECEASED**

APPLICATION BY:

**FIRST NAME LAST NAME**

Plaintiff

**ORDER**

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JUDGE: The Honourable Justice ()

DATE MADE:

ORIGINATING PROCESS: Originating motion filed ()

HOW OBTAINED: Notice to produce filed ()

ATTENDANCE: Mr/Ms/Mrs () of counsel for the plaintiff; or

No appearances; orders made on the papers pursuant to r 1.14(2)(b) of the *Supreme Court (General Civil Procedure) Rules 2015*

OTHER MATTERS:

- A. **First Name Last Name**, ('the deceased') died on **date of death** leaving a will dated **(date of will)** ('the will').
- B. The will appoints the deceased's husband, **First Name Last Name** ('the plaintiff'), as executor and trustee of her estate.
- C. Under the will the plaintiff is the sole beneficiary of the estate.
- D. On **date**, the deceased made an enduring power of attorney ('EPA') appointing the plaintiff as her attorney.

- E. The deceased and the plaintiff own a property at **Street Address**, being the land more particularly described as Certificate of Title Volume XXXX Folio XXXX ('the property'), as tenants in common in equal shares.
- F. On **date**, the plaintiff on his own behalf and on behalf of the deceased as her attorney, entered into a contract of sale of the property with the purchaser, **name** ('the contract of sale'). Settlement is due on **date**.
- G. The plaintiff seeks a limited grant of letters of administration *ad colligendum bona* in order to complete the settlement of the contract of sale on behalf of the deceased.
- H. As settlement is due to occur on **date**, there is not sufficient time to advertise and obtain a general grant of probate.
- I. The Court read the affidavit of the plaintiff sworn **date** and the exhibits thereto.
- J. The plaintiff undertakes to the Court that he will:
- (a) well and truly collect and administer the estate of the deceased according to law;
  - (b) if required, make and file or cause to be made and filed a true and just account of his administration of the estate of the deceased; and
  - (c) if required, deliver up the grant to the Court; and
  - (d) pay the net proceeds from the sale of the deceased's share of the property to his solicitors, **Firm Name**, to be held by them and invested in their name in investments appropriate for the investment of trust funds until a general grant of probate or letters of administration is made in relation to the estate of the deceased.
- K. This order is signed by the Judge pursuant to r 60.02(1)(b) of the *Supreme Court (General Civil Procedure) Rules 2015*.

#### **THE COURT ORDERS THAT:**

1. Letters of administration *ad colligendum bona* of the estate of **First Name Last Name**, deceased, be granted to **First Name Last Name (occupation)** of **address** ('the plaintiff'), subject to the limitations set out below.
2. The grant of letters of administration *ad colligendum bona* be limited for the purposes of:
  - (a) completing the sale and settlement of the land and premises situate at and known as **address**, being the land more particularly described in Certificate of Title Volume **number** Folio **number**, pursuant to the contract of sale dated **date**;
  - (b) making an application under s 49 of the *Transfer of Land Act 1958* to transfer the proprietorship of the deceased's share of the property from the name of the deceased to the plaintiff as administrator;

- (c) executing any documents and doing any acts necessary in the administration of the estate of the deceased for the purposes of completing the contract of sale of the property and transfer of the deceased's share of the property;
  - (d) paying the proceeds of the sale of the deceased's share of the property to the plaintiff's solicitors, **Firm Name**, to be invested by them in investments authorised by law as investments of trust moneys;
  - (e) paying out of the proceeds of sale of the deceased's share of the property all of the costs associated with the sale of the property and applying such proceeds to the payment of any debts of the deceased as are or become due; and
  - (f) executing any documents and operating any bank accounts to the extent necessary to give effect to any payments, collection, receipt and investment of proceeds of the sale of the deceased's share of the property.
3. The grant of letters of administration *ad colligendum bona* to the plaintiff be limited until a grant of probate or general administration be made, or until further order, and such administration shall proceed no further or otherwise than as aforesaid or in any other manner whatsoever.
4. The requirements that the plaintiff:
- (a) provide an administration guarantee in relation to his administration of the estate pursuant to this order; and
  - (b) post a notice of his intention to apply for this grant on the Court's website—  
be dispensed with.
5. The costs of this application be paid or retained out of the estate of the deceased.

DATE AUTHENTICATED:

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**The Honourable Justice**

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMON LAW DIVISION  
TRUSTS, EQUITY AND PROBATE LIST

S PRB 2020 XXXX

IN THE MATTER of the deceased estate of **DECEASED'S NAME**

APPLICATION BY:

**PLAINTIFF'S NAME**

Plaintiff

**ORDER**

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JUDGE: The Honourable Justice ()

DATE MADE:

ORIGINATING PROCESS: Originating motion filed ()

HOW OBTAINED: Notice to produce filed ()

ATTENDANCE: Mr/Ms/Mrs () of counsel for the plaintiff; or

No appearances; orders made on the papers pursuant to r 1.14(2)(b) of the *Supreme Court (General Civil Procedure) Rules 2015*

OTHER MATTERS:

- A. First Name Last Name ('the deceased'), died intestate on **date of death**. The deceased was survived by his domestic partner ('the plaintiff') and his adult daughter, **First Name Last Name**.
- B. The assets of the deceased's estate include all of the shares in Company Name ACN XXX XXX XXX ('the company') which conducts a transport business.
- C. At the date of the deceased's death the deceased was the sole director of the company.
- D. The constitution of the company dated **(date)** provides as follows:
  - (a) clause X - in the case of a death of a member, the only persons the company will recognise as having any title to the member's shares or any benefits accruing in respect of those shares are:
    - (i) the legal personal representative of the deceased where the deceased was the sole holder; and
  - (b) clause Y - if a director who is both the sole director and sole member of the company dies or becomes mentally incapable, then the director's personal representative or trustee may appoint a new director of the company (including themselves).

- E. The plaintiff seeks a grant of letters of administration *ad colligendum bona* in order to, *inter alia*:
- (a) vest in the plaintiff as legal personal representative of the estate of the deceased all the deceased's shareholding in the company; and
  - (b) exercise the rights vested in the legal personal representative of the deceased;
- F. The evidence before the Court supports orders being made for the plaintiff exercising the rights vested in her as legal personal representative of the deceased, pursuant to clauses X and Y of the constitution of the company and not otherwise.
- L. The plaintiff undertakes to the Court that she will:
- (a) well and truly collect and administer the estate of the deceased according to law;
  - (b) if required, make and file or cause to be made and filed a true and just account of his administration of the estate of the deceased; and
  - (c) if required, deliver up the grant to the Court; and
- G. The deceased's daughter is the only other persons who would potentially have an interest in the estate and she has consented in writing to the application.
- H. The Court read the plaintiff's affidavits and the exhibits thereto sworn **Date** and **Date** respectively.
- I. This order is to be signed by a judge pursuant to r 60:02(1)(b) of the Supreme Court (General Civil Procedure) Rules 2015.

**THE COURT ORDERS THAT:**

1. Letters of administration *ad colligendum bona* of the estate of **First Name Last Name**, deceased, be granted to **First Name Last Name (occupation)** of **address** ('the plaintiff'), subject to the limitations set out below.
2. The grant of letters of administration *ad colligendum bona* be limited for the purposes only of exercising the rights vested in her as legal personal representative of the deceased pursuant to and clauses XX and YY of the constitution of **Company Name** ACN XXX XXX XXX dated **Date** and vesting in her all the deceased's shareholding in the company enabling her to exercise the rights attached to the deceased's shares in the company.
3. The grant of letters of administration *ad colligendum bona* to the plaintiff be limited until a grant of probate or general administration be made or until further order of the court and such administration shall proceed no further or otherwise and aforesaid or in any other manner whatsoever.
4. The requirements that the plaintiff:

- (a) provide an administration guarantee in relation to her administration of the estate of the deceased pursuant to these orders; and
  - (b) post a notice of her intention to apply for this grant on the Court's website,  
  
be dispensed with.
5. The plaintiff's costs of and incidental to this application be paid or retained out of the estate of the deceased.
6. Liberty to apply.

DATE AUTHENTICATED:

DATE

.....  
**The Honourable Justice**

**Appendix B:**  
**Letters of administration *pendente lite***

The below orders are an example only.

They should be specifically adapted to the plaintiff's circumstances and the particulars of the case.

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMON LAW DIVISION  
TRUSTS, EQUITY AND PROBATE LIST

S PRB 2020 XXXX

IN THE MATTER of the deceased estate of **DECEASED'S NAME**

APPLICATION BY:

**FIRST NAME LAST NAME**

Plaintiff

**GENERAL FORM OF ORDER**

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JUDGE: The Honourable Justice

DATE MADE:

ORIGINATING PROCESS: Originating motion filed **date**

HOW OBTAINED: On return of the plaintiff's notice to produce filed **date**

ATTENDANCE: Mr/Ms/Mrs **counsel's name** of counsel for the plaintiff  
or  
No appearance; orders made on the papers pursuant to r 1.14(2)(a) of the *Supreme Court (General Civil Procedure) Rules 2015*.

OTHER MATTERS:

- A. The deceased died on **(date of death)** leaving a will dated **(date of will)** ('the formal will'). The will appoints **John Smith** as executor and trustee of the estate.
- B. The deceased left an informal document purporting to be a further will dated **(date of informal document)** ('the informal will'). The informal will appoints **Jane Brown** as executor and trustee of the estate.



- C. **Name** ('the plaintiff') is a child of the deceased and is a beneficiary under both the formal will and the informal will. The plaintiff's interest does not change under either document.
- D. The estate of the deceased includes a property at 123 Fake Street, North Melbourne in the State of Victoria, more particularly described at Certificate of Title Volume **Number** Folio **Number** ('the North Melbourne property').
- E. The North Melbourne property is subject to a mortgage in favour of ANZ Bank. There are also outstanding rates and body corporate expenses that have been incurred since the deceased died.
- F. On **(date)**, **John Smith**, made an application for probate of the formal will (Supreme Court Proceeding S PRB 2020 XXXX) ('the formal will proceeding'); On **(date)**, **Jane Brown** filed a caveat on the basis that the informal will is a later valid will of the deceased.
- G. On **(date)**, **Jane Brown** made an application for probate of the informal will (Supreme Court Proceeding S PRB 2020 YYYY) ('the informal will proceeding'). On **(date)**, the Registrar of Probates raised a number of requisitions in relation to the informal will.
- H. These proceedings are presently awaiting a first directions hearing on **(date)**, in the Trusts, Equity and Probate List. A trial date is likely to be some months away.
- I. The plaintiff seeks a grant of letters of administration *pendente lite* in order to sell the North Melbourne property, discharge the mortgage, pay out any outstanding expenses in relation to the property and debts of the estate more generally in order to hold the net proceeds of sale in an account on behalf of the estate pending the outcome of the formal will and informal will proceedings.
- J. **John Smith**, **Jane Brown** and the beneficiaries under both the formal will and the informal will have provided their written consent to the plaintiff's application.
- K. The plaintiff undertakes to the Court that he will:
- (a) well and truly collect and administer the estate of the deceased according to law;
  - (b) if required, make and file or cause to be made and filed a true and just account of his administration of the estate of the deceased; and
  - (c) if required, deliver up the grant to the Court; and
- L. The Court has read the affidavit of the plaintiff sworn **(date)** and the exhibits thereto.
- M. This order is signed by the Judge pursuant to rule 60.02(1)(b) of the *Supreme Court (General Civil Procedure) Rules 2015*.

**THE COURT ORDERS THAT:**

1. Pursuant to s 22(1) of the *Administration and Probate Act 1958*, letters of administration *pendente lite* of the estate of deceased's name, deceased, be granted to plaintiff's name, (occupation), of (plaintiff's address).
2. The grant of letters of administration *pendente lite* shall confer all the rights and powers of a general administration other than the right to distribute the estate.
3. The grant of letters of administration *pendente lite* be limited until a grant of probate or general administration be made, or until further order, and such administration shall proceed no further or otherwise than as aforesaid or in any other manner whatsoever.
4. The requirements that the plaintiff:
  - (a) provide an administration guarantee in relation to his administration of the estate of the deceased pursuant to these orders; and
  - (b) post a notice of his intention to apply for this grant on the Court's website—  
be dispensed with.
5. The costs of this application be paid or retained from the estate of the deceased.

DATE AUTHENTICATED: DATE

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**The Honourable Justice**

## Appendix C:

### Letters of administration *ad litem*

The below orders are an example only. They should be specifically adapted to the plaintiff's circumstances and the particulars of the case.

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMON LAW DIVISION  
TRUSTS, EQUITY AND PROBATE LIST

S PRB 2020 XXXX

IN THE MATTER of the deceased estate of **DECEASED'S NAME**

APPLICATION BY:

**PLAINTIFF'S NAME**

Plaintiff

### ORDER

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JUDGE:	The Honourable Justice
DATE MADE:	
ORIGINATING PROCESS:	Originating motion filed
HOW OBTAINED:	On return of the plaintiff's notice to produce filed
ATTENDANCE:	Mr/Ms/Mrs <b>counsel's name</b> of counsel for the plaintiff or No appearance; orders made on the papers pursuant to r 1.14(2)(a) of the <i>Supreme Court (General Civil Procedure) Rules 2015</i> .

OTHER MATTERS:

- A. **Deceased's Name** ('the deceased') died on **(date)** leaving a will dated **(date)** ('the will').
- B. The plaintiff is the deceased's wife and named executor in the will.
- C. On **(date)** the deceased commenced proceeding S ECI 2020 XXXX ('the proceeding') in the Supreme Court of Victoria claiming damages arising from unsafe work spaces relating to the deceased's employment by **Employer's Name**.
- D. The proceeding was amended after the deceased died to include a claim for special damages on behalf of his estate.

- E. The plaintiff has not yet obtained a full grant of probate. The plaintiff deposed that obtaining a full inventory of the deceased's estate will delay an application for a grant of probate.
- F. The trial of the proceeding is scheduled to commence on (date).
- G. The plaintiff seeks a limited grant of letters of administration *ad litem* in order to provide instructions on behalf of the estate in respect of the proceeding.
- H. By affidavit sworn on (date), the plaintiff provided undertakings to:
- (a) well and truly collect and administer the estate for the duration of the proceeding according to law;
  - (b) if required by the Court or by the Registrar, make and file or cause to be made and filed in the Court a true and just account of the administration of the estate; and
  - (c) if required by the Court, deliver up the grant to the Court.
- I. The Court has read the affidavit sworn (date) and the exhibits thereto.
- J. This order is signed by the Judge pursuant to r 60.02(1) of the *Supreme Court (General Civil Procedure) Rules 2015*.

**THE COURT ORDERS THAT:**

1. Letters of administration *ad litem* of the estate of Deceased's Name, deceased, be granted to the Plaintiff's Name, (occupation) of (address), limited for the purpose only of representing the estate of the deceased in proceeding number S ECI 2020 XXXX in the Supreme Court of Victoria ('the proceeding').
2. The grant of letters of administration *ad litem* be limited for the purposes of:
  - (a) representing and having the conduct and carriage of the proceeding on behalf of the estate of the deceased;
  - (b) if appropriate, compromising the proceeding upon such terms as the plaintiff may think fit;
  - (c) giving consent on behalf of the estate of the deceased to the making of orders and the entry of judgment by the Court to conclude the proceeding; and
  - (d) otherwise prosecuting the proceeding to judgment and taking all such steps as may be appropriate to enforce any such judgment on behalf of the estate of the deceased.
3. The grant of letters of administration *ad litem* to the plaintiff be limited until a grant of probate or general administration be made, or until further order and such administration shall proceed no further or otherwise than as aforesaid or in any other manner whatsoever.
4. The requirements that the plaintiff:

- (c) provide an administration guarantee in relation to his administration of the estate of the deceased pursuant to these orders; and
  - (d) post a notice of his intention to apply for this grant on the Court's website—  
be dispensed with.
5. The costs of this application be paid or retained out of the estate.
  6. Liberty to apply.

DATE AUTHENTICATED:

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**The Honourable Justice**