



## NOTICE TO THE PROFESSION

The Chief Justice has authorised the issue of the following notice.

### **Probate Office -Original Will Requirements**

This Notice to the Profession expands on and replaces the '[Notice to the Profession - Original Wills Stored in Solicitors' Offices](#)' issued by the Acting Registrar of Probates on 19 August 2020.

This Notice is issued pursuant to Rule 1A.05(4) of the *Supreme Court (Administration and Probate) Rules 2014* ('the Rules').

The Court is conscious that original wills are often stored at solicitors' offices. The provisions of this notice are made to facilitate the administration of deceased estates without the need for solicitors to travel to their offices to collect original wills at a time when COVID-19 restrictions are in place.

### **Time For Filing of Original Will**

The Rules require an original will or other document for which a grant is sought to be filed with the Probate Office within 28 days after the application is submitted in RedCrest-Probate for filing<sup>1</sup>.

For any application filed on or after 5 August 2020 this time was extended by operation of an amendment to the Rules to 60 days after the application is submitted for filing on RedCrest-Probate<sup>2</sup>. By operation of this notice<sup>3</sup> the time by which the original will or other document be filed in the Probate Office shall be whichever is the later of 30 October 2020 or 60 days after the application is submitted for filing on RedCrest-Probate.

### **Copy of Will May be Exhibited**

The Rules also require the original will or other document for which a grant is sought to be exhibited to the affidavit of executor or administrator in support<sup>4</sup>. To accommodate audio-visual witnessing of affidavits, this requirement is dispensed with by operation of this

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<sup>1</sup> Rules 2.02.1 and 3.03 of the *Supreme Court (Administration and Probate) Rules 2014*.

<sup>2</sup> Ibid. Rule 1A.05(2).

<sup>3</sup> Ibid. Rule 1A.05(4)(a).

<sup>4</sup> Ibid. Rule 2.04(2)(d)(i).

notice<sup>5</sup> in circumstances where an affidavit is witnessed via audio or audio-visual means in compliance with the provisions of Part 5A of the *Oaths and Affirmations Act 2018*.

If the affidavit is witnessed in person then the original will must continue to be exhibited.

### **Original Wills Stored in Solicitors' Offices**

The Acting Registrar of Probates has previously issued a '[Notice to the Profession – Original Wills Stored in Solicitors' Offices](#)' which provided for an application to be submitted for probate or administration of the will as contained in a copy in circumstances where the original will is stored in a solicitor's office and is unable to be retrieved.

That notice shall cease to have effect from the date of this notice and is replaced by this notice.

In circumstances where an original will is stored at a legal practitioners' office, an application may be submitted for probate or administration of the will as contained in a copy. Such application must be supported by an affidavit of the legal practitioner that:

- confirms the original will is stored at the legal practitioners' office and the copy exhibited to the affidavit of executor or administrator is the same as the original; and
- confirms due to current COVID-19 restrictions that the legal practitioner is unable to attend their office to retrieve the original; and
- contains an undertaking to file the original with the Probate Office within 14 days of the easing of restrictions that would allow them to attend their offices.

When filing such an application the affidavit of the legal practitioner must be uploaded on RedCrest-Probate as 'Affidavit – original will unable to be produced'. Any grant of representation issued in these circumstances will contain a limitation, and such limitation will be removed when the original will has been filed with the Probate Office.

Any application made in compliance with the previously issued '[Notice to the Profession – Original Wills Stored in Solicitors' Offices](#)' will be taken to be an application made in compliance with this notice save that undertakings already given in affidavits to file original wills after the end of Stage 4 restrictions will be taken to be undertakings to file within 14 days of the easing of restrictions to allow legal practitioners to attend their offices.

**CHIEF JUSTICE**

1 October 2020

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<sup>5</sup> Ibid. Rule 1A.05(4)(b).