



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.
- 1.3 The List includes a broad range of applications commonly related to succession, estates and other trusts as particularised further below. Some of these applications commence in the Probate Office and others commence in the Common Law Division.
- 1.4 The Probate Office is a discrete office administered by the Registrar of Probates under the *AP Act* and the *AP Rules* (defined below). Proceedings commenced in the Probate Office are designated with proceeding number prefix 'S PRB'. Matters from that Office may on occasion be referred to or otherwise included in the List.
- 1.5 Proceedings commenced in the Common Law Division that are included in the List are designated with the proceeding number prefix 'S ECI'.
- 1.6 Some matters concerning trusts, charitable trusts and other equitable interests may however be more appropriate for inclusion in other areas of the Court, specifically the Property List or the Commercial Court. Parties are to see the relevant Commercial Court and Property List Practice Notes together with Practice Note SC GEN 2.
- 1.7 The Court does not provide legal advice. However, the Court may from time to time produce and publish documents to assist parties and the profession in the conduct of proceeding in the List on the Court website. The Court expects that any documents published on the website will be considered and followed.

2 COMMENCEMENT

- 2.1 This Practice Note was reissued on 22 December 2025 and commences on 12 January 2026 and applies to all proceedings in the List whenever commenced.

3 DEFINITIONS

- 3.1 In this Practice Note:

<i>AP Act</i>	means the <i>Administration and Probate Act 1958</i> ;
<i>AP Rules</i>	means the <i>Supreme Court (Administration and Probate) Rules 2023</i> or any applicable prior rules;
<i>List</i>	means the Trusts, Equity and Probate List;
<i>List directions day</i>	means one of the regular days that a Judicial Officer convenes directions hearings in the List;
<i>List email</i>	means tep@supcourt.vic.gov.au ;
<i>Registrar</i>	means the Registrar of Probates;
<i>Rules (Chapter I)</i>	means the <i>Supreme Court (General Civil Procedure) Rules 2025</i> or successor;
<i>Trustee Act</i>	means the <i>Trustee Act 1958</i> ; and
<i>Wills Act</i>	means the <i>Wills Act 1997</i> .

4 PROCEEDINGS SUITABLE FOR INCLUSION IN THE LIST

- 4.1 The types of proceedings that should be initiated in or referred to the List include:

Applications commenced in the Probate Office, assigned the proceeding number prefix 'S PRB ...' and referred to the List by way of appropriate summons	<ol style="list-style-type: none">1) Applications for grants of representation and other matters that are referred by the Registrar to the List;2) Caveat proceedings where a summons for directions has been filed pursuant to r 8.07 of the <i>AP Rules</i>;3) Applications for limited grants, including grants of letters of administration <i>ad colligendum bona</i> (referred by the Registrar)¹, <i>ad litem</i> and <i>pendente lite</i>;
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¹ Applications for grants of letters of administration *ad colligendum bona* are considered by the Registrar in the first instance

	<p>4) Applications for executor's commission pursuant to r 10.02 of the <i>AP Rules</i> and s 65 of the <i>AP Act</i>;</p> <p>5) Applications for revocation of grants of representation pursuant to r 11.02 of the <i>AP Rules</i>;</p> <p>6) Applications for rectification of a will pursuant to r 12.02 of the <i>AP Rules</i> and s 31 of the <i>Wills Act</i>.</p>
<p>Applications commenced within the Common Law Division of the Court and assigned the proceeding number prefix 'S ECI ...'</p>	<p>7) Applications to withdraw a renunciation of probate pursuant to s 16(2) of the <i>AP Act</i>;</p> <p>8) Applications pursuant to s 15 of the <i>AP Act</i>;</p> <p>9) Applications for removal or discharge of an executor, administrator or trustee under the <i>AP Act</i> and/or <i>Trustee Act</i>;</p> <p>10) Applications for statutory wills pursuant to ss 20 and 21 of the <i>Wills Act</i>;</p> <p>11) Applications for judicial advice regarding the construction of a will;</p> <p>12) Other proceedings concerning the <i>Wills Act</i>;</p> <p>13) Applications pursuant to the <i>Trustee Act</i> that are not within the categories of matters appropriately to be heard and determined by the Commercial Court;</p> <p>14) Other applications for judicial advice and directions pursuant to r 54.02 of the <i>Rules (Chapter I)</i> that are not appropriate for the Commercial Court;</p> <p>15) Applications pursuant to the <i>Charities Act 1978</i>;</p> <p>16) Applications for equitable remedies, including the declaration of equitable interests in property, that are not appropriate for the Commercial Court or the Property List;</p> <p>17) Other proceedings arising under the <i>AP Act</i>, excluding proceedings arising under Part IV of the <i>AP Act</i>.</p>

4.2 Applications arising under Part IV of the *AP Act* are to be separately issued in the Testators Family Maintenance List.

- 4.3 Where the majority of witnesses or parties reside in regional Victoria, applications should be initiated in the Civil Circuit List (see Practice Note SC CL 1), but will be managed in the List and are otherwise subject to this Practice Note.

5 PROCEDURE FOR ENTRY INTO THE LIST

- 5.1 Proceedings 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 Prior to commencing any urgent application (including applications for limited grants), please see paragraph 10.
- 5.3 Parties may apply to the Court by emailing the List email if they wish to have a proceeding included in the List which is not a proceeding of a type referred to in paragraph 4.1.
- 5.4 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.
- 5.5 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.
- 5.6 No additional fees will be payable for the inclusion of a proceeding in the List.

6 INITIATING DOCUMENTS IN PROBATE PROCEEDINGS (ASSIGNED A 'S PRB' PROCEEDING NUMBER)

- 6.1 Applications within the Court's probate jurisdiction are to be commenced by filing in the Probate Office through RedCrest-Probate in accordance with the applicable *AP Rules*.
- 6.2 Applications in probate proceedings are referred into the List by an appropriate summons depending on the nature of the application.

7 INITIATING DOCUMENTS FOR PROCEEDINGS IN THE COMMON LAW DIVISION (ASSIGNED A 'S ECI' PROCEEDING NUMBER)

- 7.1 If the subject matter of the proceeding involves a deceased estate, the originating motion or the statement of claim endorsed by writ initiating the civil proceeding must include the following information:
- (i) the date of the death of the deceased in respect of whose estate the application is made;
 - (ii) the date of the last will (if any);

- (iii) the date of any grant of representation of the estate of the deceased; and
 - (iv) the relationship of the plaintiff to the deceased.
- 7.2 Applications commenced by originating motion shall be supported by affidavit which generally must, as applicable:
- (i) address the matters set out in the preceding paragraph; and
 - (ii) exhibit copies of the documents evidencing the matters in the preceding paragraph.
- 7.3 The affidavit in support of an originating motion must be filed prior to the first directions hearing in the proceeding.

8 DIRECTIONS HEARING

- 8.1 Parties may seek a return date for first hearing in accordance with the table below. The calendar of List directions days is available on the Court's website. The Court may separately list a proceeding for directions at any time on its own motion.

Application type	How to obtain a return date for first hearing
Urgent applications (including applications for limited grants or statutory wills)	Please see paragraph 10 of this Practice Note.
Interlocutory applications	Please see paragraph 9 of this Practice Note.
Proceedings commenced by writ	A first directions hearing will be listed on the Court's own motion. The Court will generally notify parties within approximately 14 days of the filing of the first defence of the date and time of the first directions hearing.
Civil proceedings commenced by originating motion in form 5B or form 5C	Parties must issue a summons with a return date for directions no less than 28 days from the date of filing.
Civil proceedings commenced by originating motion in form 5D	In the return provision of form 5D, the plaintiff is to include "directions for the following relief and remedies:" before specifying the relief and remedies sought. The originating motion is to be filed returnable for directions and the nominated

	date is to be a date for directions no less than 28 days from the date of filing.
Summons pursuant to rr 8.07, 10.02, 11.02 or 12.02 of the <i>AP Rules</i> .	Parties must issue the applicable summons with a return date for directions no less than 28 days from the date of filing.
Other probate applications	Parties must issue an appropriate summons with a return date for directions no less than 28 days from the date of filing.

8.2 The first hearing in a proceeding (including any interlocutory application pursuant to paragraph 9 below) in the List will generally be for directions only and it is unlikely substantive applications will be heard. An estimate of time must be provided for any referral of a proceeding for hearing, including interlocutory applications.

8.3 Should there be non-compliance with paragraph 7 of this Practice Note, the Court may of its own motion vacate and relist the first directions hearing. If the plaintiff has not filed the required material by the relisted date, the Court will require the parties and practitioners to address the question of the costs of that day. Legal practitioners may be ordered to pay costs if they are responsible for wasting costs.

Minutes of proposed Orders

8.4 It is expected that standard directions will be dealt with by consent on the papers. Unnecessary attendance at Court may result in orders depriving parties of costs, or costs orders against parties.

8.5 The plaintiff's solicitors should provide 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 the List email by 12.00pm three days prior to the directions hearing.

8.6 Where the parties do not agree on proposed orders, the parties should each email draft orders to the List email by 12.00pm three days prior to the directions hearing.

8.7 Regardless of whether consent minutes are received, the Judicial Officer 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.

8.8 In the event that the Court has not received any proposed orders from any party in a proceeding by 12.00pm three days prior to the directions hearing, the Court may of its own motion adjourn the directions hearing to the next available date.

9 INTERLOCUTORY APPLICATIONS

- 9.1 Any interlocutory application may be issued with a return date for directions no less than 14 days from the date of filing.
- 9.2 In any other case, an applicant must complete the “TEP/TFM Hearing Date Information Form” (available via the List page on the Court’s website).

10 URGENT APPLICATIONS

- 10.1 If a party considers that a hearing within seven days is required, they are to contact the Practice Court (Common Law) copying in the List email. See the relevant Practice Note for further information about the operation of the Practice Court (Common Law).
- 10.2 In all other cases, parties bringing an urgent application must complete the “TEP/TFM Hearing Date Information Form” (available via the List page on the Court’s website).

11 HEARINGS

- 11.1 Any matter may be heard and determined by a Judge or, whether under their original jurisdiction or on referral, an Associate Judge or a Judicial Registrar. If necessary, directions orders may be made for the preparation or the hearing of a matter.
- 11.2 Any application for consideration ‘on the papers’ in advance of a hearing date must be ready for determination with:
 - (i) all the relevant evidence filed; and
 - (ii) proposed draft orders which include appropriately detailed ‘Other Matters’ setting out the grounds and factual basis for the orders sought.

12 MEDIATIONS

- 12.1 Some applications involving parties with opposing positions on relevant issues may be appropriate for mediation. In such cases, potential contested issues should be identified at the first directions hearing, and the Court may consider ordering appropriate case management directions to facilitate mediation.

13 EVIDENCE

- 13.1 In caveat and revocation proceedings concerning the testamentary capacity and knowledge and approval of the testator, or allegations of undue influence, it will not ordinarily be appropriate for evidence to be given by affidavit. Oral

evidence will be given at trial and parties may be required to file and serve witness outlines.

- 13.2 Until and unless joined to the application for a grant as a defendant, a caveator is not to file material in support of their grounds of objection without a Court order. This includes, but is not limited to, the filing of affidavits and the issuing of any subpoena.
- 13.3 It is expected that the plaintiff in a caveat proceeding will have already filed all 'standard' affidavits in support of the initial application for a grant (including any affidavits in response to requisitions from the Registrar) ahead of the first return of the summons for caveat directions.
- 13.4 Accordingly, any request for the filing of affidavits in a caveat proceeding must be specific and address the necessity for affidavits in such case.
- 13.5 Otherwise, evidence in chief for civil proceedings commenced by originating motion will generally be given on affidavit as per the *Rules (Chapter I)*.
- 13.6 Parties should nonetheless identify contested facts in advance of final hearings, and should be prepared for witnesses to be required to give oral evidence in chief on contested facts.
- 13.7 Substandard, unduly lengthy or argumentative affidavits may attract adverse costs outcomes.

14 CIVIL PROCEDURE ACT CERTIFICATES

- 14.1 The filing of grounds of objection in support of a caveat constitutes 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.

15 COMMUNICATIONS WITH THE COURT

- 15.1 Communications with the Court should be to the List email with a copy to all other parties and confined to uncontroversial matters.
- 15.2 The file number and party represented should be made clear in every communication.
- 15.3 Parties are reminded that pursuant to rule 27.03(11)(b) of the *Rules (Chapter I)*, 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 Court 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.

16 FURTHER INFORMATION

- 16.1 The Court's website includes a page dedicated to the List with up to date information about the List's operation.

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.

22 December 2025: This Practice Note was reissued replacing the version issued on 12 September 2018.

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22 December 2025