



# Supreme Court of Victoria

## Practice Note SC CL 7

### Testators Family Maintenance 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 Testators Family Maintenance List which is a case management list within the Common Law Division of the Court.

#### 2 COMMENCEMENT

- 2.1 This Practice Note was reissued and commences on 12 January 2026, as revised, and will apply to all proceedings in the List whenever commenced.

#### 3 DEFINITIONS

- 3.1 In this Practice Note:

<b><i>AP Act</i></b>	means the <i>Administration and Probate Act 1958</i> ;
<b><i>CPA</i></b>	means the <i>Civil Procedure Act 2010</i> ;
<b><i>Inventory value</i></b>	means the net value of the estate in the inventory of assets and liabilities filed with the application for a grant of representation even if such valuation is disputed by any party;
<b><i>List</i></b>	means the Testators Family Maintenance List;
<b><i>List directions day</i></b>	means one of the regular days that a Judicial Officer convenes directions hearings in the List;
<b><i>List email</i></b>	means <a href="mailto:tfm@supcourt.vic.gov.au">tfm@supcourt.vic.gov.au</a> ;
<b><i>MCP Rules</i></b>	means the <i>Supreme Court (Miscellaneous Civil Proceedings) Rules 2018</i> or successor;
<b><i>Rules (Chapter I)</i></b>	means the <i>Supreme Court (General Civil Procedure) Rules 2025</i> or successor;

**TFM Application** means an application for provision or further provision out of a deceased estate under Part IV of the *AP Act*.

**Small estate** mean an estate where the Inventory value is under \$1,000,000 (or such other value as published on the List website from time to time).

#### **4 PROCEEDINGS SUITABLE FOR INCLUSION IN THE LIST**

- 4.1 Subject to paragraph 4.2, all TFM Applications should be initiated in the List.
- 4.2 Where the majority of witnesses or parties reside in regional Victoria, the TFM Application should be initiated in the Civil Circuit List (see Practice Note SC CL 1 (Second Revision)), but will be managed in the List and will otherwise be subject to this Practice Note.

#### **5 PROCEDURE FOR ENTRY INTO THE LIST**

- 5.1 TFM Applications should be initiated in the List by endorsing the heading of the originating motion with “Testators Family Maintenance List”. The heading of all subsequent documents filed in the proceeding should include this endorsement.
- 5.2 Proceedings may be transferred into or out of the List on the Court’s own motion.
- 5.3 No additional fees will be payable for the inclusion of a proceeding in the List.

#### **6 INITIATING DOCUMENTS**

- 6.1 TFM Applications are commenced under O 16 of the *MCP Rules*. The originating motion initiating a TFM Application must include the following information:
  - (a) the date of the death of the deceased in respect of whose estate the application is made;
  - (b) the date of the last Will (if any);
  - (c) the date of Grant of Probate of the Will, or of Letters of Administration of the estate of the deceased;
  - (d) the relationship of the plaintiff to the deceased;
  - (e) the value of the estate as set out in the Inventory of Assets and Liabilities; and
  - (f) whether the TFM Application is made in or out of time.

## **7 FIRST DIRECTIONS HEARING**

- 7.1 A summons for directions is to be filed in accordance with r 16.06 of the *MCP Rules*, with a return date no less than 14 days from the date of filing. The Court may, of its own motion, list a proceeding for directions at any time.
- 7.2 List directions days are generally heard every second week during the Court sitting terms. List directions days are available on the Court's website.
- 7.3 By 2.00 pm three business days prior to the first return of the summons for directions, the plaintiff must file and serve:
- (a) either:
    - (i) an open position statement for a small estate; or
    - (ii) an affidavit in all other cases,  
in support of their TFM Application which shall state the facts relied upon by the plaintiff to establish each of the matters set out in r 16.03 of the *MCP Rules* and, if applicable, the relevant matters set out in s 91A of the *AP Act* and also annexes or exhibits (as appropriate) copies of the last Will, Grant of Probate or Letters of Administration, and the Inventory of Assets and Liabilities;
  - (b) an affidavit of the plaintiff's solicitor stating:
    - (i) the solicitor's estimate of the plaintiff's costs, including disbursements, calculated on the standard basis up to the end of mediation; and
    - (ii) whether or not a conditional cost agreement has been entered and, if so, the estimated amount of any uplift fee; and
  - (c) the certificates required by pt 4.1 of the *CPA*.
- 7.4 An open position statement filed pursuant to 7.3(a)(i) is a 'with prejudice' document which is to be included in any e-Court book for trial and may be referred to during cross-examination.
- 7.5 Should there be non-compliance with the preceding paragraph, 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.
- 7.6 By 2.00 pm three business days prior to a directions hearing, the parties are expected to confer and submit proposed consent orders or, absent agreement, the parties' respective proposed orders. Pro-forma first directions Orders are available on the Court's website.
- 7.7 Appearances at a first directions hearing are required unless otherwise advised by the Court.
- 7.8 In any proposed first directions orders:

- (i) the plaintiff must specify the extent of the provision or further provision sought from the estate, or explain why they cannot;
- (ii) the defendant may seek orders granting leave to a beneficiary to join as a defendant and to be provided with notice of the orders, with a clear explanation as to why the defendant is unable to represent their interests in the proceeding; and
- (iii) the parties must inform the Court of any child under the age of 18 years, adult person under disability or potential unascertained beneficiaries who may be affected by the proceeding.

7.9 The absence of response to a plaintiff's solicitor's costs estimate at a first directions hearing does not indicate that the estimate has been accepted by the defendant or the Court. Costs remain in the discretion of the Court.

## **8 EVIDENCE**

8.1 In relation to a small estate, subject to subparagraph 8.4 and to any direction to the contrary, the plaintiff's open position statement will stand as the plaintiff's evidence-in-chief at trial.

8.2 In relation to all other estates, subject to subparagraph 8.4 and to any direction to the contrary, evidence-in-chief at trial will generally be given on affidavit prepared in accordance with O 43 of the *Rules (Chapter I)*. Substandard, unduly lengthy and argumentative affidavits may attract adverse costs outcomes.

8.3 At the time of seeking a trial listing, parties must be prepared to address whether any direction contrary or additional to that provided by the above paragraphs as appropriate is required.

8.4 In advance of final hearings, parties must identify contested facts and should be prepared for witnesses to be required to give oral evidence-in-chief of contested facts.

8.5 The preceding paragraphs do not apply to affidavits which solely relate to the current financial position of the estate.

## **9 INTERLOCUTORY APPLICATIONS**

9.1 Any interlocutory application may be issued with a return date for directions in a List directions day no less than 14 days from the date of filing of that application.

9.2 An interlocutory application may be heard by a Judge, an Associate Judge or, on referral, a Judicial Registrar. Directions may be made for the preparation or the hearing of an interlocutory application.

## **10 MEDIATION**

10.1 Generally, all TFM Applications are referred to mediation.

- 10.2 The Court may refer a proceeding to a judicial mediation before a judicial officer or a mediation before a Specified Court Officer to be conducted in accordance with PN SC GEN 6 *Judicial Mediation Guidelines*, accessible on the Court's website.

## **11 PRE-TRIAL DIRECTIONS AND TRIAL LISTING**

- 11.1 Any party seeking a trial listing is to use the pro-forma pre-trial directions and trial listing orders that are available on the Court's website (with appropriate modifications) submitted to the Court at least three business days prior to the post mediation directions hearing.
- 11.2 The parties are expected to cooperate to avoid delay, unnecessary appearances and to minimise costs as they progress a proceeding to trial.

## **12 FINALISATION OF RESOLVED PROCEEDINGS**

- 12.1 Where a TFM Application has settled, and all persons affected by the settlement are capable adults and consent, parties must apply for orders finalising the proceeding on the papers. In such cases, the parties' legal representatives must confirm to the Court that all persons affected by settlement of the proceeding are capable adults. A pro-forma dismissal Order is available on the Court's website and ought be used as the basis for proposed dismissal orders.
- 12.2 If a proposed settlement affects a child under the age of 18 years, or an adult person under disability, or if for any other reason there are affected parties who are unable to consent, an approval of compromise must be sought. Parties are referred for further assistance to 'A Guide to Practitioners – Applications for Approval of Compromises in Testators Family Maintenance (TFM) Cases' available on the Court's website and amended from time to time.
- 12.3 In the event that the parties seek a family provision order by consent under s 91 of the *AP Act*, and where all parties are capable adults, they must:
- (a) ensure that the plaintiff's material in support of their TFM Application and the certificates required by pt 4.1 of the *CPA* have been filed; and
  - (b) submit:
    - (i) minutes of proposed consent orders containing appropriate and complete particulars in Other Matters including the disclosures in paragraphs 12.1 and 12.4 and properly drafted proposed orders; and
    - (ii) a copy of the fully executed settlement agreement.
- 12.4 Parties applying for orders finalising a TFM Application must inform the Court of the costs, including disbursements, payable by each of the parties to the application and if it appears to the Court that a party's costs, including disbursements, may not be reasonable or proportionate, then the Court may

require that party's solicitor to file an affidavit showing how that party's costs, including disbursements, have been calculated.

### **13 PROPOSED CONSENT ORDERS**

- 13.1 Orders will be made 'on the papers' where appropriate.
- 13.2 All proposed consent orders should be sent to the List email in both Word and signed PDF format.

### **14 COMMUNICATIONS WITH THE COURT**

- 14.1 Save for communications regarding applications for approval of compromise, email communication with the Court should copy in all other parties and be confined to uncontroversial matters.
- 14.2 All communications regarding proceedings in the List should be directed, at first instance, to the List email. The file number and party represented should be made clear in every communication.

### **15 FURTHER INFORMATION**

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

### **AMENDMENT HISTORY**

30 January 2017: This Practice Note was issued on 30 January 2017 and replaced Practice Note No 7 of 2015.

1 April 2020: This Practice Note was reissued with amendments replacing the version issued on 30 January 2017.

25 March 2022: This Practice Note was reissued with amendments replacing the version issued on 1 April 2020.

22 December 2025: This Practice Note was reissued with amendments replacing the version issued on 25 March 2022.

Vivienne Mahy  
Executive Associate to the Chief Justice  
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