

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

S ECI 20XX XXXXX

IN THE MATTER of the will and estate of NAME, deceased

- and -

IN THE MATTER of an application pursuant to s 34 of the *Administration and Probate Act 1958*

- and -

IN THE MATTER of an application pursuant to ss 48 and 51 of the *Trustee Act 1958*

APPLICATION BY:

FULL NAME (as executor of the estate of NAME, deceased), by their litigation guardian/administrator,
FULL NAME Plaintiff

GENERAL FORM OF ORDER

JUDICIAL REGISTRAR:

DATE MADE:

ORIGINATING PROCESS: Originating motion filed [date]

HOW OBTAINED: On return of the originating motion

ATTENDANCE: No appearances; orders made on the application of the plaintiff pursuant to r 1.14(2)(b) of the *Supreme Court (General Civil Procedure) Rules 2025* (the **Rules**)

OTHER MATTERS:

The below is sample text only, please edit as appropriate.

- A. [Name] (the **deceased**) died on [date] leaving a **will** dated [date].
- B. By the will and in the events have the happened, the deceased:
- (i) appoints the plaintiff as their executor and trustee;

- (ii) appoints [name(s)] as their substitute executor(s) and trustee(s); and
 - (iii) [insert distribution of the estate].
- C. On [date], a **grant** of [probate of the will] was made to the plaintiff in proceeding [S PRB #####].
- D. [insert background to the application, including matters relevant to whether the plaintiff is unfit to and/or incapable of continuing to act as executor].
- E. The Court is informed that the administration of the estate is incomplete and that executorial function has not been exhausted.
- F. On [date], the plaintiff commenced this application by litigation guardian on an *ex parte* basis seeking orders to be discharged as executor and trustee of the estate and for [full names(s)] (collectively, the **proposed administrators**) to be appointed administrator(s) and trustee(s) in the plaintiff's place.
- G. The Court is satisfied that:
 - (i) the plaintiff is a person under a disability as defined by the r 15.01(b) of the *Rules*; and
 - (ii) by reason of their disability is unfit to and/or incapable of continuing to act as executor and trustee of the estate.
- H. The plaintiff has given notice of this application to [names]. The Court is satisfied that there are no other persons or entities impacted by this application for whom notice is required.
- I. The proposed administrators have each deposed to their consent to the application and undertake that they will:
 - (i) well and truly collect and administer the estate of the deceased according to law;
 - (ii) 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
 - (iii) if required by the Court, deliver up the grant to the Court.
- J. The Court has read the affidavits filed in this proceeding as at [date] and the exhibits thereto.
- K. By orders of the Honourable Justice [name] made [date], the proceeding was referred to the Judicial Registrar for hearing and determination.
- L. This order is signed by the Judicial Registrar pursuant to r 60.02(1) of the *Rules*.

THE COURT ORDERS THAT:

1. Pursuant to s 34(1)(c) of the *Administration and Probate Act 1958*,
 - (a) [full name] be discharged as executor of the estate of the deceased; and
 - (b) [full name(s)] be appointed as administrator(s) with the will dated [date] annexed of the estate of the deceased.
2. Pursuant to s 48(1) of the *Trustee 1958* and the inherent jurisdiction of the Court,
 - (a) [full name] be discharged as trustee of the estate of the deceased; and
 - (b) [full name(s)] be appointed as trustee(s) of the estate of the deceased.
3. Pursuant to s 51 of the *Trustee 1958*, the assets of the estate vest in [full name(s)] as trustee(s) of the estate of the deceased.
4. The Registrar of Probates annex an authenticated copy of this order to the grant.
5. The hearing listed for [date] is vacated.
6. The costs of and incidental to this proceeding be paid out of the estate.
7. The proceeding be otherwise dismissed.

DATE AUTHENTICATED:

[insert]

Lawyers for the plaintiff

Notes on this template:

- *This template has been prepared for use in ex parte proceedings commenced by the discharging executor by their litigation guardian or administrator in circumstances where the executor is unfit to and/or incapable of continuing to act as executor. In this template, the proposed administrators are non-parties.*
- *This template has been prepared for use in relation to an electronic grant of representation only.*
- *All material in support of the application is to be on affidavit and filed on Redcrest prior to seeking these orders.*