



# 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.

#### 2 DEFINITIONS

- 2.1 In this Practice Note:

*Act* means the *Administration and Probate Act 1958*;

*Associate* means associate to the Judge in Charge of the List;

*Judge* means the Judge in Charge of the List;

*List* means the Trusts, Equity and Probate List;

*List directions day* means one of the regular days (generally, each Friday in the Court sitting terms) on which the Judge sits to give directions and hear applications in the List;

*Registrar* means the Registrar of Probates;

*Registry lawyer* means the registry lawyer assisting with the List;

*Rules* means the *Supreme Court (Administration and Probate) Rules 2014*.

#### 3 COMMENCEMENT

- 3.1 This Practice Note was issued and commences on 30 January 2017 and applies to all proceedings in the List whenever commenced.

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

- 4.1 The following types of proceedings should be initiated or included in the List:
  - (a) Applications for grants of representation that are referred by the Registrar;
  - (b) Caveat proceedings where a summons for directions has been filed pursuant to rule 8.07 of the Rules;

- (c) Applications for limited grants, including grants of letters of administration, *ad colligendum bona*, *ad litem*, *pendente lite*, *durante dementia* or *durante minore aetate*;
- (d) Applications for revocation of grants of representation, rectification of a will, construction of a will and other proceedings pursuant to the *Wills Act 1997*;
- (e) Applications pursuant to the *Trustee Act 1958* that are not appropriate for the Commercial Court;
- (f) Applications for judicial advice pursuant to rule 54.02 of the *Supreme Court (General Civil Procedure) Rules 2015* that are not appropriate for the Commercial Court;
- (g) Applications pursuant to the *Charities Act 1978*;
- (h) Applications for equitable remedies, including the declaration of equitable interests in property, that are not appropriate for the Commercial Court; and
- (i) Proceedings arising under the Act, excluding proceedings arising under Part IV of the Act.

4.2 The following proceedings should not be initiated in the List:

- (a) Applications arising under Part IV of the Act. These applications are managed in the Testators Family Maintenance List; and
- (b) Applications relating to commission under Order 10 of the Rules. These applications are heard and determined by an Associate Judge in accordance with the procedures set out in the Rules.

4.3 For the avoidance of doubt, proceedings of the nature set out in paragraph 4.1 will only be heard in the Practice Court (Common Law) in the circumstances set out in Part 7 of this Practice Note.

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

5.1 Proceedings of the nature set out in paragraph 4.1 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 Parties may apply to the Judge in Charge (by contacting the associate or the registry lawyer) if they wish to have a proceeding included in the List, notwithstanding that it is not a proceeding of a type referred to in paragraph 4.1.

5.3 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.

5.4 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.

5.5 No additional fees will be payable for the inclusion of a proceeding in the List.

## **6 PRE-TRIAL MANAGEMENT**

- 6.1 It is expected that standard directions will be dealt with by consent on the papers, and unnecessary attendance at Court may result in orders depriving parties of costs, or costs orders against parties.
- 6.2 Parties seeking a directions hearing must issue a summons (or, in uncontested proceedings, a notice to produce pursuant to r 28.06 of the *Supreme Court (General Civil Procedure) Rules 2015*), returnable at 10.00am on a List directions day. A return date may be obtained either at the Principal Registry counter (when filing in person) or by phoning the Principal Registry on 9603 9300 (prior to filing via Citec). The Principal Registry can also advise parties of availability and any days that the Judge will not be sitting in the List.
- 6.3 The plaintiff's solicitors are encouraged to deliver 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 [tep@supcourt.vic.gov.au](mailto:tep@supcourt.vic.gov.au) (cc: [orders@supremecourt.vic.gov.au](mailto:orders@supremecourt.vic.gov.au)) by 12.00pm two days prior to the directions hearing.
- 6.4 The Judge 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.
- 6.5 Where the parties do not agree on proposed consent orders, attendance at the directions hearing is required by all parties. The parties should each email draft orders to [tep@supcourt.vic.gov.au](mailto:tep@supcourt.vic.gov.au) by 12.00pm the day prior to the directions hearing.
- 6.6 The Judge will make such orders as are necessary for the conduct of proceedings in the List and will hear and determine both interlocutory applications and substantive proceedings where possible. Substantive proceedings estimated to take half a day or less may be heard and determined by the Judge on a Friday immediately following the List directions. Substantive proceedings with estimates exceeding half a day will be referred to the Associate Judge in charge of listings for the fixing of a trial date.
- 6.7 Where the Registrar refers a proceeding to the Judge, the proceeding will be heard during List directions. The Registrar will notify the parties of the specific date and time of the hearing.

## **7 URGENT APPLICATIONS**

- 7.1 Parties bringing an urgent application should contact the associate or registry lawyer in the first instance. The associate or registry lawyer will endeavour to allocate a hearing date before the Judge.
- 7.2 Alternatively, if the application cannot be heard by the Judge within an appropriate timeframe, parties will be directed to arrange for the application to be heard in the Practice Court (Common Law). See Practice Note SC CL 10 for further information about the operation of the Practice Court (Common Law).

## **8 CIVIL PROCEDURE ACT CERTIFICATES**

- 8.1 The filing of grounds of objection in support of a caveat constitute 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.

## **9 USE OF TECHNOLOGY**

- 9.1 The provisions of Practice Note SC Gen 5 “Technology in Civil Litigation” apply to proceedings in the List.
- 9.2 For the purposes of paragraph 9.11 of that Practice Note, documentary evidence in excess of 1500 pages is to be considered a large amount of documentary evidence.

## **10 COMMUNICATIONS WITH THE COURT**

- 10.1 At all stages of the proceeding, communications with the Court should be by email to [tep@supcourt.vic.gov.au](mailto:tep@supcourt.vic.gov.au) with a copy to all other parties, and should be confined to uncontroversial matters.
- 10.2 Parties are reminded that pursuant to rule 27.03(11)(b) of the *Supreme Court (General Civil Procedure) Rules 2015*, 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 registry lawyer 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.

## **11 FURTHER INFORMATION**

- 11.1 The Court’s website ([www.supremecourt.vic.gov.au](http://www.supremecourt.vic.gov.au)) includes a [page dedicated to the List](#) with up to date information about the operation of the List including:
- a) Judicial officers managing the List;
  - b) this Practice Note in Word and PDF formats;
  - c) Guidelines for standard orders made in proceedings in the List.

## **AMENDMENT HISTORY**

30 January 2017: This Practice Note was issued on 30 January 2017 and replaced Practice Note No 6 of 2016.

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30 January 2017