



Supreme Court

New South Wales

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Practice Note No. SC Eq 7

REPLACED - Family Provision

Date:

15/05/2009

PRACTICE NOTE SC Eq 7 – Family Provision

Commencement

1. This Practice Note commences on 1 June 2009.

Application

2. This Practice Note applies to all applications under the Family Provision Act 1982 or Chapter 3 of the Succession Act 2006.

Definitions

3. In this Practice Note:

CPA means the *Civil Procedure Act 2005*

Family provision application means an application under the Family Provision Act 1982 or Chapter 3 of the Succession Act 2006

Online hearing means a hearing conducted pursuant to s 71 of the *Civil Procedure Act 2005* and Part 3.9 of the *Uniform Civil Procedure Rules 2005* and in accordance with Practice Note SC Gen 12

UCPR means the *Uniform Civil Procedure Rules 2005*.

Plaintiff's documents

4. The plaintiff must serve the following documents with the Summons:

An affidavit adapted from the form in Annexure 1 to this Practice Note

Notice of eligible persons

Draft consent orders for the first return date of the Summons that:

- Set out a timetable for the future conduct of the proceedings including the service of affidavits and the disclosure of any documents
- Refer the proceedings to mediation at the conclusion of that timetable.

5. If a limitation period is about to expire and proceedings are being commenced to preserve rights, the plaintiff must serve the following documents with the Summons:

An affidavit setting out the reasons why the service of evidence should be deferred

Draft consent orders for the first return date that set out a timetable for the future conduct of the proceedings.

Defendant's affidavit

6. Unless the court orders otherwise, a defendant must serve an affidavit in reply on all active parties by no later than 4 weeks after being served with the Summons, the plaintiff's affidavit and the draft consent orders.

7. The defendant's affidavit must include:

Allegations of facts contradicting facts alleged in the plaintiff's affidavit

Details of:

- The nature and value of the assets and liabilities of the deceased at the date of death
- What is or is likely to be the nature and value of:
 - Any distributed estate
 - The net distributable estate
- What is the nature and value of any property which, in his or her opinion, is or may be the subject of any prescribed transaction or relevant property transaction
- The name and addresses of every person who, in the defendant's opinion, is holding property as trustee or otherwise which is or may be the subject of any prescribed transaction or relevant property transaction
- The names and addresses of every person who, in the defendant's opinion, is or may be:
 - An eligible person
 - An eligible person under a legal incapacity
 - A person beneficially entitled to the distributable estate
 - A person holding property as trustee or otherwise
- The name and addresses of every person to whom the defendant has given notice of the plaintiff's application. [SCR Schedule J requires the defendant to give all persons who are or may be eligible persons notice of the plaintiff's application.]
- Whether any commission is to be charged, and if so, the amount to be charged.