

PRACTICE DIRECTION NUMBER 14 OF 2023
SUPREME COURT OF QUEENSLAND

WILLS AND ESTATES LIST

1. The purpose of the Wills and Estates List (**List**) is to effect the just, expeditious and efficient resolution of proceedings brought in respect of a will or an estate and to reduce the costs of such proceedings.
2. A proceeding will only be placed on the List if its nature and complexity warrants judicial supervision. Priority will be given to proceedings requiring urgent determination. This Practice Direction does not apply to wills and estates proceedings which can be conveniently disposed of in the Applications jurisdiction.
3. This Practice Direction applies only in relation to proceedings commenced in, or transferred to, the Brisbane Registry. A wills or estate matter filed in another region will be subject to case management as considered appropriate in that region.
4. To the extent that it is consistent with the just and expeditious determination of cases, supervision of a proceeding on the List seeks to:
 - (a) ensure that, at the trial, the parties focus on matters genuinely in issue;
 - (b) minimise time spent at trial proving matters not genuinely in issue;
 - (c) ensure that evidence at trial is presented as efficiently as is consistent with a fair hearing of the case;
 - (d) ensure that the prospects of settlement, whether of the whole proceeding, or some issue or issues in it, have been fully explored before dates are allocated for the trial of the matter;
 - (e) ensure that a case is properly ready before trial dates are allocated to it;
 - (f) minimise the risk of an adjournment of the trial; and
 - (g) to the extent consistent with a just hearing, ensure that the cost of litigation is reduced.

Wills and Estate List Judge and List Manager

5. The Chief Justice in consultation with the Senior Judge Administrator will from time to time allocate a judge to conduct the Wills and Estates List (the **Wills and Estates List Judge**).

6. The Wills and Estates List Manager, within the Registry, is responsible to the Wills and Estates List Judge for the administration and management of the Wills and Estates List.¹

Listing proceedings

7. A proceeding may be placed on the List by order of the Wills and Estates List Judge, or by any judge, upon a request being made by a party to the proceeding (as to which see paragraphs 12-14 below). A proceeding may also be placed on the List by order of the Wills and Estates List Judge, following a referral from the Resolution Registrar.
8. Proceedings which may be placed on the List include proceedings in which the following relief is sought:
 - (a) relief in respect of a will, including contentious probate proceedings and proceedings involving a promise to make a will or mutual wills;
 - (b) an order for a statutory will to be made on behalf of a person;
 - (c) relief in respect of the estate, and the administration and distribution of the estate, of a deceased person, including by way of family provision, proceedings for compensation and accounting made pursuant to the *Powers of Attorney Act 1998* and the *Guardianship and Administration Act 2000* and applications relating to testamentary trusts made pursuant to section 96 of the *Trusts Act 1973*;
 - (d) relief in respect of a personal representative or trustee of the estate of a deceased person, including the payment of executor's commission and the removal of personal representatives;
 - (e) relief in respect of the superannuation death benefits of a deceased person;
 - (f) claims seeking to set aside *inter vivos* transactions undertaken by a deceased person;
 - (g) any other relief pursuant to the *Succession Act 1981* in relation to the estate of a deceased person or testamentary trust.
9. In determining whether to order a proceeding be placed on the Wills and Estates List, relevant considerations include the complexity of the issues in dispute, the nature and size of the estate and whether the matter can be appropriately determined in the Applications List.
10. Where a proceeding is ordered to be placed on the List, the judge's associate is to immediately advise the Wills and Estates List Manager and, if another judge has made the order, the associate to the Wills and Estates List Judge, of the making of the order.

Requesting that a proceeding be placed on the List

11. A party may request the Wills and Estates List Judge to place a proceeding on the Wills and Estates List.

¹ Contact details for the List Manager and the associate to the List Judge are set out at the end of this Practice Direction.

12. Unless otherwise directed, a request by a party to have a proceeding listed on the Wills and Estates List may be made only:
 - (a) after the claim or originating application has been served on the defendants or respondents;
 - (b) after the views of the other parties as to its listing have been sought by the applicant for listing (including as to whether any other party requires an oral hearing in relation to the request to list).
13. Unless otherwise directed, a request for listing is to be supported by a document made in accordance with this Practice Direction (a **listing statement**). The listing statement must include:
 - (a) a succinct statement of the nature of the dispute;
 - (b) brief particulars of the issues said to arise;
 - (c) a statement whether or not the other party or parties agree that the proceeding should be listed;
 - (d) a statement, avoiding undue formality, of the applicant's contentions in relation to the proceedings, which should identify:
 - (i) the general facts on which the applicant relies in seeking relief;
 - (ii) the legal grounds, including statutory rights, relied on;
 - (e) details of any considerations of urgency;
 - (f) a timetable for progress to resolution, including estimated trial length and costs of the proceeding (to date, and to trial); and
 - (g) an explanation as to why the proceeding cannot be conveniently determined on the Applications List,and be accompanied by a draft order setting out the directions to be sought.
14. The request for listing and listing statement are to be provided to the court by email sent to the associate to the Wills and Estate List Judge and copied to the Wills and Estate List Manager.
15. Upon a request being made by a party (in accordance with paragraphs 12-14 above), the Wills and Estates List Judge will determine whether the proceeding is appropriate to be placed on the List. The request will be determined on the papers, unless any party indicates an oral hearing is required. The associate to the Wills and Estates List Judge will inform the parties whether or not the proceeding has been placed on the List, and of any directions made on the papers.

Directions

16. The Wills and Estates List Judge may make such orders or give such directions as appropriate to ensure the just, efficient and expeditious disposition of proceedings on the List.
17. Parties are expected to attempt to reach agreement about whether and when they should engage in alternative dispute resolution (**ADR**); the form of ADR; and arrangements for undertaking ADR. They should inform the Wills and Estates List Judge of any agreement reached, or explain the areas of dispute. If the parties are unable to resolve the proceeding, they should attempt to resolve individual issues.
18. The parties should attempt to reach agreement and, if necessary, seek directions, including in relation to:
 - (a) appointment of experts by parties jointly, pursuant to [rule 429L](#) of the *Uniform Civil Procedure Rules 1999* (**UCPR**), to prepare a report on an issue arising in the proceeding;
 - (b) experts' conferences and joint reports, pursuant to [rule 428](#) UCPR; and
 - (c) whether early determination of an issue in the proceeding is appropriate.

Reviews

19. Review hearings will be listed at the direction of the Wills and Estates List Judge.
20. Parties are expected to confer at least one week before any review, to attempt to reach agreement on the directions to be sought at the upcoming review.
21. Where parties reach agreement about the directions to be made, they are to provide:
 - (a) a copy of the agreed directions; and
 - (b) evidence of each party's agreement (either in the form of a signed consent order, or an email from the party),by email to the associate to the Wills and Estates List Judge.
22. If the Wills and Estates List Judge considers it appropriate to do so, agreed directions may be made on the papers.
23. If the parties are unable to agree about directions, each party is to provide a copy of that party's draft of the directions sought, by email to the associate to the Wills and Estate List Judge.
24. Directions and orders made at review hearings should nominate specific dates by which particular steps are to be complied with.
25. Reviews will generally be limited to the determination of directions to progress the matter, involving only limited disputes. Substantial interlocutory disputes will not be determined at a review and are to be dealt with in the Applications List.

Trial

26. Once a proceeding is placed on the Wills and Estates List, it will not be allocated trial dates unless a request for trial date is filed, or a judge otherwise orders.
27. Once a request for trial date has been filed, or a judge has made an order listing a matter for trial, the proceeding will be referred to the Resolution Registrar, who will arrange for the parties to attend a pre-trial case conference for the purpose of agreeing directions to ensure the matter proceeds to trial in an efficient and cost-effective manner.
28. Following the making of such directions, the proceeding will be managed by the judge allocated to hear the trial.

Removal from List

29. A proceeding may be removed from the Wills and Estates List once it has been allocated to another judge for trial, or by order of a judge at any time. Otherwise, a proceeding may be removed from the List by the Wills and Estates List Manager where:
 - (a) the whole of the proceeding (including any counterclaim and any appeal) has been determined; or
 - (b) the proceedings have been discontinued by the plaintiff or applicant filing a notice of discontinuance under [rule 309](#) UCPR or giving written notice that the proceeding has been settled under [rule 308A](#) UCPR.

Sanction of settlement

30. If a matter on the Wills and Estates List is resolved and court orders are required to give effect to the settlement, the parties should advise the associate to the Wills and Estates List Judge of the settlement and the orders sought. The parties may provide, by email to the associate, an affidavit(s) evidencing the compromise and brief submissions. If the Wills and Estates List Judge considers it appropriate, the orders may be made on the papers, without the need for any appearance. Otherwise, the parties will be informed that an application should be filed in the ordinary way to be heard in the Applications List.

Contact details

The Wills and Estates List Manager: willsandestateslist@justice.qld.gov.au

Current Associate: associate.williamsj@courts.qld.gov.au

Resolution Registrar resolution.registrar@courts.qld.gov.au



Helen Bowskill
Chief Justice
14 June 2023