

EXECUTOR'S OATH

SUPREME COURT OF SOUTH AUSTRALIA
TESTAMENTARY CAUSES JURISDICTION

In the Estate of **[FULL NAME OF DECEASED]** (Deceased)

[I / We], [full name, address, postcode and occupation of deponent(s)], [swear on oath / do truly and solemnly affirm] that:

- 1 [I / We] believe the paper writing [or if more than one testamentary document, paper writings] now produced to and marked by [me / us] to contain the last will and testament of [and codicil or two codicils] of [full name of deceased] late of [address and postcode] deceased ("the deceased").
- 2 [I am / We are] the [relationship to the deceased] of the deceased and [the executor / the executors / one of the executors] as described in the will.
- 3 [Full name], [spouse/domestic partner] of the deceased an executor as described in the will, died during the lifetime of the deceased] [OR [Full name] of [address, postcode and relationship, if any] the other executor as described in the will has renounced probate and letters of administration with eh will annexed of the estate of the deceased [or as the case may be]].
- 4 [I / We] will:
 - (a) collect, get in and administer according to law the estate of the deceased;
 - (b) if required to do so by the Court, produce to the Court a full statement and account of [my / our] administration of the estate;
 - (c) if required to do so by the Court, deliver up to the Court any prior grant that may have issued in this estate.
- 5 The deceased died at [suburb] [postcode] on [date] aged [number] years.
- 6 The deceased died possessed of assets in the State of South Australia as disclosed on the Electronic System.

[Sworn/Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....
[signature of deponent(s)]

before me

.....
[signature of authorised witness]
[print name of witness]
[print title of authorised witness]
[ID number of witness]

Form PROB26

Notes

- 1 Refer rule 356.27 of Chapter 25 of the *Uniform Civil Rules 2020* regarding the description of the deceased in the oath or in any of the modification to this Form.
- 2 The oath must clear off all other persons having a prior entitlement to the grant – see rule 356.2(4) of Chapter 25 of the *Uniform Civil Rules 2020*.
- 3 Where leave is to be reserved for non-proving executor[s] the following endorsement must be added at the foot of the oath:

Leave to be reserved for [full name] of [address and postcode] the other executor as described in the will [or as the case may be] to apply for probate.
- 4 If section 19 of the *Succession Act 2023* (SA) applies and revokes the appointment of the testator's former spouse or partner as one of the executors of the testamentary document or if the applicant's title to the grant is dependent upon the revocation of the executorship of the former spouse or partner or upon the operation of that section then refer to the modifications of the form of oath below.

Modifications to Form PROB26

(a) Oath of executor where appointment of one executor has been revoked by section 19(1)(b) of the Succession Act 2023 (SA)

[Heading]

[I / We], [full name, address, postcode and occupation of deponent(s)], [swear on oath/do truly and solemnly affirm] that:

- 1 [I / We] believe [complete as in Form PROB26].
- 2 [I am / We are] [relationship to the deceased] and [the executor / the executors / one of the executors] as described in the will.
- 3 The appointment of [full name] the former [spouse / partner] of the deceased an executor as described in the will has been revoked pursuant to section 19(1)(b) of the *Succession Act 2023* (SA).
- 4 [I / We] will: [complete as in Form PROB26].

(b) Oath of executor where applicant's title to the grant is dependent on the application of section 19(1)(b) of the Succession Act 2023 (SA) (e.g. the testator's former spouse or partner has been appointed as an executor highest in priority)

[Heading]

[I / We], [full name, address, postcode and occupation of deponent(s)], [swear on oath / do truly and solemnly affirm] that:

- 1 [I / We] believe [complete as in Form PROB26].
- 2 [I am / We are] [relationship to the deceased] and [the executor / the executors / one of the executors] as described in the will.
- 3 The appointment of [full name] the former spouse of the deceased an executor as described in the will has been revoked pursuant to section 19(1)(b) of the *Succession Act 2023* (SA) the marriage between the testator and [full name of former spouse] having been dissolved by order of the Federal Circuit and Family

Court of Australia made on [date]. A true copy of the order is annexed and marked "A".

OR

- 3 The appointment of [full name] the former partner of the deceased an executor as described in the will has ended under section 13(1) of the *Relationships Register Act 2016* (SA) ("the Act"). A copy of the Certificate issued by the Registrar of Births, Deaths and Marriages under section 21 of the Act recording the event or entry on the Certificate that ended the registered relationship is annexed and marked "A".

- 4 [I / We] will: [complete as in Form PROB26].

(c) Oath of executor where the marriage or registered relationship of the testator has ended and the former spouse or partner has been appointed one of the executors of the will, or an executor highest in priority, or is an executor, or is an executor according to the tenor, or is authorised by the terms of the will to nominate an executor and applies section 19(2) of the Succession Act 2023 (SA)

[Heading]

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 I believe [complete as in Form PROB26].
- 2 I am the former [spouse / partner] of the deceased and [the executor / the executors / one of the executors] as described in the will.
- 3 The marriage between the deceased and myself was dissolved by order of the Federal Circuit and Family Court of Australia made on [date]. A true copy of the order is annexed and marked "A", but the deceased by codicil dated [date] affirmed the will showing no intention of revoking the appointment of myself as [the executor / or as the case may be]*.

OR

- 3 The appointment of [full name] the former partner of the deceased an executor as described in the will has ended under section 13(1) of the *Relationships Register Act 2016* (SA) ("the Act"). A copy of the Certificate issued by the Registrar of Births, Deaths and Marriages under section 21 of the Act recording the event or entry on the Certificate that ended the registered relationship is annexed and marked "A" but the deceased by codicil dated [date] affirmed the will showing no intention of revoking the appointment of myself as [the executor / or as the case may be]

- 4 I will: [complete as in Form PROB26]

***NB:** The oath must disclose such facts as are necessary to exclude the operation of section 19(1) of the *Succession Act 2023* (SA).

(d) If directed by the Court to include an oath with the application leading to the grant on proving a lost will as contained in a copy or draft, etc.

[Heading]

[I / We], [full name, address, postcode and occupation of deponent(s)], [swear on oath / do truly and solemnly affirm] that:

- 1 On [date] the [Registrar of Probates / or as the case may be] ordered that probate of the last will and testament as contained in the copy [or a completed copy or reconstruction (or as the case may be)] (being the exhibit marked "A" referred to in the affidavit of [full name] [sworn / affirmed] on [date]) of [name of deceased] late of [address and postcode] deceased ("the deceased") be granted to [me / us] [the executor / the executors / one of the executors] as described in the will limited until the original will or a more authentic copy of it be brought into and left in the Probate Registry of this Court.
- 2 [I / We] believe the paper writing now produced to and marked by [me / us] to contain the last will and testament [as contained in the copy (or as the case may be)] of the deceased.
- 3 [I am / We are] the [relationship to deceased] of the deceased [as the case may be] and [the executor / the executors / or as the case may be] as described in the will.
- 4 [I / We] will:
 - (a) collect, get in and administer according to law the estate of the deceased limited as aforesaid.
 - (b) if required to do so [complete as in Form PROB26].

(e) If directed by the Court to include an oath with the application leading to the grant after order has been made under section 11 of the Succession Act 2023 (SA) admitting an informal will to probate

[Heading]

[I/We], [full name, address and postcode and occupation of deponent(s)], [swear on oath / do truly and solemnly affirm] that:

- 1 On [date] the [Registrar of Probates / or as the case may be] ordered that a document (being the exhibit marked "A" referred to in the affidavit of [full name] [sworn / affirmed] on [date]) be admitted to probate as the last will of [name of deceased] late of [address and postcode] deceased ("the deceased") and that probate of the same be granted to [me / us] [the executor / the executors / one of the executors] as described in the will.
- 2 [I / We] believe the document now produced to and marked by [me / us] to contain the last will and testament of the deceased.
- 3 [I am / We are] the [complete as in Form PROB26].

(f) Oath after order has been made under section 22 of the Succession Act 2023 (SA) rectifying a will before a common form grant has been made

[Heading]

[I / We], [full name, address and postcode and occupation of deponent(s)], [swear on oath / do truly and solemnly affirm] that:

Form PROB26

- 1 [Name of deceased] late of [address and postcode] deceased ("the deceased") made and duly executed their last will and testament bearing date [date] ("the will") and appointed [me the executor / us the executors / or as the case may be] as described in the will.
- 2 On [date] the [Registrar of Probates / or as the case may be] ordered that the will be rectified and a copy of the said order is annexed to and marked "A".
- 3 [I / We] believe the paper writing now produced to and marked by [me / us] to contain a true copy of the will of the deceased (the same being contained in an engrossment of the will as rectified by the aforesaid order).
- 4 [I am / We are] the [complete as in Form PROB26].

Note

- 1 If a probate action has been commenced under Chapter 20, Part 4 of the *Uniform Civil Rules 2020* in respect of a testamentary document then the rectification application must be made in that proceeding (rule 353.10(2) of Chapter 25 of the *Uniform Civil Rules 2020*) and any such oath must include reference to the relevant orders referable to the testamentary documents admitted to proof or otherwise.