

**COURT OR OTHER ORDER IN PLACE WHEN
THE WILL WAS EXECUTED – AFFIDAVIT FROM
PUBLIC TRUSTEE OFFICER**

SUPREME COURT OF SOUTH AUSTRALIA
TESTAMENTARY CAUSES JURISDICTION

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

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

1. I am a [position at Public Trustee] of [address of Public Trustee].
2. I am one of the subscribing witnesses to the last will and testament [and / or codicil] ("the document") of [name of deceased person] late of [address and postcode] deceased ("the deceased") a copy of the document dated [date] now annexed and marked "A".
3. Public Trustee has been appointed [the full] Administrator of the affairs of the deceased pursuant to an Order of the [Guardianship Board / South Australian Civil and Administrative Tribunal / Supreme Court] number [file number] and that Order remains in force. A copy of the initial Order dated [date] [and the subsequent orders of reviews dated [date] and [date] etc] is annexed and marked "B".
4. At the date of the delegation of authority dated [date] made by [name of person holding the office of the Public Trustee] ("the delegation") and at the date of the will I was employed in the office of the Public Trustee and a person occupying the position of [title of position]. At the time of execution of the document I was duly authorised by the delegation to be present at and consent to the making and execution of a will by a protected person on behalf of the Public Trustee.
5. The delegation was made pursuant to section 8 of the *Public Trustee Act 1995* (SA) and remains in force. A photocopy of the delegation is annexed and marked "C".
6. I caused the document to be prepared in accordance with instructions given to me by the deceased.
7. Prior to the execution of the document the deceased handed me a letter from Doctor [name of doctor] stating that they considered the deceased [was medically competent and] had the testamentary capacity to make a will on [date]. A copy of that letter is annexed and marked "D".
8. The deceased executed the document on [date] by [signing their name/making their mark] at the foot or end of the document [or as the case may be] as the same now appears on it in the presence of me and of [name of other subscribing witness], the other subscribed witness to the document both of us being present at the same time, and we then at the request of the deceased attested and subscribed the document in the presence of the deceased.
9. Prior to the execution of the document by the deceased [/ read the document over to them / the document was read over to them by [name of other subscribing witness], in my presence / the deceased read over the document in my presence / or as the case

Form PROB38

may be] and the deceased at such time appeared thoroughly to understand the same and to have full knowledge of its contents.

10. On behalf of the Public Trustee, I consented to the making of the document.
11. Having perused Public Trustee's Will Instruction Form and other records I provide evidence that I complied with the terms of the [*Guardianship Board Order / SACAT order / Court order*] and a copy of the documentation evidencing that compliance is annexed and marked "E".

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

.....
[*signature of deponent*]

before me

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

Note

- 1 Remember to attach copies of the document referred as being annexed marked with the correct identifier and that the identifiers are sequential.

Modifications of Form PROB38

(a) **Where delegated Public Trustee officer no longer an employee of Public Trustee**

[*Heading*]

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

- 1 I was employed in the office of the Public Trustee as a [*position at Public Trustee*] from [*date*] until [*date*] and am familiar with the requirement to formally execute a will.
- 2 I am one of the subscribing witnesses to the last will and testament [*and/or codicil*] ("the document") of [*name of deceased person*] late of [*address and postcode*] deceased ("the deceased") a copy of the document dated [*date*] now annexed and marked "A".
- 3 As I am no longer employed in the office of Public Trustee I do not have access to its will preparation files however my practice in relation to making a will for a person subject to an Order of the [*Guardianship Board / South Australian Civil and Administrative Tribunal / Supreme Court*] that restricts the making of testamentary dispositions except in the presence of and with the consent of the Public Trustee ('the Order') was as follows: -

- 3.1 I would have prepared the document in accordance with instructions given to me by the deceased.
- 3.2 I would have satisfied myself that I was duly authorised by delegation to be present at and consent to the making and execution of a will by a protected person on behalf of the Public Trustee.
- 3.3 Prior to the execution of the document I would have requested the deceased to hand to me a letter from a medical practitioner stating that the deceased had the testamentary capacity to make a will. I understand that letter should be held on the Public Trustee's will preparation file.
- 3.4 Prior to the execution of the document by the deceased the document would have been read over and explained to the deceased by me and I would have been satisfied that the deceased appeared thoroughly to understand the same and to have full knowledge of its contents. If I was not satisfied that the deceased understood and approved the document I would not have signed the will as a witness.
- 3.5 The deceased would have then executed the document on the date of the document by [*signing their name / making their mark*] at the end of the document as the same now appears in the presence of me and of [*name of other subscribing witness*] the other subscribed witness to the document, both of us being present at the same time and we then at the request of the deceased would attest and subscribe the document in the deceased's presence.
- 3.6 Following the execution of the document I would have completed the necessary documentation required by Public Trustee to ensure I complied with the terms of the Order. That documentation should be held on the Public Trustee's will preparation file.
- 4 On behalf of the Public Trustee, I consented to the making of the document.
- 5 I have no reason to doubt that I varied from my usual practice as described above before witnessing the document.

(b) Where Public Trustee officer not available or unwilling to provide an affidavit and Public Trustee Estates Manager provides evidence

[*Heading*]

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

- 1 I am the [*position at Public Trustee*] in the office of the Public Trustee of 211 Victoria Square Adelaide 5000 and I am duly authorised to make this affidavit on behalf of the Public Trustee.
- 2 [*Name of deceased*] late of [*address and postcode*] deceased ("the deceased") and having duly made their last will and testament [*and / or codicil*] ("the document") a copy of the document dated [*date*] is annexed and marked "A".
- 3 [*Name of the subscribing witnesses and their occupation at Public Trustee (if employed by Public Trustee)*] were the subscribing witnesses to the document.

[Indicate which subscribing witness prepared the document (if applicable) and how long they had been employed at Public Trustee (if known)].

- 4 *[Set out facts why the officer who consented on behalf of the Public Trustee is unable or unwilling, to provide this affidavit].*
- 5 Public Trustee has been appointed *[the full]* Administrator of the affairs of the deceased pursuant to an Order of the *[Guardianship Board / South Australian Civil and Administrative Tribunal / Supreme Court]* number *[insert file number]* and that Order remains in force. A copy of the initial Order dated *[date]* *[and the subsequent orders of review dated [date] and [date] etc]* are annexed and marked *["next identification letter e.g. "B", "C" etc"]*.
- 6 At the date of the delegation of authority dated *[date]* made by *[name of person holding the office of Public Trustee]* ("the delegation") and at the date of the will *[name of Public Trustee officer]* was employed in the office of Public Trustee and a person occupying the position of *[position classification]*. At the time of execution of the document *[name of Public Trustee officer]* was duly authorised by the delegation to be present at and consent to the making and execution of a will by a protected person on behalf of Public Trustee.
- 7 The delegation was made pursuant to section 8 of the *Public Trustee Act 1995* (SA) and remains in force. A photocopy of the delegation is annexed and marked *["next identification letter e.g. "B", "C" etc"]*.
- 8 It appears the document was prepared in accordance with the instructions provided by the deceased and duly executed.
- 9 A letter from Doctor *[name of doctor]* stating that *[they]* considered the deceased was medically competent and had the testamentary capacity to make a will on *[date of Doctor's letter]* is held on the will preparation file. A copy of that letter is annexed and marked *["next identification letter e.g. "B", "C" etc"]*.
- 10 Having perused Public Trustee's Will Instruction Form and other records it appears that *[Name of Public Trustee officer]* complied with the terms of the Order and a copy of the documentation evidencing that compliance is annexed and marked *["next identification letter e.g. "D", "E" etc"]*.