

Chief Justice's Practice Direction No. 2 of 2012

Wills and Non Contentious Probates Registry Practice

It has been noted that legal practitioners have adopted a variety of procedures with Wills and Non-Contentious Probate applications at the Probate Registry. This Practice Direction intends to clarify and strengthen the integrity of procedures put in place by Chief Registrar's Practice Direction No. 2 of 1994 (02/09/1994).

With effect from today Legal Practitioners and other users of the registry service are requested to comply with the following:

1. Interpretation

In this Practice Direction: -

- (a) 'Registry' refers to the 'High Court Probate Registry, Suva'
- (b) 'Testator' includes 'Testatrix'
- (c) 'Will' includes 'codicil'

2. Registration of 'Wills'

In order to achieve registration, two originals of the deceased's 'Will' are to be filed at the Registry together with the original Birth Certificate of the Testator.

Annexed to this Practice Direction is Form No. W1. This form needs to be duly completed and filed with the Registry to achieve registration of any 'Will'.

3. Uplifting of 'Wills'

In order to uplift a 'Will' already registered with the High Court pursuant to Section 17 of the Wills (Amendment) Act, Act 10 of 2004; the following documents must be lodged with the Registry.

- (i) In cases where the request is lodged by a Legal Practitioner or a Law firm:
 - a) A letter of Request for the 'Will' which should set out the reasons for the request;

- b) A letter of Authorisation from the Executor/Trustee to the Legal Practitioner or Law Firm to act for the estate or upon the instructions of the executor to obtain the Will;
- c) Production of a valid Photo ID of the Executor/Trustee applicant; and
- d) An Original Death Certificate of the Deceased (Testator).

(ii) In cases where the request is lodged by an individual:

- a) A letter of Request for the 'Will' which should set out the reasons for the request;
- b) A valid Photo ID of the Executor/Trustee applicant;
- c) A Statutory Declaration giving the following undertakings:
 - i) That the 'Will' will be lodged with the High Court Probate Registry, Suva upon any application for a grant;
 - ii) That the 'Will' will be produced to the Chief Registrar within 7 days of any demand so to do, and
 - iii) That the 'Will' will be kept in safe custody until lodged at the High Court Probate Registry, Suva.
- d) An original Death Certificate of the Deceased (Testator).

If the request is made pursuant to a Power of Attorney, then a Certified True Copy of the registered Power of Attorney must be lodged with the Registry to accompany the request above. The original Power of Attorney is to be brought to the Registry for perusal. The original Power of Attorney will be released after perusal, and after a photocopy has been made of it to be kept on file at the Registry.

NB: **Wills will not be released to any Third parties unless upon Order of the Court or by virtue of any other law, such as the Succession, Probate and Administration Act [Cap 60].**

4. **Search for Wills prior to application for grant.**

It shall be mandatory for a '*Request for Wills Search*' to be conducted by an applicant at the Registry prior to the filing of any application for a grant.

Searches shall be conducted after taking the following steps:

- i) completion of Form No. W2 annexed to this Practice Direction; and
- ii) upon payment of the requisite search fee.

This measure is implemented to eradicate the duplication of applications under the Intestate Succession Rules whilst a 'Will' in the same Estate is already registered with the Registry.

5. Requests for Copies of Oaths, Caveats etc.

Any request for copies of Oaths, Caveats or any other relevant document at the registry shall be by way of a Letter of Request outlining the specific reasons for seeking the said documents. Upon approval for release by the Chief Registrar or his or her nominee, the applicable photocopying fees shall be paid prior to such release.

**6. Application of Section 18 Wills (Amendment) Act 2004
[Act No. 10 of 2004]**

Section 18 is set out below.

Failure to produce will

18. any person who, having in his possession or under his control any will or codicil of a deceased person or any paper or writing purporting to be such a will or codicil, fails or neglects to produce and deposit the same with the Courts, or, where there is reason to believe that the deceased person's estate is a small estate, with the Chief Registrar of the High Court within 30 days of learning of the death of the deceased person, commits an offence and is liable on conviction to a fine of \$1,000.

[Emphasis Added]

Compliance with the above instructions will assist greatly towards the expeditious and correct processing of applications.



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Chief Justice

Date: 14.12.12

REGISTRATION OF WILL

Will Number: _____ REGISTERED BY _____

NAME OF TESTATOR/TESTATRIX : _____
(please state Alias if any) _____

NAME OF EXECUTOR(S) /EXECUTRIX (CES)/TRUSTEES(S):

DATE OF WILL : _____

DATE REGISTERED : _____

(Please provide full details) : _____
[Name]

[Signature]

[Residential Address]

[Postal Address]

[Phone contact]

[Give ID number – FNPF, Driving Licence, EVR, Passport]

Checklist :

- Birth Certificate of Testator/Testatrix
- 2 Original Wills

Official Use only:

- ID sighted and confirmed
- Entered into Database
- Date of Entry: _____

SEARCH FORM

Search No: _____

PART A

Name of Applicant: _____ Contact: _____ (m)

Residential Address: _____ (h)

Postal Address : _____ ID No: _____

RELATIONSHIP TO THE TESTATOR/TESTATRIX (Tick whichever applicable)

Spouse Partner Sibling
Parent Issue Others _____

(please specify if others)

PART B

NATURE OF SEARCH (tick whichever applicable)

Wills Caveat Probate/Letters of Administration etc Other: *please specify*

PART C

DETAILS OF WILLS OR CODICILS TO BE SEARCHED

NAME OF TESTATOR/TESTATRIX : _____

(please state Alias if any) _____

- Certified true copy of deceased's birth certificate
 If testator is deceased, certified true copy of Death Certificate

PART D

FOR PROBATE, LETTERS OF ADMINISTRATION AND CAVEAT

Estate of : _____

(please state Alias if any) _____

PART E

Declaration

I, _____ submit that the information provided in this form is true and accurate to the best of my knowledge and belief.

Signature of Applicant

Date