



High Court Amendment (Wills Act 2007) Rules 2007

Anand Satyanand, Governor-General

Order in Council

At Wellington this 15th day of October 2007

Present:

His Excellency the Governor-General in Council

Pursuant to section 51C of the Judicature Act 1908, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and 2 other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

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Rules

1 Title

These rules are the High Court Amendment (Wills Act 2007) Rules 2007.

2 Commencement

These rules come into force on 1 November 2007.

3 Principal rules amended

These rules amend the High Court Rules set out in Schedule 2 of the Judicature Act 1908.

4 Wills to which these rules apply

- (1) These rules apply to the wills of persons who die on or after 1 November 2007.
- (2) These rules do not apply to the wills of persons who die before 1 November 2007, except rule 6, which does apply to the wills of persons who die before 1 November 2007.
- (3) The High Court Rules set out in Schedule 2 of the Judicature Act 1908 before their amendment by these rules, except for the amendment in rule 6, apply to the wills of persons who die before 1 November 2007.

5 Heading and rules 632 to 664 substituted

The heading above rule 632 and rules 632 to 664 are revoked and the following heading and rules substituted:

“General

“632 Definitions for rules 632 to 664

For the purposes of rules 632 to 664,—

“**administration**—

“(a) means probate of a deceased’s will; and

- “(b) includes letters of administration of a deceased’s estate, granted with or without a will annexed, for general, special, or limited purposes; and
- “(c) for Public Trust or the Maori Trustee or a trustee company as defined in the Trustee Companies Act 1967, includes—
 - “(i) an order to administer; and
 - “(ii) an election to administer
- “**administrator**—
 - “(a) means a person to whom administration is granted; and
 - “(b) includes Public Trust or the Maori Trustee or a trustee company as defined in the Trustee Companies Act 1967 treated as an executor or administrator because it has filed an election to administer
- “**executed**,—
 - “(a) for a will made on or after 1 November 2007, means signed and witnessed as described in section 11(3) and (4) of the Wills Act 2007; and
 - “(b) for a will made before 1 November 2007, means signed and witnessed as described in section 11(3) and (4), as modified by section 40(2)(i), of the Wills Act 2007
- “**grant** means a grant of administration
- “**will** is defined in the Wills Act 2007.

“633 Kinds of applications for grants

An application for a grant is made by—

- “(a) an application without notice under rule 634; or
- “(b) an application in solemn form under rule 636.

“*Applications without notice*

“634 Applications without notice

- “(1) This rule applies to an application without notice.
- “(2) Rule 41 does not apply to the application.
- “(3) The application is headed in the same way as form 51.
- “(4) A lawyer may give the certificate required by rule 240(2), even though he or she—
 - “(a) is one of the witnesses to the will that the application is about; or
 - “(b) is named as an executor in the will; or

- “(c) is an executor of the will according to its tenor.
- “(5) If the applicant knew the deceased or knows about the deceased’s death personally, the applicant must file an affidavit in whichever is appropriate of forms 51 to 56 to prove the deceased’s death.
- “(6) If the applicant did not know the deceased and does not know about the deceased’s death personally,—
- “(a) paragraphs 1 and 2 of forms 51 to 56 must be omitted; and
- “(b) another person must swear an affidavit proving the deceased’s death, in the form of paragraphs 1 and 2 of form 51.
- “(7) If the application is for a grant of probate or a grant of letters of administration with the will annexed, the applicant must file an affidavit in form 51 or 52 to prove the validity of the will that the application is about.
- “(8) The procedure for dealing with the application is the same as for an *ex parte* application under rules 237 and 240, subject to rules 632 to 664.
- “(9) A form presented for filing under this rule is not invalid just because it contains minor differences from a prescribed form as long as the form still has the same effect and is not misleading.

Compare: 1908 No 89 Schedule 2 rr 632, 634(1), 635, 636 (pre-1 November 2007); 1999 No 85 s 26

“635 Restrictions if possibly invalid will exists

- “(1) This rule applies if the applicant—
- “(a) knows of a will later than the will that the application is about; and
- “(b) has reason to believe that the later will is invalid.
- “(2) This rule also applies if the applicant—
- “(a) seeks a grant because the deceased was intestate; and
- “(b) knows of a will; and
- “(c) has reason to believe that the will is invalid.
- “(3) The applicant may make an application under rule 634 containing proof that—
- “(a) the applicant has given the executor named in the will written or electronic notice of the applicant’s intention to apply; and

- “(b) the executor has not applied for a grant within 1 month after service of the notice; and
 - “(c) a caveat has not been lodged against a grant within 1 month after service of the notice.
- “(4) The Court—
- “(a) may direct the applicant to apply for an order under section 53 of the Administration Act 1969; and
 - “(b) must defer dealing with the application under rule 634 until the application under section 53 has been determined.

Compare: 1908 No 89 Schedule 2 r 634(2), (3) (pre-1 November 2007)

“Applications in solemn form

“636 Applications in solemn form

- “(1) This rule applies to an application in solemn form.
- “(2) An application is made in solemn form if—
 - “(a) the applicant chooses to apply in that way; or
 - “(b) the applicant is ordered to apply in that way.
- “(3) Part 2 applies to the application.
- “(4) The procedure for dealing with the application is the same as for an ordinary proceeding, subject to rules 632 to 664.

Compare: 1908 No 89 Schedule 2 rr 633, 638 (pre-1 November 2007)

“637 Respondents and additional parties

- “(1) The applicant may apply to the Court for directions as to the persons to be named as respondents to an application under rule 636.
- “(2) If the applicant does not apply, or if the Court does not give directions, the applicant must name as respondents—
 - “(a) the person who may be entitled to a grant if the applicant does not obtain the grant; and
 - “(b) all persons who have lodged caveats under rule 641.
- “(3) A person interested in the result of an application under rule 636 may apply to the Court to be added as a party.
- “(4) If the Court is satisfied that the interests of the person are not already adequately represented, it may—
 - “(a) order that the person be added; and
 - “(b) impose conditions on the order, if necessary; and

“(c) give directions as to the part that the person is to take in the hearing of the application.

Compare: 1908 No 89 Schedule 2 rr 639, 640 (pre-1 November 2007)

“638 Compromises

“(1) This rule applies if an application under rule 636 is the subject of a compromise, whether or not a statement of defence has been filed.

“(2) The Court may direct—

“(a) that the application is to be treated as an application under rule 634; and

“(b) that evidence on the application may be given by affidavit.

Compare: 1908 No 89 Schedule 2 r 642 (pre-1 November 2007)

“639 Pleadings

“(1) This rule applies to an application under rule 636 in which a pleading states that the will that the application is about is invalid.

“(2) This rule also applies to an application under rule 636 in which a pleading states that a will that is the subject of a grant obtained by way of an application without notice is invalid.

“(3) The pleading must state the substance of the case against validity.

“(4) If the allegation is that the will’s execution was not valid, the pleading must state the facts on which the allegation is based.

“(5) If the allegation is that the will-maker did not have testamentary capacity when the will was executed, the pleading must state whether the incapacity lay in—

“(a) the will-maker’s lack of ability to comprehend or recollect the extent of his or her estate; or

“(b) the will-maker’s lack of ability to comprehend or recollect the claims of persons excluded from participating in his or her estate; or

“(c) the will-maker’s insane delusions about the persons who have claims on his or her estate; or

“(d) some other specified incapacity.

Compare: 1908 No 89 Schedule 2 r 641 (pre-1 November 2007)

“Filing and lodging

“640 Where application is filed

- “(1) This rule applies to an application, and all other documents, filed under rules 632 to 664.
- “(2) If the deceased resided in New Zealand when he or she died, the application and documents must be filed in the office of the Court nearest, by the most practicable route, to the place where he or she resided at death.
- “(3) If the deceased did not reside in New Zealand when he or she died and his or her property is situated in only 1 place in New Zealand, the application and documents must be filed in the office of the Court nearest, by the most practicable route, to the place where his or her property is situated.
- “(4) If the deceased did not reside in New Zealand when he or she died and his or her property is situated in more than 1 place in New Zealand, the application and documents must be filed in the office of the Court in Wellington or an office specified under subclause (6).
- “(5) If the deceased did not reside in New Zealand when he or she died and left no property in New Zealand, the application and documents must be filed in the office of the Court in Wellington or an office specified under subclause (6).
- “(6) If subclause (4) or (5) applies,—
- “(a) the applicant may make an interlocutory application for an order specifying the office of the Court in which the application and documents are to be filed; and
- “(b) the Court may make an order specifying the office.
- “(7) If an application or a document is filed in the wrong office of the Court, the Court may order the transfer of the application or document to the right office.

Compare: 1908 No 89 Schedule 2 r 643 (pre-1 November 2007)

“641 Where caveat is lodged

- “(1) This rule applies to a caveat under section 60 of the Administration Act 1969.
- “(2) The caveat must be in form 60.
- “(3) The caveat must be lodged with the Registrar in the office in which the application is required to be filed under rule 640.

Compare: 1908 No 89 Schedule 2 r 644 (pre-1 November 2007)

“Rules that apply whether or not will advanced and relied on

“642 Evidence of death

- “(1) The Court may accept any evidence that satisfies it of the death of a person whose estate is the subject of an application for a grant, unless no dead body has been identified as that of the person.
- “(2) If no dead body has been identified as that of the person, the applicant must apply for leave to swear death.
- “(3) The applicant applies by—
- “(a) making an interlocutory application before filing an application for a grant; or
 - “(b) incorporating the application for leave to swear death in an application without notice under rule 634.
- “(4) The applicant must file affidavits stating—
- “(a) the circumstances under which the application is made; and
 - “(b) the facts from which the Court is invited to infer death; and
 - “(c) whether or not the person’s life was insured and, if it was, the name and address of the insurer.
- “(5) If the person’s life was insured,—
- “(a) the applicant must serve notice of the application and copies of the affidavits on the insurer; and
 - “(b) the insurer is treated as a party to the application for the purposes of rules 234 to 277.
- “(6) The Court may make an order that the person is presumed to be dead for the purposes of the grant.
- “(7) The Court may accept any evidence that satisfies it of the death of a person who, if alive, would have been entitled to a grant.

Compare: 1908 No 89 Schedule 2 rr 645, 646 (pre-1 November 2007)

“643 Sale of perishable property

- “(1) This rule applies if—
- “(a) a deceased leaves perishable property; and
 - “(b) the property’s value may be greatly diminished before the Court can make a grant.

- “(2) A person interested in the deceased’s estate may apply to the Court for an order—
- “(a) authorising a named person to sell the property; and
 - “(b) directing the payment of the proceeds to the Registrar for the deceased’s estate.
- “(3) The Court may make the order.
- Compare: 1908 No 89 Schedule 2 r 649 (pre-1 November 2007)

“644 Registrars may make some orders

- “(1) This rule applies to the following registrars:
- “(a) all Registrars; and
 - “(b) all Senior Deputy Registrars in the Auckland office; and
 - “(c) no other deputy registrars.
- “(2) The registrars have the powers of the Court under—
- “(a) sections 5 to 9A and sections 12, 19, 21, 44, and 61(a)(ii) of the Administration Act 1969; and
 - “(b) section 380(4)(c)(iii) of the Insolvency Act 2006; and
 - “(c) section 154(3) of the Insolvency Act 1967; and
 - “(d) section 76 of the Public Trust Act 2001; and
 - “(e) section 35(4) of the Trustee Act 1956; and
 - “(f) section 8(1) of the Trustee Companies Act 1967; and
 - “(g) rule 640(6)(b); and
 - “(h) rule 642(6), if an unopposed application has been made under rule 642(3); and
 - “(i) rule 643(3); and
 - “(j) rule 659(2); and
 - “(k) rule 660(1) to (4); and
 - “(l) rule 664(2).
- “(3) Rules 272 to 276 apply to a registrar acting under subclause (2). For this purpose, references in them to ‘rule 270 or rule 271’ must be read as references to ‘rule 644(2)’.
- Compare: 1908 No 89 Schedule 2 r 651 (pre-1 November 2007)

“Rules that apply when will advanced and relied on

“645 Application of rules 646 to 658

Rules 646 to 658 apply to every case in which a will is advanced and relied on—

- “(a) for a grant of probate; or

“(b) for a grant of letters of administration with the will annexed.

Compare: 1908 No 89 Schedule 2 r 654 (pre-1 November 2007)

“646 Evidence as to execution

- “(1) A person who knows the relevant facts personally may provide the evidence required by rules 647 to 658.
- “(2) If the evidence relates to the fact, date, manner, or circumstances of the execution of a will, the person providing the evidence must be—
- “(a) an attesting witness; or
- “(b) a person present when the will was executed.
- “(3) If the authenticity of the signature of the will-maker or an attesting witness is in doubt, the Court may accept evidence from any appropriate person to prove that the signature is in the handwriting of the will-maker or the attesting witness.
- “(4) If the application is unopposed, evidence given under this rule must be given by affidavit. Form 62 may be used.

Compare: 1908 No 89 Schedule 2 r 664 (pre-1 November 2007)

“647 Valid execution

- “(1) For wills made on or after 1 November 2007, each of the following is evidence that a will’s execution was valid:
- “(a) a clause, in the will, consisting of a statement describing the actions complying with section 11(3) and (4) of the Wills Act 2007:
- “(b) evidence given under rule 646 satisfying the Court that the will complies with section 11(3) and (4) of the Wills Act 2007:
- “(c) an order made under section 14 of the Wills Act 2007.
- “(2) For wills made before 1 November 2007, each of the following is evidence that a will’s execution was valid:
- “(a) an attestation clause, in the will, consisting of a recital describing the actions complying with section 11(3) and (4), as modified by section 40(2)(i), of the Wills Act 2007:
- “(b) evidence given under rule 646 satisfying the Court that the will complies with section 11(3) and (4), as modified by section 40(2)(i), of the Wills Act 2007.

Compare: 1908 No 89 Schedule 2 r 657 (pre-1 November 2007)

“648 Doubt as to will-maker’s understanding

“(1) This rule applies if—

- “(a) a person directed by the will-maker signed the will-maker’s will in the will-maker’s presence; and
- “(b) the will does not state that the will-maker read over the will and thoroughly understood it before the will-maker directed the person to sign it.

“(2) This rule also applies if—

- “(a) the will-maker—
 - “(i) was blind; or
 - “(ii) was illiterate; or
 - “(iii) signed the will by mark; and
- “(b) the will does not state that the will was read over to and thoroughly understood by the will-maker before the will-maker signed it.

“(3) This rule also applies if the Court is doubtful for any other reason whether or not the will-maker, at the time the will was signed,—

- “(a) thoroughly understood the will; or
- “(b) had full knowledge of its contents.

“(4) Evidence must be given under rule 646 satisfying the Court that the will-maker, at the time the will was signed,—

- “(a) thoroughly understood the will; or
- “(b) had full knowledge of its contents.

Compare: 1908 No 89 Schedule 2 r 658 (pre-1 November 2007)

“649 Doubt as to originality of signature

“(1) This rule applies if it appears to the Court, when it inspects a will, that a signature on it—

- “(a) may not be an original signature; or
- “(b) may be a reproduction of the original signature.

“(2) The Court may require evidence to prove whether or not the signature is an original signature.

Compare: 1908 No 89 Schedule 2 r 662(3) (pre-1 November 2007)

“650 Doubt as to date

If there is doubt as to the date on which a will was executed, the Court may require evidence to prove the date.

Compare: 1908 No 89 Schedule 2 r 661 (pre-1 November 2007)

“651 Changes

- “(1) This rule applies if—
- “(a) a change appears on a will; and
 - “(b) the change is of practical importance; and
 - “(c) the change was not made,—
 - “(i) for a will made on or after 1 November 2007, by a means described in section 15 of the Wills Act 2007; or
 - “(ii) for a will made before 1 November 2007, by a means described in section 15, as modified by section 40(2)(1), of the Wills Act 2007.
- “(2) The Court may require evidence to prove whether or not the change was present when the will was executed.
- “(3) The Court may give directions as to the form in which the will is to be proved.
- “(4) Words that have been changed form part of a will as proved if the change does not obliterate the words in such a way as to prevent their effect being apparent.
- “(5) Subclause (4) applies even though there is no satisfactory evidence that the words were changed before the will was executed.

Compare: 1908 No 89 Schedule 2 r 659 (pre-1 November 2007)

“652 Revocations or revivals by other document

- “(1) This rule applies if—
- “(a) it appears to the Court, when it inspects a will, that some other document has been attached to it; or
 - “(b) a will contains a reference to another document in terms suggesting that it ought to be incorporated in the will.
- “(2) The Court may require the other document to be produced or its non-production to be explained.
- “(3) The Court may require evidence as to—
- “(a) the attaching or incorporation of the document; and
 - “(b) when it came into existence.

Compare: 1908 No 89 Schedule 2 r 660 (pre-1 November 2007)

“653 Revocation

- “(1) This rule applies if it appears to the Court that,—
- “(a) for a will made on or after 1 November 2007, one of the means of revocation described in section 16 of the Wills Act 2007 may have been used; or
 - “(b) for a will made before 1 November 2007, one of the means of revocation described in section 16, as modified by section 40(2)(m) and (n), of the Wills Act 2007 may have been used.
- “(2) The applicant must satisfy the Court that the will has not been revoked.

Compare: 1908 No 89 Schedule 2 r 663 (pre-1 November 2007)

“654 Duplicate wills

- “(1) This rule applies if more than 1 copy of a will has been executed.
- “(2) All executed copies must be produced to the Court, or accounted for to its satisfaction, to exclude an inference of revocation.
- “(3) If the Court doubts whether subclause (2) has been complied with, it may require evidence to prove that it was.

Compare: 1908 No 89 Schedule 2 r 662(1), (2) (pre-1 November 2007)

*“Grant with will annexed***“655 Circumstances in which grant may be made**

- “(1) This rule applies if a will exists but does not appoint an executor.
- “(2) This rule also applies if a will exists but appoints an executor who—
- “(a) has died during the will-maker’s life; or
 - “(b) has survived the will-maker but has died without obtaining a grant; or
 - “(c) has renounced probate of the will; or
 - “(d) is a former spouse or former civil union partner of the will-maker whose appointment is void under section 19 of the Wills Act 2007, for a will made on or after 1 November 2007; or
 - “(e) is a former spouse of the will-maker whose appointment is void under section 19, as modified by section

40(2)(q), of the Wills Act 2007, for a will made before 1 November 2007; or

“(f) is incapable of acting as an executor but does not have an attorney for the purposes of section 9A of the Administration Act 1969.

“(3) This rule also applies if—

“(a) section 19 of the Administration Act 1969 applies to an executor; and

“(b) no one entitled to apply for an order nisi under the section has done so within 4 months after the will-maker’s death.

“(4) The Court may grant letters of administration with the will annexed to the person entitled to them according to the priority in rule 656.

Compare: 1908 No 89 Schedule 2 r 655(1), (3) (pre-1 November 2007)

“656 Priority of potential administrators for purposes of rule 655(4)

“(1) The first in priority is a residuary beneficiary holding in trust for any other person.

“(2) The second in priority is a residuary beneficiary for life.

“(3) The third in priority is,—

“(a) if the will disposes of the whole residue, the ultimate residuary beneficiary; or

“(b) if the will does not dispose of the whole residue but the Court is satisfied that it disposes of the whole or substantially the whole of the estate as ascertained by the time the application for the grant is made,—

“(i) a beneficiary entitled to the estate; or

“(ii) a beneficiary entitled to a share in the estate; or

“(c) if the will does not dispose of the whole residue and the Court is not satisfied that it disposes of the whole or substantially the whole of the estate as ascertained by the time the application for the grant is made,—

“(i) a person entitled to a share in the residue not disposed of or the person’s personal representative; or

“(ii) the Attorney-General, if entitled to claim the residue as bona vacantia on behalf of the Crown.

- “(4) The fourth in priority is—
- “(a) a specific beneficiary or the beneficiary’s personal representative; or
 - “(b) a creditor or the creditor’s personal representative; or
 - “(c) if the will does not dispose of the whole estate, a person who has no immediate beneficial interest in the estate because of its small amount but may have a beneficial interest if the estate increases.
- “(5) The fifth in priority is a specific or residuary beneficiary who is entitled on the happening of a contingency.
- “(6) The sixth in priority is a person who—
- “(a) has no interest under the will; and
 - “(b) would be entitled to a grant if the deceased had died wholly intestate.
- “(7) Persons who are third, fourth, or fifth in priority, and are entitled to the grant, are entitled to the grant in order of priority in their class according to the value of their interests or the amounts of their debts.

Compare: 1908 No 89 Schedule 2 r 655(2), (4) (pre-1 November 2007)

“657 Proving entitlement to grant

- “(1) This rule applies if—
- “(a) an applicant applies for a grant of letters of administration with the will annexed; and
 - “(b) rule 656 would give persons other than the applicant a priority that is higher than, or equal to, that of the applicant.
- “(2) The applicant must—
- “(a) satisfy the Court that all the persons are dead, incompetent, or disqualified; or
 - “(b) satisfy the Court that the applicant has given all the persons notice of the intended application; or
 - “(c) attach the written consents of all the persons to an affidavit in form 52.
- “(3) The Court may excuse the applicant from giving notice to, or obtaining the consent of, a person who, at the time of the application,—
- “(a) is beyond the jurisdiction of the Court; or
 - “(b) cannot be found.

“(4) The Court may impose conditions under subclause (3).

Compare: 1908 No 89 Schedule 2 r 656 (pre-1 November 2007)

“658 Grant while executor is minor

“(1) This rule applies if a person is, when the Court grants letters of administration with the will annexed,—

“(a) the sole executor of the will; and

“(b) a minor; and

“(c) not entitled to a grant under section 9(3) of the Administration Act 1969.

“(2) The Court may grant letters of administration with the will annexed to any appropriate person.

“(3) The person is entitled to the grant until the minor becomes entitled to and obtains a grant.

Compare: 1908 No 89 Schedule 2 r 656A (pre-1 November 2007)

“Grants

“659 Time for making grant

“(1) The following time limits apply to the making of a grant:

“(a) for probate or letters of administration with the will annexed, no earlier than 7 days from the date of the will-maker’s death; and

“(b) for other letters of administration, no earlier than 14 days from the date of the deceased’s death.

“(2) If the applicant for the grant applies for the shortening of a time limit, the Court may shorten it.

Compare: 1908 No 89 Schedule 2 r 648 (pre-1 November 2007)

“660 Grants to attorneys

“(1) The Court may make a grant to the lawfully constituted attorney of a person who—

“(a) is entitled to the grant; and

“(b) does not reside in New Zealand.

“(2) The Court may make a grant to the holder of an enduring power of attorney for a donor to whom section 9A of the Administration Act 1969 applies.

“(3) If the person or the donor is 1 of 2 or more executors, the Court may make the grant to the attorney or the holder only after—

“(a) the attorney or the holder has given notice to the other executors; or

“(b) the Court has dispensed with notice.

“(4) The Court may limit the grant in any way.

“(5) A grant under section 9A of the Administration Act 1969 must convey the effect of sections 9A(6) and 9B(2) of the Act.

“(6) The grant is for the use and benefit of the person or donor.

Compare: 1908 No 89 Schedule 2 r 647 (pre-1 November 2007)

“661 Common or solemn form

“(1) A grant on an application under rule 634 must be in common form in whichever is appropriate of forms 57, 58, and 59.

“(2) A grant on an application under rule 636 must be in solemn form.

Compare: 1908 No 89 Schedule 2 rr 637, 638 (pre-1 November 2007)

“After grant made

“662 Inventory and account filed by administrator

“(1) A person interested in a deceased’s estate may apply for an order that the estate’s administrator file the following documents:

“(a) an accurate inventory of the estate; and

“(b) an account of the estate that—

“(i) is accurate; and

“(ii) states the dates and details of all receipts and disbursements; and

“(iii) states which of the receipts and disbursements were on capital account and which on revenue account.

“(2) The applicant must—

“(a) make the application within 3 years after the date of the grant appointing the administrator; and

“(b) serve the administrator with notice of the application.

“(3) If the Court makes an order,—

“(a) the administrator must file the documents within the period after the service of the order that the Court specifies; and

“(b) the account must be current to—

“(i) the date of service of the order; or

“(ii) another date specified in the order.

“(4) If no one makes an application, or if the Court does not make an order,—

“(a) the administrator may file the documents if he or she wishes to do so and at any time he or she wishes; and

“(b) the account must state the date to which it is current.

“(5) The administrator must file an affidavit verifying the documents.

“(6) The administrator must file the documents in the office of the Court in which the grant was made.

Compare: 1908 No 89 Schedule 2 r 652 (pre-1 November 2007)

“663 Administration of overseas assets

“(1) An administrator administering overseas assets may request the Court to seal an exemplification of administration in form 61.

“(2) Alternatively, an administrator administering overseas assets may request the Court to—

“(a) seal a duplicate of the grant; or

“(b) seal and certify a copy or photocopy of the grant.

“(3) The administrator must file an affidavit as to the purpose for which the duplicate, copy, or photocopy is required.

Compare: 1908 No 89 Schedule 2 r 653 (pre-1 November 2007)

“664 Recall of grant

“(1) If a grant is made in common form, a person may make an interlocutory application for an order for the recall of the grant.

“(2) The Court may make an order recalling the grant only if—

“(a) the application is unopposed; and

“(b) one of the following circumstances exists:

“(i) the grant was made on the basis that the deceased died intestate and a will has been found; or

“(ii) a will has been found with a date later than that of the will of which probate was granted; or

“(iii) the person to whom the grant was made applies for the recall; or

“(iv) the person to whom the grant was made consents to the recall.

“(3) If subclause (2) is not satisfied, a person wishing to apply for an order for the recall of the grant must bring proceedings.

“(4) Rule 639 applies to an application under subclause (1) and the proceedings referred to in subclause (3).

Compare: 1908 No 89 Schedule 2 r 650 (pre-1 November 2007)”

6 Rule 651 substituted

Rule 651 is revoked and the following rule substituted:

“651 Registrars may make some orders

“(1) This rule applies to the following registrars:

“(a) all Registrars; and

“(b) all Senior Deputy Registrars in the Auckland office; and

“(c) no other deputy registrars.

“(2) The registrars have the powers of the Court under—

“(a) sections 5 to 9A and sections 12, 19, 21, 44, and 61(a)(ii) of the Administration Act 1969; and

“(b) section 154(3) of the Insolvency Act 1967; and

“(c) section 76 of the Public Trust Act 2001; and

“(d) section 35(4) of the Trustee Act 1956; and

“(e) section 8(1) of the Trustee Companies Act 1967; and

“(f) rule 643(2); and

“(g) rule 646(1), if an unopposed application has been made; and

“(h) rule 647; and

“(i) rule 648; and

“(j) rule 649; and

“(k) rule 650(1).

“(3) Rules 272 to 276 apply to a registrar acting under subclause (2). For this purpose, references in them to ‘rule 270 or rule 271’ must be read as references to ‘rule 651(2)’.”

7 Form 59 amended

(1) This rule amends form 59 of Schedule 1 of the High Court Rules.

(2) The form is amended by omitting “r 637” and substituting “r 661(1)”.

(3) The form is amended by omitting “rule 651” from each place where it appears and substituting “rule 644” in each place.

8 Forms substituted

The following forms are revoked and the forms in the Schedule substituted:

- (a) form 51; and
- (b) form 52; and
- (c) form 57; and
- (d) form 58; and
- (e) form 61; and
- (f) form 62.

Schedule
Forms substituted

r 8

Form 51
Affidavit for obtaining grant of probate

r 634(5)–(7)

(Endorsement)

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased).

I/We*, [*full name, place of residence, occupation, of deponent or each deponent*], swear/severally swear*/I/We*, [*full name of deponent or each deponent*], of [*place of residence of deponent or each deponent*], solemnly and sincerely affirm/severally solemnly and sincerely affirm*—

**Select one.*

- 1 The deceased (whom I/we* knew) died at [*place, country*] on or about [*date*].

**Select one.*

- 2 *For this paragraph, select the first of the following statements that applies.*

Statement A

I was/We were* present when the deceased died.

**Select one.*

Form 51—*continued**Statement B*

I/We* attended the deceased's funeral.

**Select one.*

Statement C

I/We* saw the deceased's dead body.

**Select one.*

Statement D

The deceased is the person named [full name] in the death certificate that is attached and marked "A".

If the applicant or applicants for the grant did not know the deceased and does or do not know about the deceased's death personally, replace paragraphs 1 and 2 with an affidavit in the form of those paragraphs made by a person or persons who knew the deceased or knows or know about the deceased's death personally.

3 When the deceased died, he or she resided at [place, country].

4 The nearest registry of this Court to the place stated in paragraph 3, by the most practicable route, is [name of registry].

If the deceased did not reside in New Zealand when he or she died, rule 640(3) to (7) apply.

5 The deceased left a last will dated [date]. I/We* believe the document dated [date] and marked "[specify]" now produced and shown to me/us* is the deceased's last will.

**Select one.*

6 *Include this paragraph only if there is a separate document associated with the will.*

There is a separate document associated with the will. I/We* believe the document dated [date] and marked "[specify]" now produced and shown to me/us* is the separate document.

**Select one.*

7 *For this paragraph, select the statement that applies.*

Statement A

I am the executor/We are the executors* named in the will.

**Select one.*

Form 51—*continued**Statement B*

I am one/We are some* of the executors named in the will.

**Select one.*

Statement C

I am the/an* executor/We are the/some of the* executors of the will according to its tenor.

**Select one.*

- 8 *Include this paragraph only if it applies. Select the statement that applies.*

Statement A

The deceased's will was made on or after 1 November 2007. I am the deceased's surviving spouse/surviving civil union partner*. When the deceased died, no order, decree, or enactment was in force between the deceased and myself providing for our separation or the dissolution of our marriage/civil union*.

**Select one.*

Statement B

The deceased's will was made before 1 November 2007. I am the deceased's surviving spouse. When the deceased died, no order, decree, or enactment was in force between the deceased and myself providing for the dissolution of our marriage.

Statement C

The deceased's will was made on or after 1 November 2007. I am the deceased's former spouse/former civil union partner*. When the deceased died, a [*state the details of the order, decree, or enactment in force between the parties providing for their separation or the dissolution of their marriage or civil union*] was in force. However, my appointment as executor is not void under section 19 of the Wills Act 2007 because [*state why*].

**Select one.*

Form 51—*continued**Statement D*

The deceased's will was made before 1 November 2007. I am the deceased's former spouse. When the deceased died, a [state the details of the order, decree, or enactment in force between the parties providing for the dissolution of their marriage] was in force. However, my appointment as executor is not void under section 19, as modified by section 40(2)(q), of the Wills Act 2007 because [state why].

- 9 *Include this paragraph only if it applies. Select the statement that applies.*

Statement A

[Full name], the other executor named in the will, died at [place, country] on or about [date].

Statement B

[Full name], the other executor named in the will, renounced probate of the will by the renunciation document dated [date] that is attached and marked "[specify]".

Statement C

The deceased's will was made on or after 1 November 2007. [Full name], the other executor named in the will, is the deceased's former spouse/former civil union partner*. Section 19 of the Wills Act 2007 makes the appointment void. The relevant document in force when the deceased died was [state the details of the order, decree, or enactment in force between the parties providing for their separation or the dissolution of their marriage or civil union]. A certified/sealed* copy of the document is attached and marked "[specify]".

*Select one.

Form 51—*continued**Statement D*

The deceased's will was made before 1 November 2007. [Full name], the other executor named in the will, is the deceased's former spouse. Section 19, as modified by section 40(2)(q), of the Wills Act 2007 makes the appointment void. The relevant document in force when the deceased died was [state the details of the order, decree, or enactment in force between the parties providing for the dissolution of their marriage]. A certified/sealed* copy of the document is attached and marked "[specify]".

*Select one.

Statement E

[Full name], the other executor named in the will, does not join in the application because he/she* is incapable of acting as an executor because [state why].

*Select one.

Statement F

[Full name], the other executor named in the will, does not join in the application because he/she* is overseas at present. His/her* current address is [address]. I/We* gave notice to him/her* of his/her* appointment as executor under the will and of my/our* intention to make the application. A copy of the notice/An acknowledgment of the notice* is attached and marked "[specify]".

*Select one.

Statement G

[Full name], the other executor named in the will, does not join in the application because he/she* is 19 years old and is not, and never has been, married and is not, and never has been, in a civil union/is 18 years old and is not, and never has been, married and is not, and never has been, in a civil union/is not yet 18 years old*. He/she* was born on [date].

*Select one.

Statement H

[If the applicant or applicants is or are the executor or executors according to the tenor of the will, state the facts proving this.]

Form 51—*continued*

- 10 *If you selected statement A for paragraph 9, for this paragraph select the first of the following statements that applies.*

Statement A

I was/We were* present when the other executor died.

**Select one.*

Statement B

I/We* attended the other executor's funeral.

**Select one.*

Statement C

I/We* saw the other executor's dead body.

**Select one.*

Statement D

The other executor is the person named [*full name*] in the death certificate that is attached and marked “[*specify*]”.

- 11 I/We* will faithfully execute the will of which probate is granted in accordance with the law. If the Court requires me/us* to, I/we* will file in the Court and verify by affidavit—
- (a) an accurate inventory of the deceased's estate; and
 - (b) an account of the deceased's estate that—
 - (i) is accurate; and
 - (ii) states the dates and details of all receipts and disbursements; and
 - (iii) states which of the receipts and disbursements were on capital account and which on revenue account.

**Select one.*

Sworn* at: [*place, date*]

Before me: [*name, signature*]

Affirmed* at this day of 20 before me:

**Select one.*

(A solicitor of the High Court of New Zealand/Registrar/Deputy Registrar*/High/District* Court/Justice of the Peace*)

**Select one.*

Form 52

r 634(5)–(7)

Affidavit for obtaining grant of letters of administration with
will annexed

(Endorsement)

In the High Court of New Zealand

[Name of registry] Registry

No: [number of proceeding]

In the estate of [full name, place, occupation] (deceased).

I/We*, [full name, place of residence, occupation, of deponent or each deponent], swear/severally swear*/I/We*, [full name of deponent or each deponent], of [place of residence of deponent or each deponent], solemnly and sincerely affirm/severally solemnly and sincerely affirm*—

*Select one.

- 1 The deceased (whom I/we* knew) died at [place, country] on or about [date].

*Select one.

- 2 For this paragraph, select the first of the following statements that applies.

Statement A

I was/We were* present when the deceased died.

*Select one.

Statement B

I/We* attended the deceased's funeral.

*Select one.

Statement C

I/We* saw the deceased's dead body.

*Select one.

Statement D

The deceased is the person named [full name] in the death certificate that is attached and marked "A".

Form 52—*continued*

If the applicant or applicants for the grant did not know the deceased and does or do not know about the deceased's death personally, replace paragraphs 1 and 2 with an affidavit in the form of those paragraphs made by a person or persons who knew the deceased or knows or know about the deceased's death personally.

- 3 When the deceased died, he or she resided at [*place, country*].
- 4 The nearest registry of this Court to the place stated in paragraph 3, by the most practicable route, is [*name of registry*].
If the deceased did not reside in New Zealand when he or she died, rule 640(3) to (7) apply.
- 5 The deceased left a last will dated [*date*]. I/We* believe the document dated [*date*] and marked “[*specify*]” now produced and shown to me/us* is the deceased's last will.
**Select one.*
- 6 *Include this paragraph only if there is a separate document associated with the will.*
There is a separate document associated with the will. I/We* believe the document dated [*date*] and marked “[*specify*]” now produced and shown to me/us* is the separate document.
**Select one.*
- 7 *For this paragraph, select the statement that applies.*
Statement A
No executor is named in the will.
Statement B
[*Full name*], the sole executor named in the will, died at [*place, country*] on or about [*date*].
Statement C
[*Full name*], the sole executor named in the will, renounced probate of the will by the renunciation document dated [*date*] that is attached and marked “[*specify*]”.

Form 52—continued

Statement D

The deceased's will was made on or after 1 November 2007. [Full name], the sole executor named in the will, is the deceased's former spouse/former civil union partner*. Section 19 of the Wills Act 2007 makes the appointment void. The relevant document in force when the deceased died was [state the details of the order, decree, or enactment in force between the parties providing for their separation or the dissolution of their marriage or civil union]. A certified/sealed* copy of the document is attached and marked "[specify]".

*Select one.

Statement E

The deceased's will was made before 1 November 2007. [Full name], the sole executor named in the will, is the deceased's former spouse. Section 19, as modified by section 40(2)(q), of the Wills Act 2007 makes the appointment void. The relevant document in force when the deceased died was [state the details of the order, decree, or enactment in force between the parties providing for the dissolution of their marriage]. A certified/sealed* copy of the document is attached and marked "[specify]".

*Select one.

Statement F

[Full name], the sole executor named in the will, is incapable of acting as an executor because [state why].

Statement G

[Full name], the sole executor named in the will, is 19 years old and is not, and never has been, married and is not, and never has been, in a civil union/is 18 years old and is not, and never has been, married and is not, and never has been, in a civil union/is not yet 18 years old*. He/she* was born on [date].

*Select one.

Statement H

[Full name], an executor named in the will, is an executor to whom section 19 of the Administration Act 1969 applies. No one entitled to apply for an order nisi under the section has done so within 4 months after the will-maker's death.

Form 52—continued

- 8 *If you selected statement B for paragraph 7, for this paragraph select the first of the following statements that applies.*

Statement A

I was/We were* present when the sole executor died.

**Select one.*

Statement B

I/We* attended the sole executor's funeral.

**Select one.*

Statement C

I/We* saw the sole executor's dead body.

**Select one.*

Statement D

The sole executor is the person named [full name] in the death certificate attached and marked "[specify]" .

- 9 I am/We are* [state the facts showing the applicant's or applicants' right to the grant in terms of rules 655 and 656 or 658. Attach any consent given by any other person whose priority is higher than, or equal to, that of the applicant or applicants.].

**Select one.*

- 10 *Omit this paragraph if it does not apply.*

No child of the deceased died before the deceased leaving issue entitled to share under the will.

- 11 *Omit this paragraph if it does not apply.*

I am the deceased's surviving spouse/surviving civil union partner/surviving de facto partner/former spouse/former civil union partner/former de facto partner*.

I am still a beneficiary under the will.

I have not ceased to be a beneficiary under the will under section 19 of the Wills Act 2007 [if the will was made on or after 1 November 2007]/section 19, as modified by section 40(2)(q), of the Wills Act 2007 [if the will was made before 1 November 2007]*.

Form 52—*continued*

I have not ceased to be a beneficiary under the will under section 61 of the Property (Relationships) Act 1976. I chose option B under section 61. I lodged a notice of choice of option under section 65(2)(c) in this Court on [date]. A copy is attached and marked “[specify]”.

**Select one.*

Omit paragraphs 12 and 13 when a trustee corporation within the meaning of section 2 of the Administration Act 1969 applies for the grant, either alone or jointly with another person.

12 *For this paragraph, select the statement that applies.*

Statement A

I/We* have made reasonable inquiries for the purposes of section 5A(1)(a) of the Status of Children Act 1969 as to the existence of a parent or child of the deceased, in addition to those I/we* already know, who could claim an interest in the deceased’s estate/part of the deceased’s estate* only because of the Status of Children Act 1969 and the deceased’s will. The inquiries included those required by section 5A(2) of the Status of Children Act 1969. The nature of the inquiries was [specify].

**Select one.*

Statement B

No useful purpose would be served by making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 because [state why].

Statement C

Making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 would unduly delay a grant of administration because [state why].

Statement D

Getting in or preserving the assets of the deceased’s estate requires the making of an immediate grant of administration because [state why].

Form 52—*continued*

- 13 *If you selected statement A for paragraph 12, for this paragraph select the statement that applies.*

Statement A

The result of my/our* inquiries was that I/we* did not discover any such parent or child.

**Select one.*

Statement B

The result of my/our* inquiries was that I/we* discovered [full names and the relationship of those discovered. In the case of children, also state their ages]. They are children to whom neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies.

**Select one.*

- 14 To the best of my/our* knowledge, information, and belief, the gross value of the deceased's estate does not exceed \$ [amount].

**Select one.*

- 15 I/We* will faithfully execute the will annexed to the letters of administration in accordance with the law. If the Court requires me/us* to, I/we* will file in the Court and verify by affidavit—

- (a) an accurate inventory of the deceased's estate; and
- (b) an account of the deceased's estate that—
 - (i) is accurate; and
 - (ii) states the dates and details of all receipts and disbursements; and
 - (iii) states which of the receipts and disbursements were on capital account and which on revenue account.

**Select one.*

Sworn* at: [place, date]

Before me: [name, signature]

Affirmed* at this day of 20 before me:

**Select one.*

Form 52—*continued*

(A solicitor of the High Court of New Zealand/Registrar/Deputy Registrar*/High/District* Court/Justice of the Peace*)

**Select one.*

r 661(1)

Form 57
Probate in common form

In the High Court of New Zealand

[*Name of registry*] RegistryNo: [*number of proceeding*]In the estate of [*full name, place, occupation*] (deceased).1 *For this paragraph, select the statement that applies.**Statement A*

On [*date*] the last will of the deceased, [*full name*], who died on or about [*date*], was proved before the Honourable Justice [*name*]. A copy is attached.

Statement B

On [*date*] the last will of the deceased, [*full name*], who died on or about [*date*], was proved in Chambers before Registrar/Senior Deputy Registrar* [*name, place*], acting under rule 644 of the High Court Rules. A copy is attached.

**Select one.*

2 This probate document appoints [*full name, place of residence, occupation, of executor or each executor*], the executor/executors* named in the will, as the administrator/administrators* of the deceased's estate.

**Select one.*3 *Omit this paragraph if it does not apply.*

The Court reserves the power to grant probate to [*full name or full names*], the other executor/executors* named in the will, if they appear before this Court and apply.

**Select one.*

Dated:

(Registrar/Deputy Registrar)

[*Seal of the High Court*]

Form 58
Letters of administration with will annexed

r 661(1)

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased).

To [*full name, place of residence, occupation*] [*State circumstance in rule 656 that allowed grant of administration.*]

1 The deceased, [*full name*], died on or about [*date*], leaving a will. A copy is attached.

2 *For this paragraph, select the statement that applies.*

Statement A

On [*date*] the will was proved before the Honourable Justice [*name*].

Statement B

On [*date*] the will was proved in Chambers before Registrar/Senior Deputy Registrar* [*name, place*], acting under rule 644 of the High Court Rules.

**Select one.*

3 The circumstance in rule 655(1) to (3) that allowed the grant of administration was [*specify*].

4 These letters of administration authorise you—

- (a) to administer the deceased's estate; and
- (b) to demand and recover whatever debts may belong to the deceased's estate; and
- (c) to pay whatever debts the deceased owed; and
- (d) to pay the legacies contained in the will to the extent that the estate allows.

5 You are appointed as the administrator with the will annexed of all the deceased's estate.

Form 58—*continued*

Dated:
(Registrar/Deputy Registrar)

[*Seal of the High Court*]

Form 61 r 663(1)
Exemplification of probate or letters of administration

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased).

- 1 This document certifies a record in the [*name of registry*] Registry of the High Court of New Zealand, which is a Court of Record. The record is that on [*date*]—

Select the statement that applies.

Statement A

the last will of [*full name, place, occupation*], who died at [*place*] on or about [*date*], was proved by, and probate was granted to, [*full name, place of residence, of executor or each executor*], the named executor/executors*.

**Select one.*

Statement B

letters of administration with will annexed of the estate of [*full name, place, occupation*], who died at [*place*] on or about [*date*], were granted to [*full name, place of residence*] as [*state circumstance in rule 656 that allowed grant of administration*].

Statement C

letters of administration of the estate of [*full name, place, occupation*], who died at [*place*] on or about [*date*], were granted to [*full name, place of residence*].

- 2 *For this paragraph, select the statement that applies.*

Statement A

The probate is on record in the office of that Registry.

Statement B

The letters of administration with will annexed/letters of administration* are on record in the office of that Registry.

**Select one.*

Form 61—*continued*

- 3 *Omit this paragraph if the exemplification relates only to letters of administration on intestacy.*

The text of the will is shown by the copy/copies* of it attached and endorsed on each page with the seal of the High Court of New Zealand.

**Select one.*

- 4 *Omit this paragraph if the exemplification relates only to letters of administration on intestacy.*

The sealing of this document is evidence of the acceptance by this Court of the authenticity of the wording of the will.

Dated:

(Registrar/Deputy Registrar)

[*Seal of the High Court*]

Form 62
Affidavit of valid execution

r 646(4)

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased).

I, [*full name, place of residence, occupation*], swear/I, [*full name, occupation*], of [*place of residence*], solemnly and sincerely affirm*—

**Select one.*

- 1 I am one of the witnesses to/I was present at the signing of* the last will of the deceased, [*full name, place*]. The last will is the document marked “A” now produced and shown to me.

**Select one.*

- 2 *For this paragraph, select the statement that applies.*

Statement A

The deceased made his/her* will on or after 1 November 2007. The deceased signed the will on [*date*] by signing his/her* name as it now appears on the will, intending the signing to be a valid signing of his/her* will.

**Select one.*

Statement B

The deceased made his/her* will on or after 1 November 2007. The deceased acknowledged that a person directed by the deceased signed the will on [*date*] in the deceased’s presence, intending the signing to be a valid signing of the deceased’s will.

**Select one.*

Statement C

The deceased made his/her* will before 1 November 2007. The deceased signed the will on [*date*] by signing his/her* name on the last page as it now appears on the will, intending the signing to be a valid signing of his/her* will.

**Select one.*

Form 62—*continued**Statement D*

The deceased made his/her* will before 1 November 2007. The deceased acknowledged that a person directed by the deceased signed the will on [date] on the last page in the deceased's presence, intending the signing to be a valid signing of the deceased's will.

**Select one.*

- 3 *For this paragraph, select statement A if you selected statement A or B for paragraph 2 or statement B if you selected statement C or D for paragraph 2.*

Statement A

The signing referred to in paragraph 2 was completed in my presence and in the presence of [full name, place of residence, occupation, of each witness] and both of us/they* then signed the will as witnesses in the presence of each other and in the presence of the deceased.

**Select one.*

Statement B

The signing referred to in paragraph 2 was completed in my presence and in the presence of [full name, place of residence, occupation, of each witness] and both of us/they* then signed the last page of the will as witnesses in the presence of each other and in the presence of the deceased.

**Select one.*

- 4 *Include this paragraph only if there is a change on the will. Select the statement that applies.*

Statement A

The change on the will was executed by [describe the actions complying with section 15(a) or (b) of the Wills Act 2007].

Statement B

The change on the will was made by the obliteration of words in the will in such a way as to prevent their effect being apparent. The deceased indicated his/her* consent to the obliteration by [describe the actions by which the deceased indicated consent to the obliteration].

**Select one.*

Form 62—*continued*

- 5 *Include this paragraph only if it must be proved that the deceased knew the contents of the will or a separate document.*

Before the deceased signed the will/separate document*, I read/[full name] in my presence read* the will/separate document* to the deceased and the deceased seemed to understand it thoroughly/seemed to have full knowledge of its contents*.

**Select one.*

Sworn* at: [place, date]

Before me: [name, signature]

Affirmed* at this day of 20 before me:

**Select one.*

(A solicitor of the High Court of New Zealand/Registrar/Deputy Registrar*/High/District* Court/Justice of the Peace*)

**Select one.*

Diane Morcom,
Clerk of the Executive Council.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

These rules amend the High Court Rules. They come into force on 1 November 2007.

The amendments are consequential on the Wills Act 2007. They replace rules 632 to 664 with rules that reflect the changes made by the Act. They also replace forms 51, 52, 57, 58, 61, and 62.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 18 October 2007.

This order is administered by the Ministry of Justice.
