



New South Wales

Supreme Court Rules (Amendment No 368) 2002

under the

Supreme Court Act 1970

The Supreme Court Rule Committee made the following rules of court under the *Supreme Court Act 1970* on 21 October 2002.

Steven Jupp

Secretary of the Rule Committee

Explanatory note

The object of these Rules is to consolidate 3 existing forms for caveats relating to probate matters into a single caveat form.

2002 No 800

Rule 1 Supreme Court Rules (Amendment No 368) 2002

Supreme Court Rules (Amendment No 368) 2002

under the

Supreme Court Act 1970

1 Name of Rules

These Rules are the *Supreme Court Rules (Amendment No 368) 2002*.

2 Amendment of Supreme Court Rules 1970

The *Supreme Court Rules 1970* are amended as set out in Schedule 1.

Schedule 1 Amendments

(Rule 2)

[1] Schedule F, Forms 114,115 and 115A

Omit the Forms. Insert instead:

Form 114

P. 78, rr 61, 62, 62A

CAVEAT

In the Supreme Court
of New South Wales
Equity Division
Probate

Estate of *(name)*
late of *(place)*, *(occupation)*

I require that: ⁽¹⁾

- (a) *(Rule 61)* ⁽²⁾
no grant of probate or reseal be made in the estate of *(name)* late of
(place), *(occupation)* who died on *(date of death)* without prior notice to
me.

or

- (b) *(Rule 62)* ⁽³⁾
any will *(or where applicable, the will dated (date) (or otherwise identify
the will))* of *(name)* late of *(place)*, *(occupation)* who died on *(date of
death)* be proved in solemn form.

or

2002 No 800

Supreme Court Rules (Amendment No 368) 2002

Schedule 1 Amendments

- (c) (Rule 62A) ⁽⁴⁾
no grant be made in the estate of *(name)* late of *(place)*, *(occupation)* who died on *(date of death)* unless I am given the opportunity to be heard on the question of whether a declaration as to the Court's satisfaction under s18A of the *Wills, Probate and Administration Act 1898* should be made in respect of a document made by the deceased.

My interest is: (state this)

Caveator: (name, address and occupation)

Caveator's address for service (Part 9 rule 6)

Lodged: (date)

(signature)
Caveator's solicitor

Notes

- (1) Delete whichever of (a), (b) or (c) is inapplicable. As to the procedures applicable to the type of caveat filed, see Divisions 5B, 6, 8, 9 and 10 of Part 78.
- (2) This paragraph is appropriate where the caveator wishes to make a general objection to grant or reseal.

- (3) This paragraph is appropriate where the caveator wishes to put the admissibility of the will beyond doubt or where the only issue is whether the will was executed in accordance with the formal requirements for execution of wills. A person requiring proof in solemn form may not raise issues such as testamentary capacity, undue influence or fraud but may examine witnesses, and raise questions, as to the proper execution of the will.
- (4) This paragraph is appropriate where the only issue is whether an appropriate declaration should be made under section 18A of the *Wills, Probate and Administration Act 1898* (which relates to testamentary documents and amendments to testamentary documents which are not executed in accordance with the formal requirements of the Act).

[2] Schedule F, Index

Omit the matter relating to Forms 114, 115 and 115A from the Index of Forms at the end of Schedule F.

Insert instead:

114. Caveat in respect of grant of probate or proof of will (P. 78, rr 61, 62, 62A)