



New South Wales

Supreme Court Rules (Amendment No 416) 2009

under the

Supreme Court Act 1970

The Supreme Court Rule Committee has made the following rules of court under the *Supreme Court Act 1970*.

Steven Jupp
Secretary of the Rule Committee

Explanatory note

The object of these Rules is to amend the *Supreme Court Rules 1970* in respect of:

- (a) the commencement of proceedings for the grant or resealing of probate, and
- (b) the procedures to be followed in the Supreme Court for an application for a family provision order under Chapter 3 of the *Succession Act 2006*.

2009 No 165

Rule 1 Supreme Court Rules (Amendment No 416) 2009

Supreme Court Rules (Amendment No 416) 2009

under the

Supreme Court Act 1970

1 Name of Rules

These Rules are the *Supreme Court Rules (Amendment No 416) 2009*.

2 Commencement

- (1) Subject to subrule (2), these Rules commence on the day on which they are published on the NSW legislation website.
- (2) Schedule 1 [1] commences on 1 June 2009.

Schedule 1 Amendment of Supreme Court Rules 1970

[1] Part 78, rule 8

Omit the rule. Insert instead:

8 Commencement of proceedings

- (1) Proceedings for the grant or resealing shall be commenced by summons in the form approved by the Uniform Rules Committee.
- (2) A person who files a summons under this rule must also file:
 - (a) 2 separate sets of the following documents, each stapled together on the left hand side, in the following order:
 - (i) the proposed form of the grant of probate, administration or reseal (as the case may be) in the form approved by the Uniform Rules Committee,
 - (ii) if applicable, a copy of the grant of representation sought to be resealed,
 - (iii) if relevant, a copy of the will and any codicils,
 - (iv) the inventory of the assets of the estate, and
 - (b) a stamped self-addressed A4 envelope.
- (3) In this rule, *Uniform Rules Committee* means the Uniform Rules Committee established under section 8 of the *Civil Procedure Act 2005*.

[2] Schedule D Powers of associate Judges

Insert in appropriate order in Part 1:

Succession Act 2006

- Chapter 3 Family provision

[3] Schedule J Procedure under various Acts

Insert in appropriate order:

Succession Act 2006

1 Commencement of proceedings

An application for a family provision order under Chapter 3 of the Act:

2009 No 165

Supreme Court Rules (Amendment No 416) 2009

Schedule 1 Amendment of Supreme Court Rules 1970

- (a) must join as a defendant any administrator, unless the plaintiff is the sole administrator, and
- (b) must not join any person unless there is sufficient reason for doing so.

2 Directions as to parties and service

- (1) Despite clause 1, the Court may, at any stage of the proceedings, direct that any person be added as a party or substituted for another party or a former party or that notice of the proceedings be served on any person in addition to or instead of the defendant.
- (2) Subclause (1) does not affect the powers of the Court under Part 7 of the *Uniform Civil Procedure Rules 2005* in relation to the joinder of parties.

3 Representative orders

Rule 7.6 of the *Uniform Civil Procedure Rules 2005* applies to proceedings under the Act as it applies to proceedings mentioned in subrule (1) of that rule.

4 Notice to eligible persons

- (1) The plaintiff applying for a family provision order under Chapter 3 must, unless he or she is the administrator, when serving the application, also serve a notice on the administrator showing who, in his or her opinion, is or may be an eligible person (designating as a person under legal incapacity any eligible person who, in his or her opinion, is or may be a person under legal incapacity).
- (2) The administrator must serve a notice in accordance with subclause (3) on the following:
 - (a) the surviving spouse (if any) of the deceased person,
 - (b) every child of the deceased person,
 - (c) every person not mentioned in paragraph (a) or (b) who is entitled to share in the distributable estate of the deceased person,
 - (d) any person mentioned by the plaintiff in his or her notice served under subclause (1) and not mentioned in paragraph (a), (b) or (c),
 - (e) any other person who, in his or her opinion, is or may be an eligible person.

- (3) The notice must set out the following:

NOTICE OF CLAIM

The plaintiff has applied to the Court under the *Succession Act 2006* for a family provision order in respect of the estate of (*name*) deceased who died on (*date*).

If you are entitled to, and wish to apply for, an order for provision for you out of that estate, you must apply within a period prescribed by the *Succession Act 2006* or allowed by the Court. If you do not, before the Court deals with the plaintiff's application, apply for an order for provision for you out of that estate, the Court may deal with the plaintiff's application without regard to any possible application by you.

Dated:

(*signature*)

Solicitor for the administrator

(*Address for service*)

(*or as the case may be*)

5 Affidavit of administrator

- (1) In proceedings for a family provision order under Chapter 3, the administrator must make an affidavit setting out the following:
- (a) the nature and value of the assets and liabilities at the date of death,
 - (b) what is or is likely to be the nature and value of:
 - (i) any distributed estate, and
 - (ii) the net distributable estate,
 - (c) what is the nature and value of any property which, in the administrator's opinion, is or may be the subject of any prescribed transaction or any relevant property transaction,
 - (d) the names and addresses of every person who, in the administrator's opinion, is holding property as trustee or otherwise which is or may be the subject of any prescribed transaction or relevant property transaction,
 - (d) the names and addresses of every person who, in the administrator's opinion, is or may be:
 - (i) an eligible person (designating as a person under legal incapacity any eligible person who, in his or her opinion, is or may be a person under legal incapacity), or

2009 No 165

Supreme Court Rules (Amendment No 416) 2009

Schedule 1 Amendment of Supreme Court Rules 1970

- (ii) a person beneficially entitled to the distributable estate, or
 - (iii) a person holding property as trustee or otherwise,
 - (e) the names and addresses of every person to whom the administrator has given notice of the plaintiff's application.
- (2) The affidavit mentioned in subclause (1) must be served within a reasonable time after service of the application.