WILLS KIT WA – When an Aboriginal or Torres Straits Islander artist passes away with a will

This Wills Kit has been developed to assist families of Indigenous visual artists who made a will before they passed away. If the artist passed away without making a will, see the WA Intestacy Kit. The development of this resource is made possible through the support of Copyright Agency Limited.

Download the COMPLETE Wills Kit Here

What is a "Will"?

A Will is a legal document that an artist or other person makes during their lifetime that sets out how they want their money and other belongings to be distributed among their family and friends when they pass away.

If a person passes away without leaving a valid Will, that person is said to have died "intestate". If they have a Will but it only deals with some of that person's belongings, that person is said to have passed away "partially intestate". If a person passes away intestate, the laws of intestacy will determine who is entitled to have that person's estate including any copyright and resale royalty. If the person passes away partially intestate, then the law determines how to distribute those things that are not covered by the Will.

The intestacy rules may require the deceased person's assets to be distributed in a way which is very different to the outcome that the family of the deceased person expect, and may also be very different to the result that the deceased person would have wanted. In particular, these rules may be very different from the traditional or customary way of dealing with the passing of an Indigenous person. **For that reason, it is usually sensible to prepare a Will to make sure that the estate goes to the family and community members that the artist believes should receive it.**

In this information sheet, we focus on the process which is followed when an artist passes away after having made a Will.

What is the "Estate"?

The assets owned by a person at the time of their death are described as that person's "**estate**".

The estate can include anything owned by the person, such as real estate (property), cars, insurance policies, money in bank accounts, shares, artwork, furniture, jewellery, clothes, copyright royalties, and even debts owed to the person (such as money due from the sale of artwork). Sometimes the estate will also include mining royalties or superannuation.

The estate may also owe money, such as for credit card bills, car payments, or income tax. The executor of the estate will pay off these debts before distributing the remaining amounts in the estate in accordance with the Will (but not before paying for the person's funeral expenses).

Importantly, every artist's estate is likely to include copyright in the artwork created during his or her lifetime. Copyright can be an important source of income for an artist's family, as it lasts for 70 years after the artist passes away. After 70 years, the copyright is said to be 'in the public domain' and is able to be used without making royalty payments to the artist's estate. Within that 70 year period after the artist's death, however, the estate can earn royalties for the right to reproduce the artist's artworks, for example, in auction catalogues, art books and merchandise, usually even if the physical artworks themselves have been sold.

In addition, with the passing of the Resale Royalty Right for Visual Artists Act 2009 (Cth), the artist's estate will include the entitlement to resale royalties on all eligible commercial resales of the artist's works which take place in the 70 years after the artist's passing.

© 2026 Arts Law Centre of Australia

For most Aboriginal and Torres Strait Islander visual artists, the most important assets in the estate are likely to be the following:

1. Money in any personal bank account held in the artist's name;
2. Money held by an art centre from the sale of artworks;
3. Artworks held by an art centre, or by a commercial gallery or dealer on consignment;
4. Resale royalties; and
5. Copyright, including entitlements to licensing royalties from collecting societies or under licensing deals negotiated during the artist's lifetime.

In this information sheet we only deal with the assets and liabilities listed above. If the estate contains assets or liabilities other than the ones mentioned above, we recommend you contact Arts Law for legal advice as to the appropriate procedure for dealing with them.

Who are the 'Beneficiaries'?

The people who are named in the Will as the ones who should receive the artist's estate after he or she passes away are called the "**beneficiaries**". If a beneficiary passes away within 30 days of the date on which the artist died, that beneficiary is not entitled to inherit anything under the Will.

If a person dies intestate (without a valid Will), the relevant laws of intestacy will determine who the beneficiaries are.

Who is the 'Executor"?

Most Wills nominate one person to be the "**executor**" of the Will (this person is also called the 'trustee'). Usually the executor is a trusted family member or friend, but it can also be a lawyer, or the Public Trustee. The role of executor is an important responsibility that should not be taken lightly.

Sometimes the Will appoints two people to act together as the executors and trustees. In some Wills, there is a first choice of executor and then a second choice – in case the first person is sick when the artist dies, dies before the artist or simply doesn't want to be the executor and trustee.

The executor is responsible for the "**administration**" of the Will and the deceased's estate. The administration of the deceased's estate involves collecting the deceased's assets, establishing what debts and tax the estate owes, paying those debts, and then distributing the assets to the beneficiaries named in the Will after paying for the funeral expenses of the deceased. The executor may also need to file a tax return for the estate.

Some Wills don't appoint an executor, or the executor appointed under the Will may have already passed away by the time the artist dies. In that case, a family member or other person can apply to the Supreme Court to be appointed as the executor, or otherwise request the Public Trustee to administer the estate in accordance with the terms of the Will.

It is important to remember that the executor's duties may continue for a long time. For example, the executor may have to look after assets given to children who are under 18 years of age. Many artists also appoint the executor to manage their copyright and resale royalty entitlements on an ongoing basis.

The Public Trustee can assist private executors with certain aspects of administration. For further information relating to these services (and the fees charged) you can telephone the Public Trustee on 1300 746 116 or read the information sheet provided on the Public Trustee Website. Fees for this service are deducted from the estate before distribution of cash or assets to beneficiaries.

© 2026 Arts Law Centre of Australia

Should the executor have a ‘reading’ of the Will?

One of the executor’s first jobs is to find and look after the original Will. If the Will was not among the papers of the deceased, it may have been held by a solicitor or by the artist’s art centre. It must be handed to the executor.

The executor will need several copies of the Will – it is very important not to write on, remove the staples from, or give away the original Will. If anyone needs to see the Will, show or give them a photocopy and not the original. Never staple the original Will to any other document.

The executor must read the Will carefully and understand how the artist wanted his or her estate to be distributed. It is important to identify which family members are entitled to the deceased artist’s assets according to the Will (i.e. the beneficiaries).

It is a good idea to arrange a meeting of the family of the deceased and of the beneficiaries named in the Will and to explain to them what the Will says (a “**reading**”). Arts Law (or an art centre manager) may be able to help with this. It is not a legal requirement to have a ‘reading’ of the Will. If any of the beneficiaries can’t attend the meeting, the executor can send them a photocopy of the Will.

The executor must provide a copy of the Will to the following people if they request a copy:

1. Any person mentioned in the Will (or any earlier Will) such as a beneficiary;
2. Any spouse, parent, child or grandchild of the deceased;
3. Any parent or guardian of a person mentioned in a Will who is a minor; and
4. Any person to whom the deceased owed money (a creditor).

Funeral Arrangements

Usually funeral arrangements are managed by the family and in accordance with any express wishes of the deceased person. Often the Will says where the artist wanted to be buried, and if so, this should be respected if possible. If there is any disagreement within the family, the executor makes the final decision.

The executor should consider that a very expensive funeral will mean that there is less money in the estate for the beneficiaries. The funeral should not cost more than the estate can afford.

The executor must pay funeral expenses and the costs of administration (such as Court filing fees, postage etc) before any debtors are paid and before distributing any money to the family .

Whether there are insufficient funds in a deceased person’s estate to pay for a funeral, and when the deceased person’s family are unable to meet the funeral costs the Bereavement Assistance of the Department for Child Protection Program could provide assistance to community members. For further information you can call free the Department for Child Protection Program 1800 854 925. You can also refer to the Department for Child Protection Program Website.

The Australian Securities and Investments Commission also has a useful information sheet explaining solution for paying for funerals, which you can access by clicking here.

Carrying out the instructions in the Will

There are three options for administering the estate:

Option 1: The Public Trustee can manage the estate. The Will may nominate the Public Trustee as executor. However, the beneficiaries can also ask the Public Trustee to manage the estate even if the Will appointed someone else. This is usually

© 2026 Arts Law Centre of Australia

appropriate if the Will does not name an executor or the executor who is named in the Will has also passed away or cannot take on the job of executor, and no one in the family of the deceased is prepared to take on that responsibility.

Option 2: The executor named in the Will can apply to the Supreme Court for an order confirming his or her authority to manage the estate. This is called a "**Grant of Probate**". Where there is no executor, a family member or other person can apply to the Supreme Court for permission to manage the estate. This is called "**Letters of Administration**" and is appropriate if the Will does not name an executor or the executor who is named in the Will has also passed away or cannot take on the job of executor. The family may prefer that a family member or trusted friend carry out those responsibilities rather than the Public Trustee. A Grant of Probate or Letters of Administration is necessary where businesses or institutions which hold the deceased's assets are not be prepared to release them to the executor unless he or she has such a Court order confirming his or her authority.

Option 3: The executor named in the Will can try to manage the estate and distribute all the assets in accordance with the instructions in the Will without a Grant of Probate or Administration. This may be possible for smaller estates where there is no real property (land) involved.

For the complete information sheet download the Wills Kit WA here

---

Disclaimer

The information in this information sheet is general. It does not constitute, and should be not relied on as, legal advice. The Arts Law Centre of Australia (Arts Law) recommends seeking advice from a qualified lawyer on the legal issues affecting you before acting on any legal matter.

While Arts Law tries to ensure that the content of this information sheet is accurate, adequate or complete, it does not represent or warrant its accuracy, adequacy or completeness. Arts Law is not responsible for any loss suffered as a result of or in relation to the use of this information sheet. To the extent permitted by law, Arts Law excludes any liability, including any liability for negligence, for any loss, including indirect or consequential damages arising from or in relation to the use of this information sheet.

© Arts Law Centre of Australia

You may photocopy this information sheet for a non-profit purpose, provided you copy all of it, and you do not alter it in any way. Check you have the most recent version by contacting us on (02) 9356 2566 or tollfree outside Sydney on 1800 221 457.

The Arts Law Centre of Australia has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body.