

INTESTACY KIT - WHEN AN ABORIGINAL OR TORRES STRAITS ISLANDER ARTIST PASSES AWAY WITHOUT A WILL IN THE AUSTRALIAN CAPITAL TERRITORY

1. What is intestacy?

Usually, when an artist or other person passes away, their will is the document that sets out how they want their belongings to be distributed among their family and friends. 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. If the person passes away partially intestate, then the law determines how to distribute those things that are not covered by the will.

In the Australian Capital Territory, the laws of intestacy are set out in the *Administration and Probate Act 1929* (ACT) (the **Act**). The rules in this Act apply to the estate of any deceased person who lived in the Australian Capital Territory. The rules will apply when the deceased person did not make a will or, although they had a will, there is property that is not covered by the will.

Different rules may apply in relation to property that is located outside the Australian Capital Territory or to property in the Australian Capital Territory that belonged to a person who lived elsewhere at the time of their death.

The intestacy rules may require the deceased person's assets to be distributed in a way that 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 them.**

In this information sheet, we focus on how the rules of intestacy will operate in relation to an Indigenous artist who was living in the Australian Capital Territory at the time he or she passed away.

2. 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 real estate (property), cars, insurance policies, money in bank accounts, shares, artwork, furniture, jewellery and clothes 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 or car payments.

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. The estate can earn royalties for the right to reproduce the artist's paintings in auction catalogues, art books and merchandise long after the paintings themselves are sold and the artist has died.

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.

For most Aboriginal and Torres Strait 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 the art centre from the sale of paintings;
3. Paintings held by the art centre or 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.

As well as assets, the estate is also responsible for certain debts and other liabilities. The liabilities of the estate will include paying any costs associated with the funeral, and any other debts of the deceased artist such as any income tax that might be owed.

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 get legal advice as to the appropriate procedure to deal with them.

3. Who are the 'Beneficiaries'?

The intestacy rules identify certain family members as the ones entitled to the artist's estate after he or she passes away. Those family members are called the **'beneficiaries'**.

4. Who gets the property of an intestate Indigenous artist?

In many cases, where an Indigenous person passes away leaving very few belongings, the family and community will simply deal with those belongings in the way that they think is appropriate and questions of intestacy law may never arise.

The *Administration and Probate Act* sets out a series of rules for distributing intestate estates to a deceased person's spouse and next of kin. The rules are very precise and it is wise to get legal advice about exactly which distribution rules will operate in each particular circumstance.

According to the rules set out in the Act, where an Indigenous artist dies intestate, their estate will be divided among the following surviving persons as follows:¹

¹ There is no requirement in the ACT that the beneficiaries must survive the deceased by 30 days in order to share in the estate.

When the deceased artist has a husband, wife or partner who is still alive?

The deceased's **'partner'** and/or partners are entitled to the whole of the intestate estate if the deceased is not survived by any children, grandchildren or great grandchildren (that is, by any of the deceased's direct lineal descendants who are also referred to as **'issue'**).

A **'partner'** means a person who:

- was the husband or wife (the 'spouse') or civil partner of the deceased artist when the artist passed away; or
- was not the deceased artist's spouse or civil partner but is still an **'eligible partner'**. An eligible partner is a person who was the deceased's **'domestic partner'** when they died and:
 - had been the deceased's domestic partner continuously for 2 or more years when the artist died; or
 - is the parent of the deceased artist's child, if the child was under 18 years old when the artist died.

The word **'spouse'** means 'either member of a married pair in relation to the other; one's husband or wife'.² For a couple to be recognised as married, the couple must have met the formalities of marriage set out in the *Marriage Act 1961* (Cth). This means that a traditional Indigenous marriage may not be recognised and that a husband or wife in a traditional law marriage may not be considered as a spouse under the intestacy rules.

A **'civil partnership'** refers to a legally recognised relationship that, subject to the *Civil Partnerships Act 2008* (ACT), may be entered into by any 2 adults, regardless of their sex. In practice, civil partners are usually same-sex couples who have the same legal rights as a married couple. To be in a civil partnership, two adults who are in a relationship as a couple must have their relationship registered under section 8 of the *Civil Partnerships Act*. Again, if it is not registered, a husband or wife in a traditional law marriage may not be considered as a civil partner under the intestacy rules.

A **'domestic partnership'** is defined in the *Legislation Act 2001* (ACT) as a relationship between 2 people, whether of a different or the same sex, living together as a couple on a genuine domestic basis. Some of the circumstances that will suggest two people are living together as a couple include the sharing of a residence, sharing financial resources, common ownership of assets, shared performance of household duties, a sexual relationship and having a mutual commitment to a shared life. Not all these circumstances need to be present to be in a domestic partnership but the extent to which they are present or absent gives an overall indication of whether there is a domestic partnership. If there has been a marriage under traditional Indigenous law and it does not meet the tests described above, the couple may still be recognised as being in a domestic partnership.

If the deceased is survived by a spouse or domestic partner and also by children, grandchildren or great-grandchildren, then different rules apply depending on the value of the estate:

- If the value of the intestate estate does not exceed \$200,000, the spouse or partner is entitled to the whole of the intestate estate and to the deceased artist's personal effects (household items, jewellery, etc).
- If the value of the intestate estate exceeds \$200,000, the spouse or partner is entitled to be paid out of the estate:

² *Legislation Act 2001* section 169

- \$200,000;
 - interest on that amount (calculated at the rate of 8% per annum from the date of the death of the deceased artist to the date the amount is paid to the partner); and
 - an additional amount equal to half the value of the remaining estate if there is only one surviving child or the issue of one child or, in any other case, 1/3 of the remaining intestate estate.
- The remainder of the estate worth more than \$200,000 will be shared with the deceased artist's children or grandchildren (the **issue** of the deceased).

The Act specifically contemplates that a deceased person may have, at the time they pass away, more than one partner (for example, both a legal wife or husband and a domestic partner)³. This section provides guidance as to how the estate is to be shared if there is more than one partner. If the deceased is survived by both a spouse or civil partner and an eligible partner:

- If the eligible partner and the intestate had been domestic partners continuously for less than 5 years when the deceased artist died, the partnership share of the estate will be equally divided between the eligible partner and the spouse or civil partner.
- If the eligible partner and the deceased artist had been domestic partners continuously for 5 years or more when the deceased artist died, the eligible partner will receive the whole partnership share (which is the relevant share of the estate calculated in accordance with the Act).

When there is no surviving partner?

If the artist passes away and is not survived by a spouse or partner but there are surviving children, grandchildren or great grandchildren, those lineal descendants are entitled to the whole (or relevant part) of the intestate estate⁴.

- If the artist had only one child and that child is still alive, that child is entitled to the whole of the intestate estate. If that child predeceased the artist but his or her children (the artist's grandchildren) are still alive, then they are entitled to the whole (or relevant part) of the intestate estate in equal shares.
- In any other case, the intestate estate is divided by the number of the deceased artist's children who are either still alive or who predeceased the artist leaving children or grandchildren of their own. Each surviving child is entitled to an equal share of the estate. If a child of the deceased has died, leaving a surviving child or children of that deceased child, then those grandchildren are entitled to the share of the estate that would have gone to their deceased parent (in equal shares). This process continues for all direct descendants until the entitlement is exhausted.

What about traditional adoption under Indigenous laws?

Many Indigenous families have children who are adopted under traditional law. Such children will NOT be considered part of that family for the purpose of the intestacy laws.

For the purposes of the intestacy rules, adopted children are only considered to be the children of their adopted parents, not their natural parents, if the formal processes of the adoption legislation

³ *Administration and Probate Act 1929* section 45A

⁴ *Administration and Probate Act 1929* section 49B

must have been complied with. This includes the adoption being facilitated by the relevant government department or an accredited adoption service provider, consent of each parent of the child being given to the adoption and an adoption order being issued by a court.

This is another good reason to make a will so that all children, including children adopted under traditional law can share in the artist's estate.

The provisions of the *Parentage Act 2004* (ACT) provide that ex-nuptial children will be treated the same as children born of a marriage only if the deceased artist was recognised as the child's parent *before* the artist died.⁵

When the artist is not survived by a partner or any children, grandchildren or great grandchildren?

Where the deceased has no spouse or any direct descendants (e.g. children and grandchildren), the deceased's surviving **parents** are entitled to the whole estate in equal shares.

Where the deceased has no spouse, direct descendants (e.g. children and grandchildren), or parents, then the deceased's surviving brothers and sisters (**siblings**) are entitled to the whole estate. If a sibling of the deceased has died, leaving any surviving children, then those nephew/nieces of the deceased are entitled to the share of the estate that would have gone to their parent (and so forth until the entitlement is exhausted).

Where the deceased has no spouse, direct descendants (e.g. children and grandchildren), parents, or siblings, then the deceased's surviving **grandparents** are entitled to the whole estate in equal shares.

Where the deceased has no surviving partner, direct descendants (e.g. children and grandchildren), parents, siblings (or their direct descendants) or grandparents, then the deceased artist's surviving **aunts and uncles** are entitled to the whole estate in equal shares. If an aunt or uncle of the deceased has died, leaving surviving children, then any cousins of the deceased artist are entitled to the share of the estate that would have gone to their parent. If the deceased is not survived by any aunts and uncles but is survived by the direct descendants of an aunt and uncle, then the intestate estate will be distributed to those descendants as if they were the direct descendants of the deceased artist.

Where there is no next of kin as described above, the estate is described as '*bona vacanti*' and the intestate estate will belong to the Australian Capital Territory. The public trustee must hold the estate for the Territory for six years after the death of the intestate, after which the trustee must sell the estate and pay the proceeds to the Territory.⁶ This could happen even though the artist is survived by children adopted under traditional law – they would have no entitlement to share in the estate.

More details about the rules for distributing an intestate estate are set out in Part 6 of the Act, and are summarised in [Schedule 1](#) of this Kit.

5. When can the intestacy rules be varied?

The rules for distribution of the property of a person who dies intestate are based on a relatively narrow range of family relationships, and these rules may be inappropriate for Indigenous communities that have a broader concept of family relationships.

⁵ *Parentage Act 2004* section 38

⁶ *Administration and Probate Act 1929* section 49CA

Unlike in the Northern Territory and New South Wales, there are currently no legal mechanisms that allow Indigenous communities to distribute intestate estates in a different way to that set out in the Act. However, the Public Trustee for the Australian Capital Territory is currently cooperating with the New South Wales Trustee and Guardian with a view to creating appropriate documentation to assist Indigenous people to make a valid will and effectively distribute their property.

6. Funeral Arrangements

Usually funeral arrangements are managed by the family and in accordance with any express wishes of the deceased person. If there is any disagreement within the family, the person appointed to manage the estate makes the final decision.

The family 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 money required for funeral expenses must be paid before other any debtors are paid and before distributing any money to the beneficiaries⁷.

7. How do the artist's beneficiaries get access to the artist's estate?

Where someone dies intestate, someone close to the deceased (often a beneficiary) must take responsibility for the "**administration**" of the deceased's estate. The administration of the deceased's estate will involve collecting the deceased's assets, finalising certain tax issues and then distributing the assets to the appropriate beneficiaries according to the rules set out above.

For most artists, the most important assets held in the estate are likely to be those set out above namely:

- Money held by the art centre from the sale of paintings;
- Paintings held by the art centre or a commercial gallery or dealer on consignment;
- Copyright (including entitlements to licensing royalties from collecting societies or under licensing deals negotiated during the artist's lifetime);
- Resale royalties; and
- Any personal bank account held in the artist's name.

In this information sheet we only deal with the assets listed above. The person who administers the artist's estate may also be responsible for other assets such as a house or car owned by the artist.

If a person dies intestate, a person such as a beneficiary wishing to arrange for the administration of the deceased's estate has the following options:

Option 1: The Public Trustee for the Australian Capital Territory can be asked to manage the estate.

Option 2: A beneficiary or other person can apply to the Court to be appointed as the formal administrator of the estate. This is called a '**Grant of Administration**'. The family may prefer that a family member or trusted friend carry out those responsibilities

⁷ *Succession Act* section 57

rather than the Public Trustee. A Grant of Administration is necessary where businesses or institutions which hold the deceased's assets are not be prepared to release them without such a Court order.

Option 3: A beneficiary or other person can locate the assets and distribute them according to the rules of intestacy without going through the formal process of applying to the Court. This may be possible for smaller estates where there is no real property (land) involved.

Whichever option is chosen, it is very important that all the correct beneficiaries are identified. [Schedule 2](#) to this Kit is a questionnaire that you can fill out and provide to Arts Law. Based on that information, we can advise you who will be the beneficiaries of the deceased artist under the Australian Capital Territory intestacy laws.

Option 1 – Asking the Public Trustee for the ACT to manage the estate

Where there is no one who is able or willing to apply for letters of administration, the beneficiaries can approach the Public Trustee for the Australian Capital Territory and ask it to administer the estate. The Public Trustee for the Australian Capital Territory is a statutory authority that is a branch of the Australian Capital Territory Government.

Document A is a template letter to the Public Trustee for the Australian Capital Territory requesting that it administer the estate of the deceased artist. Alternatively, the beneficiaries may contact the Public Trustee by phone on (02) 6207 9800.

The Public Trustee for the Australian Capital Territory must first agree to administer the estate. The Public Trustee will not often refuse to do this, but may do so if, for example, the estate is insolvent. It cannot however decline to administer an estate purely on the basis of the estate's low value. After the beneficiaries have contacted the Public Trustee and it agrees to administer the estate, the Public Trustee will respond and set up a meeting. The beneficiaries will be asked to bring all relevant information regarding the deceased artist's estate to the meeting, and will be required to sign renunciation documents so that the Public Trustee can proceed with the administration.

If it agrees to manage the estate, the Public Trustee for the Australian Capital Territory must apply to the Court to be appointed as the administrator. However, it can do so in a streamlined manner which is quicker than the process an individual must follow because fewer documents are required to be filed.

The Public Trustee for the Australian Capital Territory is entitled to charge a capital commission on a sliding scale of up to 4.4% for estates up to \$200,000 and up to 1.1% for estates greater than \$600,000. As at 1 April 2012, its [Fee Brochure](#) states that fees for all estates are fixed at 1.1%. In addition to its standard charges, the Public Trustee for the Australian Capital Territory may also incur certain additional costs that must be paid out of the estate (known as disbursements), such as court filing costs, or the cost of obtaining a Death Certificate. However, the Public Trustee also has a discretion to discount or waive its fees for reasons of hardship.⁸

The Public Trustee for the Australian Capital Territory does not specify average times for the administration of an intestate estate. A similar body - the NSW Trustee and Guardian - specifies an average period of about 9 months. It is worth noting, however, that more complicated cases can sometimes take years to be complete.

Once the Public Trustee for the Australian Capital Territory has received the grant of administration from the Court, it takes legal responsibility for ensuring the estate is administered properly. The

⁸ *Public Trustee Act 1985* section 28

Public Trustee for the Australian Capital Territory would become responsible for arranging the sale of any artworks and collecting the proceeds of sale.

Where the artist had an agreement with an art centre under which the art centre was entitled to sell and retain commission on works painted at the art centre, the Public Trustee for the Australian Capital Territory may be obligated to continue those arrangements put into place during the artist's lifetime. Even where there is no such arrangement, the Public Trustee for the Australian Capital Territory is generally keen to administer estates in the most beneficial way possible, and may be willing to allow the art centre to arrange for exhibitions and sales of unsold artworks to ensure that they get the best possible price.

Example:

An Indigenous artist has passed away. She is survived by her husband and her three children. Her estate contains the following property:

- A bank account with \$50,000;
- \$25,000 of unsold artworks; and
- \$25,000 held by an art centre.

Altogether, this estate is worth \$100,000. Under the intestacy rules, the whole estate goes to her husband.

If there were no difficulties or complexities encountered, the Public Trustee's charges for administering such an estate would probably be about \$1,100, plus disbursements. The Court filing fees would be \$750.

If any complexities were encountered, for example if one of the children couldn't be found, the Public Trustee's charges would increase, depending on how long these tasks took.

For more information about the Public Trustee's role generally, see the [Public Trustee's website](#).

Option 2: A family member can apply to the Supreme Court to be appointed as the formal administrator of the estate

If a particular person or persons, such as a beneficiary, wishes to be responsible for the administration of the estate, they can apply to the Court to be formally appointed as the "**administrator**" of the estate. If successful, this is known as a "**Grant of Letters of Administration**". It is preferable that the person or persons applying to be the administrators of the estate have the consent of all the beneficiaries (as identified by the Australian Capital Territory intestacy laws) to do so.

Applying for the authority to administer the deceased's estate can involve costs and can be a complex and time-consuming process. To avoid some of these costs and effort, the Public Trustee for the Australian Capital Territory can be asked to administer the estate. This can sometimes be a quicker and cheaper process. More about this process is set out above, at Option 1.

Before it will grant letters of administration to someone, the Court must be satisfied that the applicant is an appropriate person to be appointed as the administrator. Generally, the Court will appoint the person with the largest interest in the deceased estate as the administrator (this is usually the partner of the deceased). The Act provides that the Court may only grant

administration of an intestate estate to a person who is at least 18 years old. Further, the Court generally will not grant the right to administer a deceased's estate to a person unrelated to the deceased (such as an art centre) when there are spouses, children or other next of kin who can be identified and are living in the Australian Capital Territory. However, if there is no family member willing to apply, the Court may appoint someone else who applies to administer the estate and, in the Court's opinion, can be trusted with administration of the estate.

When hearing an application by a family member, evidence of that person's family relationship with the artist would usually be given in the form of an affidavit. An affidavit is a written statement provided to the Court under oath. If there is a basis for challenging affidavit evidence, the Court may require further proof of identity. A chain of birth certificates is the best means to prove a family relationship. If this record is not available, other forms of identity may assist in proving the relationship, for example Medicare records, marriage certificates, car registration documents, a drivers licence or bank records. Similar proof of identity may be required in identifying beneficiaries.

In some circumstances, it may be necessary for a genealogical report to be prepared. This is usually an expensive process.

Procedure for applying for grant of administration

In order to make an application for a grant of letters of administration, the procedure set out below must be followed.

The [Supreme Court website](#) gives access to the prescribed forms, filing fee structure, current legislation, rules of procedure and other information.

The forms usually required to apply for a Grant of Administration where there is intestacy are form numbers 3.3, 3.6, 3.9, 3.13, 3.14, and possibly 3.10, 3.21 and 3.22 (if required by the Court). These forms must be filed at the Court's Registry:

- Form 3.3 - *Originating application - letters of administration - no will.*
- Form 3.6 - *Grant of letters of administration - no will* - sets out the details of the estate and the person to whom the letters of administration are granted. This document is then sealed by the Supreme Court and returned to the person applying for administration.
- Form 3.9 - *Notice of intention to apply for letters of administration - no will* - requires the applicant to publish an advertisement of his or her intention to apply for administration rights over the estate in a daily newspaper published and circulating in the Territory.
- Form 3.13 - *Affidavit of Applicant for Administration - no will* - sets out the death and identity of the deceased; the date; an explanation as to why the deceased died without leaving a will or any other explanation as to why letters of administration are being sought; and any searches made for the will of the deceased. Form 3.13 should also be accompanied by certificate evidence (such as birth, death and marriage certificates) and a statement of assets as annexures.
- Form 3.14 - *Affidavit of search* - attests that no other application has been made or granted for the deceased's estate. The search should occur no earlier than 14 days after the publication of the notice of intent to apply for letters of administration.

Forms that may be also required include:

- Form 3.10 - *Consent to administration of estate.*
- Form 3.21 - *Administration Bond* - requires the applicant to give security for the proper administration of the estate in situations when there is an intestacy in order to protect the estate and ensure the proper administration of the estate by the applicant.

- Form 3.22 - *Affidavit of justification*.

In most cases, the help of a solicitor will be necessary to prepare these documents (which may involve paying solicitor's costs). The process of preparing all the necessary documents for filing with the Court, applying to the Court and satisfying any requisitions from the Court may take some time.

There is no time limit on making an application to the Court for a grant of letters of administration. However, if there is a delay of more than 6 months (from the date of death) this should be explained to the Supreme Court (see Form 3.13). Completed forms may be either typed or in legible print. In addition, you will need to file the will (if there is one), the death certificate and any other relevant certificates, as appropriate. Original documentation must be presented to the court, where it will be sighted and noted, and then returned.

Part of the application for Letters of Administration includes valuing the estate. This may be difficult in respect of some of the deceased's assets. While the value of the artwork still owned by the artist may increase in the future, it is the current value that needs to be considered.

The application should also identify the potential for the estate to earn income from resale royalties and licensing or sale of the copyright in the artwork (if still owned by the deceased at the time of passing). Although that asset cannot at the time be valued, it is an asset that needs to be distributed in accordance with the rules of intestacy. Value can be given to the copyright if it is subject to a licensing agreement at the time of the deceased's passing and the licensing agreement should be considered in making the application.

There is a filing fee payable for lodging the documents necessary for obtaining the grant at the Supreme Court registry. Fees are subject to change so it is wise to consult the website or telephone the Court for details. For example, in 2011-12, an application for a grant to administer an estate costs \$750. The Registrar of the Court has the power to waive this filing fee if financial hardship of the person applying can be demonstrated. An application for waiver of the fee should be supported by a statutory declaration describing the circumstances of financial hardship.

The completed application may be filed with the Court either in person or by post. According to the ACT Supreme Court's website, the usual application processing time of the ACT Supreme Court Registry for wills administration documents is one week. Once an application has been filed with the Court it will be examined. If it is in order the grant will be made at that time and the parchment prepared and mailed to you. If the application is not in order, further requirements are raised at the time of examination and will be mailed to you for answering.

If the application is successful, the administrator of the estate has the legal right to deal with the assets of the estate, including the right to provide instructions in relation to the sale of artwork and to collect money owed to the estate. The administrator can usually obtain reimbursement from the assets of the estate for any costs, expenses or fees associated with the administration of the estate (such as the costs of the application to the Supreme Court).

After payment of funeral expenses and the deceased's debts, the administrator must distribute the remaining assets to the beneficiaries within a reasonable time. Before any distribution of assets is made, the administrator or the administrator's legal representative should publish a notice of intended distribution that complies with sections 64 to 67 of the *Administration and Probate Act*, section 60 of the *Trustee Act 1925* (ACT) and section 21 of the *Family Provision Act 1969* (ACT). These sections protect the decision of the administrator to make a distribution of assets after giving at least 2 months' notice of their intention to distribute the estate in a newspaper printed and circulating in the Territory. An administrator has the same rights as a person administering the estate under a will (known as an "**executor**").

The administrator can provide an art centre or bank holding money or property belonging to the estate with a certified copy of the grant of letters of administration and a signed receipt. Upon payment of money or the transfer of any property to the administrator, the administrator becomes legally responsible for such funds or property and for ensuring the estate is administered properly. The art centre or bank is relieved of legal responsibility to look after those funds or that property.

The administrator can also receive resale royalties or licensing fees for distribution to the beneficiaries. Alternatively, the administrator can notify the collecting society of the persons to whom those royalties should be paid.

The administrator may need to file a tax return for the estate. The position of administrator involves substantial responsibility and liability for any improper distribution, or for distributing assets while creditors remain unpaid.

Option 3 – Administration of the estate in accordance with the terms of the Will without applying to the Supreme Court

Given the complexity, cost and time involved in Options 1 and 2, the beneficiaries of the estate may prefer not to proceed through the formal process of applying for a Court order or involving the Public Trustee for the Australian Capital Territory. An alternative is for the family to administer the estate informally, without applying to the Supreme Court.

8. Administration of the estate in accordance with the rules of intestacy without applying to the Supreme Court

This option will only be possible if those holding property or money on behalf of the estate (such as a bank or art centre) do not insist on sighting a Court order granting rights of administration before they will release the property or money belonging to the estate. In other words, the bank or art centre must be prepared to transfer the property or release the money to a family member who is not a legally appointed administrator of the estate. It is worth noting that it is unlikely a bank or other organisation will release property of medium-to-high value without first sighting a grant of administration. Therefore, this option is most appropriate if the estate is small or uncomplicated.

The first step in this informal approach is to identify which family members are entitled to the deceased artist's assets according to the rules of intestacy (ie the beneficiaries). To do this, you can refer to the summary of the intestacy rules at [Schedule 1](#) and the questionnaire in [Schedule 2](#), and you can request help from the Arts Law Centre.

Who should take charge?

Once the beneficiaries have been identified, they will need to come to an agreement about how to proceed. The beneficiaries should authorise one or two people to be the ones who will contact the organisations holding assets that are part of the artist's estate.

Document B is a suggested authority that the beneficiaries could sign nominating who will act on behalf of all of them. This document can be used to demonstrate that all the beneficiaries agree.

Does the estate need its own bank account?

It is usually sensible to set up a bank account for the estate. This is not a personal account for the beneficiaries and must not be used for anything other than the business of managing the estate. The name of the account will be the words "Estate of..." followed by the name of the deceased artist. This account can be used for depositing any funds owed to the estate such as resale royalties or sales proceeds from artwork. It can be used to pay any debts such as taxes or credit card amounts. Once all expenses have been paid, the remaining funds in this account can be paid

to the beneficiaries in the shares specified by the intestacy rules. Once all the distributions have been made, the account can be closed.

In some cases, it may be possible to discuss with the art centre whether its account can be used for the purposes of the estate. This will save the beneficiaries setting up a separate account. The art centre may not be comfortable with this approach. Even if it does agree, the art centre manager will want to receive confirmation as to the correct distribution under the intestacy rules and may require written instructions from the beneficiaries before making any payments.

In the rest of this information sheet, we assume that the estate has its own bank account; however the information set out below would also apply if the estate's funds were held in the art centre account.

How do the beneficiaries get hold of the assets in the estate?

Set out below are some suggestions as to how the beneficiaries can approach the different organizations who hold the various assets if the deceased's estate is to be administered informally.

a. Personal bank account held in the artist's name.

A bank may release funds in a deceased person's bank account to the beneficiaries if those funds are not substantial.

Document C is a suggested template letter to send to the bank. Preferably it would attach a copy of the death certificate and any authority the sender has to represent other beneficiaries, as well as the most recent statement or the passbook and chequebook, if any.

The bank may require the beneficiaries to go in to a branch and prove their identity by producing, for example, a driver's licence or passport. Once the bank account can be accessed, it should be used to pay any outstanding funeral expenses. Otherwise the money should be kept until it is clear how the estate will be distributed among the beneficiaries. Before allowing access to the account, the bank may request that the beneficiaries sign an "indemnity" document, which can mean that you are liable for any losses the bank suffers as a result of its decision to release the funds to you. If the bank requests that you sign such a document, you should seek legal advice. The Arts Law Centre can provide you with help in this respect.

b. Money and paintings held by an Indigenous art centre where the artist was a member.

Most Indigenous art centres operate on the basis of an agreement with their artist members that entitles the art centre to a share of the sales proceeds of any artworks made through the art centre (such as art made using canvases and paints supplied by the art centre). In that case, after the artist passes away, the art centre is generally entitled to arrange the sale of all paintings and artwork created by the artist with the assistance of the art centre. In such cases, the beneficiaries cannot give the paintings to another gallery or auction house to sell without the consent of the art centre and cannot keep any of that artwork for themselves unless the art centre agrees. In such cases, the simplest approach is for the art centre to sell the paintings in its possession and (after deduction of its share of the proceeds) deposit the funds into the estate's bank account, as well as any other moneys held for the artist in its account.

If the beneficiaries are unsure as to nature of the deceased artist's arrangements with the art centre, it is important to get legal advice. The Arts Law Centre can help with this.

it may be prepared to sell the paintings in its possession and give the money (after deduction of its commission and payment of the funeral expenses and other debts) to the beneficiaries as well as any other moneys held for the artist in its account.

If the estate doesn't have its own bank account, the art centre may be prepared to sell the paintings in its possession and hold the money received from those art sales on trust for the estate in the art centre's own account. The beneficiaries can provide a written instruction to use those funds to pay funeral expenses and other debts. If the art centre is confident that it is dealing with the proper beneficiaries of the deceased's estate under the intestacy rules, it may be willing to pay the balance directly to the beneficiaries.

[Document D](#) is a suggested template letter to send to the art centre.

There are some risks for the art centre (and anyone else who hands over property where letters of administration have not been obtained) associated with pursuing this course of action, including the following:

- As there is no formally appointed personal representative of the estate, the art centre cannot transfer legal responsibility for distribution of funds of the estate. It may be legally responsible if it gives property to the wrong people, for example if a will is found later or the artist had another child which the art centre didn't know about and who didn't get a share.
- If the artist had any outstanding debts, then the creditors may be entitled to the funds rather than the beneficiaries. The art centre could be responsible if it pays the beneficiaries when there are debts owing to others.
- If the art centre hands over the funds to one family member and that person doesn't correctly share the funds with the other beneficiaries, the art centre could be legally responsible.

If the art centre (or other business) is concerned about these risks, it may reduce those risks (although not completely) by one or more of the following:

- Obtaining a signed document from each of the beneficiaries receiving the money that expressly states that they have waived their rights to apply for letters of administration and they indemnify the art centre against any claims or losses arising from the payment of money to them in such circumstances. However, this has significant risks for the persons signing that indemnity. The Arts Law Centre can help you prepare such a document if it is required.
- Placing an advertisement in a publication likely to be accessed by people who might have an interest in the estate to ensure that the correct beneficiaries have been identified

[Document E](#) is a suggested form of advertisement.

Arts Law recommends that the art centre obtain and keep copies of receipts for any amounts paid to beneficiaries.

c. Money and paintings held by a commercial gallery or dealer.

Any arrangement between the artist and a commercial gallery or dealer is likely to be terminated upon the artist's death. The beneficiaries are entitled to ask for the paintings to be returned and any amounts due to be paid into the estate's bank account. The beneficiaries might do this if it is decided to collect all the artist's works together and arrange for one major retrospective after a suitable period of time has passed.

[Document F](#) is a suggested template letter to send to a gallery or dealer asking it to return any unsold works and make any payments due.

Alternatively, if the beneficiaries decide that the best way to manage the assets is to proceed with that particular exhibition or consignment arrangements, they can request the gallery or dealer to sell the paintings and to pay the proceeds into the estate's bank account or, once all debts are paid, directly to the beneficiaries in the shares specified in the intestacy rules.

[Document G](#) is an alternative template letter to send to a gallery or dealer asking it to proceed with the exhibition and sale arrangements which were planned during the artist's lifetime.

If the gallery or dealer does not agree, the beneficiaries should seek legal advice. It may be necessary to obtain a grant of Letters of Administration.

d. Resale royalties

For information about the resale royalty right, see Arts Law's information sheet: [Resale royalty rights for visual artists](#). The organization nominated by the Federal government to manage the resale royalty scheme is Copyright Agency and further information can also be found on the [Copyright Agency website](#).

Copyright Agency also manages the statutory copyright royalties payable to copyright owners where artworks are reproduced in certain types of government and educational publications such as educational materials (both hard copy and online). See the [Copyright Agency website](#). For convenience, because Copyright Agency manages both types of royalties, we will deal with both in this section.

Contact Copyright Agency to find out if the deceased artist was registered for resale royalties (and/or statutory copyright royalties) on its tollfree number: 1800 066 844. Email: resale@copyright.org.au

In most cases, Copyright Agency will amend its registration details and accept new instructions for the payment of future resale royalty (and statutory copyright royalty) payments without requiring the executor to provide letters of probate or administration from the Court.

[Document H](#) is a letter from the artist's art centre to Copyright Agency requesting registration of the estate for resale and statutory royalties. There are two options – registration of the beneficiaries individually or registration of a copyright trustee.

[Document I](#) is a suggested template letter and statutory declaration that can be used instead of the art centre letter if the artist was not a member of an art centre.

Each applicant for registration (whether a beneficiary, copyright trustee or executor) will also need to complete the '[Registration Form for Artist's beneficiaries](#)' available on the Copyright Agency website and submit it with the letter or statutory declaration. If more than one beneficiary is entitled to be registered, then one form needs to be completed for each beneficiary. The forms should be sent in together with a copy of the Will and evidence of the identity of the person or persons seeking registration.

The same steps can be used to register the resale royalty and statutory copyright royalty rights of a deceased artist who was not a Copyright Agency member during his or her lifetime.

- e. [Copyright, including entitlements to licensing royalties from collecting societies or under licensing deals negotiated during the artist's lifetime.](#)

The beneficiaries are entitled to share the artist's copyright in the way set out in the intestacy rules. The *Copyright Act* automatically vests the ownership of the artist's copyright in the beneficiaries according to the intestacy rules.

Managing the copyright involves negotiating licence agreements and claiming royalties when the deceased artist's work is reproduced. Without a grant of administration for the estate, it is likely to be very difficult to assert any claim for royalties arising out of the copyright in the deceased's artwork. It will also be difficult to negotiate any future copyright licences. Unless the copyright trustee or the beneficiaries have the time and expertise to manage this, Arts Law recommends that they register the deceased artist's copyright with the appropriate collecting societies so that the beneficiaries can receive an income stream from copyright licensing opportunities. For information about collecting societies generally, see Arts Law's information sheet: [Copyright Collecting Societies](#).

Example:

A well-known Aboriginal artist has passed away. His works have been featured in books and films and he earned substantial copyright royalties during his lifetime. The estate is worth approximately \$150,000. His wife passed away many years earlier. He is survived by his four children and under the intestacy rules, the estate must be shared among them equally. The family agree that his eldest daughter should manage the estate. She registers the estate with Viscopy and instructs them that all royalties must be divided equally among the four beneficiaries. The National Gallery of Australia wish to conduct a major retrospective of the artist's work which will involve showing films of him painting and publishing a hardcover collectors' catalogue. Viscopy negotiates all the licensing agreements with the National Gallery including airfares for the family to attend the opening of the exhibition. Viscopy collects the royalties on behalf of the family and distributes them to the four beneficiaries. The following year, the films are broadcast on SBS and further royalties are paid to Screenrights which then distributes them to the four beneficiaries.

AAA and Screenrights deduct a commission from the royalties they collect. The beneficiaries do not have to negotiate or agree licensing arrangements among themselves. They do not need to spend money on a lawyer to help them with the copyright licensing contracts. This is included in the commission charged by the collecting society.

The beneficiaries will need to prove their ownership in order to register themselves with any collecting society. This means they will have to show how the intestacy rules apply to the artist's family.

Some families may decide to nominate one person as the 'trustee' of copyright with an ongoing responsibility to manage the copyright on behalf of a group of beneficiaries. This responsibility can continue well after all the other assets in the estate have been shared out among the beneficiaries.

This information sheet gives some guidance below about how to deal with the different collecting societies that might be relevant to the copyright of a visual artist.

If the artist was a member of an art centre, the first step should be to contact the art centre to ask whether it had registered the artist with any collecting societies. If so, it may be that copyright royalties were paid into the art centre's account.

In all other situations, the beneficiaries will need to contact each collecting society directly and:

- Find out if the artist was registered;
- If so, advise that the artist has passed away intestate;
- Find out which bank account the artist was using to receive royalties and make sure that any money in this bank account is included in the estate.
- Update the registration details to register the beneficiaries as the new owners of copyright or, alternatively, to register a copyright trustee.

i. *Copyright Agency Limited:*

See the section on Resale Royalty above for information on approaching Copyright Agency about registering the artist's estate for payment of the statutory royalties payable to copyright owners where artworks are reproduced in certain types of government and educational publications such as educational materials (both hard copy and online). See the [Copyright Agency website](#).

ii. *Viscopy:*

Viscopy can manage non-statutory or voluntary copyright licensing for the beneficiaries of the deceased artist's estate. For example, businesses that want to use copies of the deceased artist's artworks in books, on websites, greeting cards and posters, in newspapers, magazines, television, exhibition catalogues, merchandise, advertising and film can approach Viscopy for a license. If the artist's estate is registered with Viscopy, Viscopy will negotiate a royalty for that use and, after deducting its fee, will pay the remainder to the persons registered as the artist's beneficiaries. For information, see [Viscopy's website](#).

Viscopy can also distribute the resale and statutory royalties collected for the artist's estate by Copyright Agency. However commission will need to be paid to both Copyright Agency and Viscopy for this service and Arts Law recommends that artists and their families only register with Viscopy for non-statutory royalties and register directly with Copyright Agency for resale and statutory royalties.

The executor can contact Viscopy on its tollfree number: 1800 649 901.

Viscopy's policy in the situation where an artist has passed is to work with the families on a case by case basis. You will need to discuss with Viscopy how you should proceed to arrange for payments to go to the beneficiaries. Viscopy is likely to require information which confirms:

- the date of death;
- that the artist had a Will,
- details of the names, contact details and bank account details for the executor, the copyright trustee (if applicable) and the beneficiaries.

If the artist was not registered with Viscopy, the artist may have been registered instead with AAA. If not, then Arts Law recommends that families enquire as to how the beneficiaries can become registered with Viscopy (or AAA) for non- statutory royalties.

iii. *Aboriginal Artists Agency Limited (AAA):*

AAA represents over 300 Indigenous artists from the Central desert and Arnhem Land areas by providing similar copyright licensing services to those provided by Viscopy. If the deceased artist was registered with AAA, AAA will usually be willing to continue to manage non-statutory licensing for the beneficiaries. Businesses that want to use copies of the deceased artist's artworks in books, on websites, greeting cards and posters, in newspapers, magazines, television, exhibition catalogues, merchandise, advertising and film can approach AAA for a license which will negotiate a royalty for that use and, after deducting its fee, will pay the remainder to the persons registered as the artist's beneficiaries. For information, see [AAA's website](#).

Contact Anthony Wallis at AAA by phone: 0417 230 464 or email: anthony@aboriginalartists.com.au to find out if the deceased artist was registered for copyright royalties. If the artist was not registered, Arts Law recommends that families enquire as to how the beneficiaries can become registered with AAA (or Viscopy) so that it can manage the deceased artist's copyright for non- statutory royalties.

AAA generally deals with the situation where an artist has passed away on a case by case basis. It will normally require information which confirms:

- the date of death;
- that the artist had a Will,
- details of the names, contact details and bank account details for the executor, the copyright trustee (if applicable) and the beneficiaries.

iv. *Screenrights:*

Screenrights manages statutory copyright licences for certain uses of audio-visual works (film and video) including uses by government and educational institutions. Often an artistic work such as a painting or sculpture may appear in a film or television broadcast and the owner of copyright in that artwork will share in any royalties collected by Screenrights for the use of that film. For more information see the [Screenrights website](#).

If you know that artworks by the deceased artist appeared in a film or television broadcast, contact Screenrights' Member Services Department to find out if the deceased artist was registered for statutory royalties. Telephone: 02 9904 0133 or email memberservices@screenrights.org.

Screenrights can also distribute the statutory royalties collected for the artist's estate by Copyright Agency. However commission will need to be paid to both Copyright Agency and Screenrights for this service and Arts Law recommends that artists and their families register directly with Copyright Agency for statutory royalties.

Screenrights will not necessarily require a Grant of Probate or Administration in order to update registration and payment details for the estates of Indigenous artists. The executor should discuss with the Member Relations Manager how to proceed to arrange for payments to go to the copyright trustee or the beneficiaries.

[Document J](#) is a letter from the art centre to the collecting societies (other than Copyright Agency) advising them that the artist has passed away and asking them to continue paying royalties into the art centre account.

v. *Other licensing arrangements:*

If there are other licensing deals that were negotiated during the artist's lifetime without involving a collecting society, the beneficiaries need to decide whether those contracts can and should be terminated or whether they should continue. We recommend that the beneficiaries get legal advice as to whether each licence is a sensible and commercially reasonable arrangement or whether it should be terminated.

[Document K](#) is a template letter requesting the licensee to pay any royalties to the beneficiaries in the future.

If the licensee does not agree, seek legal advice as to whether the licence should be terminated. It may be necessary to get a Grant of Administration in order to deal with these licences.

Example:

The artist had a licence with a souvenir business to use three artworks on stationery and gift cards. The artist passed away without a will. The only beneficiaries were the artist's three children. The children agreed that they would each take copyright in one of the three works. The souvenir business agreed to pay royalties on the first artwork to the artist's eldest son, on the second artwork to the second son and on the third artwork to the artist's daughter.

The artist also had a licence with a hotel for the use of an artwork on its website. The hotel wouldn't agree to pay the royalties in three shares or deal with the beneficiaries. However the beneficiaries registered the artist's estate with Viscopy. The hotel agreed to licence the artwork through Viscopy. Viscopy then distributed the royalties to the three beneficiaries after deducting its commission

f. Insurance policies and superannuation funds

Some types of insurance or superannuation policy will include provision for a named beneficiary in the event of the death of the policy holder and may therefore not be covered by the intestacy rules.

The beneficiaries should contact the insurance company or superannuation fund to find out what steps need to be taken in order for any funds to be paid out to the beneficiaries. In many cases, the trustee of the fund will have the discretion to release the funds directly to the named beneficiaries without a grant of administration.

g. Nursing home accommodation bonds

The beneficiaries will need to contact the nursing home to enquire what information it requires in order to release any accommodation bond or accrued social security payments. In some cases, nursing homes will require a Grant of Administration.

9. Getting started when someone passes away intestate – Checklist

As can be seen from the above, there are a number of things to think about when managing the affairs of a deceased artist who made a will before passing away. The Federal government has some helpful information on its website - [What To Do Following a Death](#).

Set out below is a checklist of matters to consider when embarking on one of the options outlined above:

- a. Make sure there is no will.
- b. Establish who the beneficiaries of the estate are when there is no will. Contact the Arts Law Centre if you need help with this.
- c. You will probably need one or more certified copies of the Death Certificate. The official Death Certificate should be photocopied several times. You can then take those copies to the local police station and ask them to endorse them as certified copies.
- d. If the artist was receiving any benefits from Centrelink, advise Centrelink that the artist has passed away.
- e. If the artist had a car or a driver's licence, advise the Road Transport Authority that the artist has passed away.
- h. What did the artist own at the date of passing away?
 - o Paintings
 - o Car
 - o Bank account
 - o House or property
 - o Personal belongings
 - o Shares, life insurance, superannuation
- i. Was the artist a member of an art centre? Which one? Do they hold any money or paintings belonging to the artist?

- j. Are there any art galleries holding works of the artist for exhibition and sale? Do you have contact details for them?
- k. Did the artist have any agreements or licenses about the use of his/her art? If so, can you provide any details?
- l. Did the artist get royalties from Viscopy or Copyright Agency? Is the artist registered for resale royalties?
- m. Have all the funeral expenses been paid? If so, who paid them? If there are outstanding debts associated with the funeral, any funds must first be applied to the payment of those before any distribution to the beneficiaries.
- n. What other debts did the artist have? These must be paid before any distribution to the beneficiaries.
- o. Find out if the artist needs to file a tax return. If there is any tax owing, that must be paid before any money can be distributed to the beneficiaries. Many Indigenous artists were considered to be "hobbyists" by the Australian Tax Office and while alive did not have to complete tax returns dealing with income earned from their art. If that is the case then it will not be necessary to file a tax return for the period up to the date of death. However, in relation to any money earned by the estate from sales of artwork **after** the artist's death, tax may be payable.

TEMPLATE DOCUMENTS FOR USE WITH THE AUSTRALIAN CAPITAL TERRITORY INTESTACY KIT

SCHEDULE OF DOCUMENTS

SCHEDULE 1 contains a general guide about the way in which the Act will distribute an intestate estate.

SCHEDULE 2 is a questionnaire that you can fill out and provide to Arts Law. Based on that information, we can advise you who will be the beneficiaries of the deceased artist under the Australian Capital Territory intestacy.

Documents A to L are template letters and forms that you can adapt and use. The yellow highlighting identifies information that you must insert or change to suit your situation.

Document A is a template letter to the Public Trustee for the Australian Capital Territory requesting that it administer the estate of the deceased artist.

Document B is a suggested authority which the beneficiaries could sign nominating who will act on behalf of all of them.

Document C is a suggested template letter to send to the bank.

Document D is a suggested template letter to send to the art centre.

Document E is suggested form of advertisement that the art centre can use to try to ensure that the correct beneficiaries have been identified.

Document F is a suggested template letter to send to a gallery or dealer asking it to return any unsold works and make any payments due.

Document G is an alternative template letter to send to a gallery or dealer asking it to proceed with the exhibition and sale arrangements which were planned during the artist's lifetime.

Document H is a letter from the artist's art centre to Copyright Agency requesting registration of the estate for resale and statutory royalties.

Document I is a suggested template letter to Copyright Agency and a statutory declaration which can be used if the artist was not a member of an art centre.

Document J is a letter from the art centre to the collecting societies (other than Copyright Agency) advising them that the artist has passed away and asking them to continue paying royalties into the art centre account.

Document K is a template letter to a copyright licensee requesting the licensee to pay any royalties to the beneficiaries in the future.

INSTRUCTIONS

This template letters and forms are samples only. You need to change each document to meet your specific circumstances.

At times you need to choose from a few alternatives. Instructions about alternatives or other instructions are written in **BLUE LIKE THIS** and once you have chosen the alternative that suits you, you can delete the blue instructions.

At other times you need to insert information such as names, dates or descriptions that are specific to your letter or form. Where this is necessary you will be prompted by an expression in square brackets in red like this: **[please insert your name and address]**

Step 1

Read the accompanying information sheet.

Step 2

Ensure that the letter or form is appropriate for your purpose. If you are unsure, you can contact Arts Law for advice.

Step 3

You need to create a new document by copying the template you want to use and saving it on your computer. Follow the instructions to complete it. Remember to delete the instructions in **BLUE** and insert all the information identified in **RED**.

Step 4

If you are not sure whether you have done it properly, you can contact Arts Law and ask whether you are entitled to legal advice under our Artists in the Black program.

SCHEDULE 1

Summary of intestacy rules under the *Administration and Probate Act 1929 (ACT)*

| Circumstance | Distribution |
|---|--|
| <i>Where the deceased leaves a partner</i> | |
| 1. One or more surviving partner/s and no children | <p>a. If there is only one surviving partner, the partner is entitled to the whole of the estate.</p> <p>b. If there is more than one surviving partner (for example, a spouse (husband or wife) or civil partner AND an eligible partner (someone who was in a domestic relationship with the artist when they died AND had been for two years OR was the parent of the artist's child)):</p> <p>i. If the eligible partner and the deceased artist had been domestic partners for less than five years, the eligible partner and the spouse or civil partner are entitled to the partnership share of the estate in equal shares.</p> <p>ii. If the eligible partner and the intestate had been domestic partners continuously for five years or more, the eligible partner is entitled to the whole of the partnership share of the estate.</p> |
| 2. Surviving partner and children | <p>a. If the value of the intestate estate does not exceed \$200,000, the partner is entitled to the whole of the intestate estate.</p> <p>b. If the value of the intestate estate exceeds \$200,000 the partner is entitled to:</p> <p>i. the deceased artist's personal effects (household items, jewellery etc);</p> <p>ii. \$200,000 and interest of 8% per annum on this sum from the date of the death to the date the \$200,000 is paid to the partner; and</p> <p>iii. an additional amount being:</p> <ul style="list-style-type: none"> • if one child or the issue of one child survives the deceased, half of the value of the balance of the intestate estate; and • in any other case, one-third of the balance of the intestate estate. <p>c. The children of the intestate are entitled to the balance (if any) of the intestate estate after payment to the partner of the sum or sums to which the partner is entitled above.</p> |

| | |
|---|--|
| | d. If there is more than one surviving partner and children of the deceased artist, the partners are entitled to the estate as set out in item 1 above. |
| Where the deceased leaves no surviving partner | |
| 3. Children | <p>a. If the deceased artist had only one child, the child is entitled to the whole estate.</p> <p>b. If the deceased artist had two or more surviving children, the children take the whole estate in equal shares.</p> <p>c. If a deceased artist's child has not survived, but leaves any surviving children of that deceased child, then those grandchildren of the deceased are entitled to the share of the estate that would have gone to their deceased parent, in equal shares.</p> |
| 4. Parent or parents only | Parent or parents are entitled to the whole estate (if both survive, in equal shares). |
| 5. Brothers and/or sisters only | <p>a. The deceased artist's surviving brothers and sisters are entitled to the whole estate, in equal shares if there are more than one.</p> <p>b. If a deceased artist's sibling has not survived, but leaves a surviving child or children, then that/those child(ren) of the deceased are entitled to the share of the estate that would have gone to their deceased parent, in equal shares.</p> <p>c. If a deceased artist's nephew or niece would have been entitled to a share in the estate under 5b but has not survived and leaves any surviving children, then those children are entitled to the share that the nephew or niece would have had, in equal shares (and so forth until the entitlement is exhausted).</p> |
| 6. Grandparents only | Grandparent or grandparents are entitled to the whole estate (if more than one in equal shares). |
| 7. Aunts or uncles or cousins | <p>a. The deceased artist's aunts or uncles are entitled to the whole estate (if more than one, in equal shares).</p> <p>b. If an aunt or uncle of the deceased has died, leaving any surviving children, then those cousins of the deceased are entitled to the share of the estate that would have gone to the deceased's uncle/aunt, in equal shares.</p> |
| 9. No relatives | Deemed to be <i>bona vacantia</i> . The State is entitled to the whole estate. |

SCHEDULE 2**Questionnaire where the Artist had no will**

1. What is the full name of the Artist?
2. What is the date on which the Artist passed away?
3. Do you have an original certificate showing the date that the Artist passed away?
4. Was the Artist married at the time of passing away? Date married? Name and address of spouse.
5. Was the Artist in a de facto relationship at the time of passing away? Approximately how long was that relationship? Name and address of de facto.
6. Was the Artist divorced at the time of passing away? Date divorced?
7. Was the Artist survived by any children? List their names and addresses (if known). How old are the Artist's surviving children? Have any of them passed away since the Artist died?
8. If the Artist was not survived either by a spouse or children, who are the closest relatives? What is their relationship to the Artist – grandchildren, parent, brother or sister, niece or nephew?
9. Who is the primary contact from the family? What is the relationship to the Artist?
10. What was the arrangement between the Artist and art centre
 - a. Did the art centre buy the paintings outright?
 - b. Did the art centre provide paints and canvases?
 - c. What was the art centre's commission?
 - d. How many paintings are still at the art centre?
 - e. What is their approximate value?
 - f. Have any been sold since the Artist passed away?
 - g. Are any paintings or artworks out at other galleries on commission?
 - h. Is the art centre holding any money from sales of paintings for the Artist?
11. What did the Artist own at the date of passing away?
 - a. Paintings
 - b. Car
 - c. Bank account
 - d. House or property
 - e. Personal belongings

- f. Shares, life insurance, superannuation
 - g. What else?
12. What's the approximate total value of those items listed above, including the paintings?
More than \$10,000?
13. Do you know if the Artist has any outstanding debts? ie credit cards, laybys, loan repayments etc.
- a. What about any money owed to the art centre?
14. Did the Artist have any agreements or licenses about the use of his/her art? If so, can you provide any details?
15. Did the Artist get royalties from Viscopy?
16. Did the Artist receive any mining royalties?

DOCUMENT A

[Letter to the Public Trustee for the ACT]**[Date]****[please insert your name and address]****Public Trustee for the Australian Capital Territory**

Ground Floor
 221 London Circuit
 Canberra City, ACT 2600

Dear Sir/Madam

[Name of deceased] (deceased)

I am writing to inform you that the above named person has passed away. I **enclose** a certified copy of the death certificate.

The deceased passed away without a will. The deceased's surviving next of kin entitled to share in the estate are:

| Name of family member | Relationship to deceased | Address |
|--------------------------------|-----------------------------------|------------------|
| [Name of family member] | [Relationship to deceased] | [Address] |
| [Name of family member] | [Relationship to deceased] | [Address] |
| [Name of family member] | [Relationship to deceased] | [Address] |
| [Name of family member] | [Relationship to deceased] | [Address] |

The assets in the deceased's estate include:

- The moneys in the deceased's bank account with **[name of bank]**, numbered **[account number]**.
- Moneys and paintings of an unknown value held by **[name of arts centre]**, an art centre where the deceased was a member.
- **[OTHER]**

To the best of my knowledge, no person has, or intends, to apply for letters of administration. I request that the Public Trustee for the Australian Capital Territory administer the Estate.

Please let me know if the Public Trustee is willing and able to proceed in this way.

Yours sincerely

[Beneficiary making application to provide name and sign letter]

Names and Signatures of Other Beneficiaries *[To be provided if possible. This section may otherwise be deleted]*

Name **Signature**

[Other beneficiaries to provide name and sign letter]

DOCUMENT B**Authority to Act on behalf of All Beneficiaries**

We, the undersigned, are the beneficiaries of the estate of the Late *[Deceased's name]*.

We **enclose** a certified copy of the death certificate.

The assets are not substantial and we do not propose seeking formal letters of Administration.

We authorise *[name of person to act on behalf of beneficiaries]* of *[person's address]* to act on behalf of all of us in all matters relating to the administration of the estate, including the receipt of assets of the estate, such as the funds in *[Deceased's name]*'s bank accounts and works of art belonging to *[Deceased's name]*'s estate.

| Name of Beneficiary | Relationship to deceased | Address | Signature | Date |
|----------------------------|---------------------------------|------------------|--------------------|---------------|
| <i>[Name]</i> | <i>[Relationship]</i> | <i>[Address]</i> | <i>[Signature]</i> | <i>[Date]</i> |

DOCUMENT C

[Letter to Bank]

*[Date]**[Please insert your name and address]**[Name]* Bank
[please insert address]

Dear Sir

[Name of deceased] (deceased)

I am writing to inform you that the above named person has passed away. I **enclose** a certified copy of the death certificate.

Expenses have been incurred by me in respect of the deceased's funeral of *[\$ Amount]* by *[Person/company who was paid funeral expenses]*. Details are attached.

The deceased passed away without a will. The deceased's surviving next of kin entitled to share in the estate are:

| Name of family member | Relationship to deceased | Address |
|--------------------------------|-----------------------------------|------------------|
| <i>[Name of family member]</i> | <i>[Relationship to deceased]</i> | <i>[Address]</i> |
| <i>[Name of family member]</i> | <i>[Relationship to deceased]</i> | <i>[Address]</i> |
| <i>[Name of family member]</i> | <i>[Relationship to deceased]</i> | <i>[Address]</i> |
| <i>[Name of family member]</i> | <i>[Relationship to deceased]</i> | <i>[Address]</i> |

The only moneys in the deceased's estate are:

- 1 The moneys in the deceased's bank account with you, numbered *[please insert number]*. I enclose a copy of the *[most recent statement or the passbook and check book]*.
- 2 Moneys and paintings of an unknown value held by *[Name of arts centre]*, an art centre where the deceased was a member.
- 3 *[Other]*

In the circumstances, I am hoping to avoid the need to go to the expense and time of obtaining Letters of Administration. I request that you grant me access to the funds in the bank account.

I am one of the next of kin entitled to share in the estate and undertake to distribute the funds in accordance with the intestacy rules set out in the *Administration and Probate Act 1929* (ACT). The other beneficiaries have consented to this by signing this letter.

Please let me know if you are willing and able to proceed in this way.

Yours sincerely

[Beneficiary making application to provide name and sign letter]

Names and Signatures of Other Beneficiaries

| Name | Signature |
|-------------|------------------|
|-------------|------------------|

[Other beneficiaries to provide name and sign letter]

DOCUMENT D

[Letter to Art Centre]

*[Date]**[please insert your name and address]**[Name of arts centre]**[Insert address]*

Dear Sir/Madam

[Name of deceased] (deceased)

I am writing to inform you that the above named person has passed away. I **enclose** a certified copy of the death certificate.

The deceased passed away without a will. The deceased's surviving next of kin entitled to share in the estate are:

| Name of family member | Relationship to deceased | Address |
|--------------------------------|-----------------------------------|------------------|
| <i>[Name of family member]</i> | <i>[Relationship to deceased]</i> | <i>[Address]</i> |
| <i>[Name of family member]</i> | <i>[Relationship to deceased]</i> | <i>[Address]</i> |
| <i>[Name of family member]</i> | <i>[Relationship to deceased]</i> | <i>[Address]</i> |
| <i>[Name of family member]</i> | <i>[Relationship to deceased]</i> | <i>[Address]</i> |

The estate is small but includes moneys and paintings of an unknown value held by you.

In the circumstances, I am hoping to avoid the need to go to the expense and time of obtaining Letters of Administration.

I am one of the next of kin entitled to share in the estate and undertake to distribute the moneys and paintings in accordance with the intestacy rules. The other beneficiaries have consented to this by signing this letter.

Please provide me with details of all artwork (including current sales values) and all moneys held by the art centre for the deceased or placed by it on consignment with other galleries. Please also confirm your commission payable upon sale.

In respect for the artist, the family request that all works and images of the artist be removed from public view and sale for a period of *[how many]* weeks/months.

After that time, please proceed with the sale of the artwork consistent with securing the best available prices.

OPTION ONE: Please hold all proceeds in your account pending further instructions from me as to a final distribution.

OR OPTION TWO: Please deposit all proceeds of such sales and all funds in your account into the estate's bank account as follows:

Account name: *[account name]*

BSB: *[BSB number]*

Account number: *[insert account number]*

[OPTIONAL: If you have concerns about releasing the money and paintings to me, you may like to place an advertisement in a publication to assure yourself that the correct beneficiaries have been identified.]

Please let me know if you are willing and able to proceed in this way.

Yours sincerely

[Beneficiary making application to provide name and sign letter]

Names and Signatures of Other Beneficiaries

| Name | Signature |
|-------------|------------------|
|-------------|------------------|

[Other beneficiaries to provide name and sign letter] [To be provided if possible. This section may otherwise be deleted]

DOCUMENT E

Advertisement to identify beneficiaries

RE: *[name of deceased]*

Take notice that *[name of arts centre or other business]*, the *[set out relationship to deceased eg agent, artist's representative]* of the deceased late of *[last address of deceased]*, has been instructed by the following persons as beneficiaries of the deceased's estate:

[Names of beneficiaries and relationships to deceased]

The beneficiaries have instructed *[name of arts centre or other business]* as to how to deal with the deceased's assets.

The deceased left no will and no formal application has been made for a grant of Letters of Administration under the *Administration and Probate Act 1929* (ACT).

Any other person with a claim against the estate as beneficiary must notify *[name of arts centre or other business]* within 28 days of the date of publication of this notice. If no notification is received then the works and proceeds of sale will be dealt with according to the instructions of those beneficiaries listed above.

The contact details for *[name of arts centre or other business]* are as follows:

[Insert arts centre or other business contact details]

DOCUMENT F Letter to gallery seeking return of artwork

[Date]

[Insert author name/address]

[Insert name and address of gallery/dealer]

Dear *[name]*

[Name of deceased] (deceased)

I am writing to inform you that the above named person has passed away. I **enclose** a certified copy of the death certificate.

The deceased passed away without a will. The deceased's surviving next of kin entitled to share in the estate are:

[Names of beneficiaries, addresses and relationship to deceased]

As one of the beneficiaries entitled to share in the estate, I undertake to distribute the property and funds in accordance with the intestacy rules set out in the *Administration and Probate Act 1929* (ACT). The other beneficiaries have consented to this by signing this letter. In the circumstances, I am hoping to avoid the need to go to the expense and time of obtaining Letters of Administration.

I understand that you hold artwork placed on consignment for sale with you. Such arrangements are terminated by the death of the artist. In respect for the artist, the family have requested that all works and images of the artist be removed from public view and sale. I would be grateful if you would make immediate arrangements to return all unsold works to *[address of art centre/gallery/other place]*.

Please provide me with details of all artwork (including current sales values) and all moneys held by you for the deceased. Please also provide a copy of the agreement evidencing your commission payable upon sale and provide a reconciliation for all works sold to date.

As the estate is small, I am hoping to avoid the need to go to the expense and time of obtaining Letters of Administration. Please let me know if you are happy to proceed in this way. If you have concerns about releasing the money and paintings to me, you may like to place an advertisement in a local publication to assure yourself that the correct beneficiaries have been identified.

Please deposit all sales proceeds into the estate's bank account as follows:

Account name: *[account name]*

BSB: *[BSB number]*

Account number: *[insert account number]*

Yours sincerely

[Beneficiary making application to provide name and sign letter]

Names and Signatures of Other Beneficiaries

Name

Signature

[Other beneficiaries to provide name and sign letter]

DOCUMENT G**Letter to Gallery authorising sale of artwork**

[Date]

[Insert author name/address]

[Insert name and address of gallery/dealer]

Dear [name]

[Name of deceased] (deceased)

I am writing to inform you that the above named person has passed away. I **enclose** a certified copy of the death certificate.

The deceased passed away without a will. The deceased's surviving next of kin entitled to share in the estate are:

[Names of beneficiaries, addresses and relationship to deceased]

Please provide me with details of all artwork (including current sales values) and all moneys held by you for the deceased. Please also provide a copy of the agreement evidencing your commission payable upon sale.

In respect for the artist, the family request that all works and images of the artist be removed from public view and sale for a period of [how many] weeks/months.

After that time, subject to confirmation and agreement as to your commission terms, the beneficiaries request that you proceed with the exhibition and sale of the artwork consistent with securing the best available prices.

Please deposit all proceeds of such sales and all funds in your account into the estate's bank account as follows:

Account name: [account name]

BSB: [BSB number]

Account number: [insert account number]

As the estate is small, I am hoping to avoid the need to go to the expense and time of obtaining Letters of Administration. As one of the beneficiaries entitled to share in the estate, I undertake to distribute the property and funds in accordance with the intestacy rules set out in the *Administration and Probate Act 1929* (ACT). The other beneficiaries have consented to this by signing this letter. If you have concerns about releasing the money and paintings to me, you may like to place an advertisement in a publication to assure yourself that the correct beneficiaries have been identified.

Please let me know if you are happy to proceed in this way.

Yours sincerely

[Beneficiary making application to provide name and sign letter]

Names and Signatures of Other Beneficiaries

| Name | Signature |
|-------------|------------------|
|-------------|------------------|

[Other beneficiaries to provide name and sign letter]

DOCUMENT H Letter from art centre to Copyright Agency re royalties

[Date]

Copyright Agency Limited
Level 15, 233 Castlereagh Street
Sydney NSW 2000 AUSTRALIA

By fax: +61 2 9394 7601 or email: resale@copyright.org.au

Dear Sir/Madam

[Name of deceased] (deceased)

I am writing to inform you that the above named artist passed away at **[place]** on **[date]**. This artist was a member of this art centre from **[year]** to **[year]**. The deceased **was/was not** registered through this art centre with CAL for both resale and statutory royalties.

The deceased did not have a will. I confirm that to the best of my knowledge, the next of kin entitled to share in the estate are;

[Names of beneficiaries, addresses and relationship to deceased]

I enclose:

- A copy of the artist's death certificate
- A statutory declaration by me
- Completed artist's beneficiary resale registration form(s)
- Evidence of identity for the beneficiaries (photocopies of drivers licences or Centrelink cards)

The estate is small but includes moneys and paintings valued at approximately **[estimated value]** held at the art centre as well as the deceased's entitlement to resale and statutory royalties. The family have informed me that they do not intend to apply for letters of administration given the size of the estate.

EITHER OPTION 1: Could you please register the beneficiaries as the recipients of any resale royalties and statutory royalties due to the deceased artist's estate in the following shares:

[Names of beneficiaries and shares]

OR OPTION 2: The beneficiaries have nominated **[name]** as their copyright and resale trustee and have signed this letter in confirmation of those instructions. **He/she** is then responsible for

distributing any royalties in accordance with the rules of intestacy. Could you please register that person as the owner of the resale and statutory royalty rights for the artist's estate.

Yours sincerely

Manager

INSERT IF OPTION 2, OTHERWISE DELETE:

Names and Signatures of Beneficiaries

Name

Signature

[Beneficiaries to provide name and sign letter]

DOCUMENT I Letter to Copyright Agency from beneficiary

Copyright Agency Limited
 Level 15, 233 Castlereagh Street
 Sydney NSW 2000 AUSTRALIA

[Date]

By fax: +61 2 9394 7601 or email: resale@copyright.org.au

Dear Sir/Madam

[Name of deceased] (deceased)

I am writing to inform you that the above named artist passed away at *[place]* on *[date]*. The deceased **was/was not** registered with Copyright Agency for both resale and statutory royalties.

The deceased did not have a will. I confirm that to the best of my knowledge, the next of kin entitled to share in the estate are;

[Names of beneficiaries, addresses and relationship to deceased and shares]

The estate is small but includes the deceased's entitlement to resale and statutory royalties. In the circumstances, the family do not propose to apply for letters of administration.

EITHER OPTION 1: Could you please register the above beneficiaries as the recipients of any resale royalties and statutory royalties due to the deceased artist's estate in accordance with the shares according to the intestacy rules specified above.

OR OPTION 2: The beneficiaries have nominated *[name]* as their copyright and resale trustee and have signed this letter in confirmation of those instructions. *He/she* is then responsible for distributing any royalties in accordance with the rules of intestacy. Could you please register that person as the owner of the resale and statutory royalty rights for the artist's estate.

I enclose:

- A copy of the death certificate
- A statutory declaration
- Completed artist's beneficiary resale registration form(s)
- Evidence of identity for the applicant(s) (photocopies of drivers licences or Centrelink cards)

Yours sincerely

[Beneficiary making application to provide name and sign letter]

Names and Signatures of Other Beneficiaries

Name **Signature**

[Other beneficiaries to provide name and sign letter]

Commonwealth of Australia
STATUTORY DECLARATION
Statutory Declarations Act 1959

I **[insert full name]**

Of **[insert address]** in the Australian Capital Territory, **[insert occupation]**

make the following declaration under the *Statutory Declarations Act 1959*:

1. **[name]** passed away on **[date]**.
2. The deceased did not make a will.
3. To the best of my knowledge, the deceased's next of kin under the rules of intestacy in the ACT are as follows:

[Names of beneficiaries, addresses and relationship to deceased and shares]

4. To the best of my knowledge, none of the deceased's next of kin has applied or intends to apply for Letters of Administration.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

Signature of declarant

Taken and declared before me at **[location]**

Thisday of

A Justice of the Peace/Commissioner for Declarations

DOCUMENT J Letter from Art Centre to other Collecting Societies

[Date]

Choose either AAA or Viscopy – not both

Aboriginal Artists Agency Limited

PO Box 282

CAMMERAY 2062

email; anthony@aboriginalartists.com.au

Viscopy

Level 15, 233 Castlereagh St

Sydney NSW, 2000

email: viscopylicensing@copyright.com.au

Screenrights

PO Box 1248

Neutral Bay NSW 2089

email: info@screenrights.org

Dear Sir/Madam

[Name of deceased] (deceased)

I am writing to inform you that the above named artist passed away at *[place]* on *[date]*. This artist was a member of this art centre from *[year]* to *[year]*. The deceased was registered with your collecting society with royalties going directly to the art centre account.

I enclose a copy of the artist's death certificate

The deceased did not have a will. I confirm that to the best of my knowledge, the next of kin entitled to share in the estate are;

[Names of beneficiaries, addresses and relationship to deceased and shares]

The estate is small but includes moneys and paintings valued at approximately *[estimated value]* held at the art centre as well as the deceased's entitlement to statutory and voluntary copyright royalties. In the circumstances, the family do not propose to apply for letters of administration.

EITHER OPTION 1: Could you please register the beneficiaries identified above as the recipients of all statutory and voluntary copyright royalties due to the deceased artist's estate. The family wish all royalty payments to continue to be paid into the art centre account. We will distribute those payments in accordance with the instructions of the next of kin.

OR OPTION 2: The family have nominated *[name]* as the copyright trustee for the estate. *He/she* is then responsible for distributing any royalties in accordance with the rules of intestacy. Could you please register that person as the owner of all statutory and voluntary copyright royalty rights for the artist's estate.

Please note that I have already contacted Copyright Agency Limited in relation to the resale and statutory royalty rights it administers.

Please let me know if you have any questions.

Yours sincerely

Manager, Art Centre

DOCUMENT K

[Date]

[Insert author name and address]

[Insert name and address of licensee]

Dear *[Name]*

[Name of deceased] (deceased)

I am writing to inform you that the above named person has passed away. I **enclose** a certified copy of the death certificate.

The deceased passed away without a will. The deceased's surviving next of kin entitled to share in the estate are:

[Names of beneficiaries, addresses and relationship and shares]

In the circumstances, I am hoping to avoid the need to go to the expense and time of obtaining Letters of Administration.

The beneficiaries seek your agreement to continue in your role as licensee and request that the royalties you collect on behalf of the deceased now be made payable to the deceased's estate.

As one of the beneficiaries entitled to share in the estate, I undertake to distribute the funds paid to the estate in accordance with the intestacy rules set out in the *Administration and Probate Act 1929* (ACT). The other beneficiaries have consented to this by signing this letter.

[If Document B applicable: "I also **enclose** a signed authority from the other beneficiaries, which authorises me to act on their behalf in relation to the administration of the asset, including to receive assets from the estate of the deceased.]

Please let me know if you are willing and able to proceed in this way and I will advise of new bank details for the payments to be made.

We thank you in advance for your co-operation.

Yours sincerely

[Beneficiary making application to provide name and sign letter]

Names and Signatures of Other Beneficiaries

| Name | Signature |
|------|-----------|
|------|-----------|

[Other beneficiaries to provide name and sign letter]

Disclaimer

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