

# WHEN AN ABORIGINAL OR TORRES STRAITS ISLANDER ARTIST PASSES AWAY WITHOUT A WILL IN NEW SOUTH WALES

## 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".

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. The estate may also owe money, such as for credit card bills or car payments.

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 which are not covered by the will.

In New South Wales, the laws of intestacy are set out in the *Succession Act 2006* (NSW) (the **Act**). The rules in this Act apply to the estate of any person who was living in New South Wales at the time of their death and did not leave a will. These rules will also apply to any property which was not covered by the deceased person's will if they did leave one.

Different rules may apply in relation to property which is located outside New South Wales or to property in New South Wales which 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 which is very different to the outcome that the family of the deceased person expect, and may also be very different to the result that the deceased person would have wanted. In particular, these rules may be very different from the traditional or customary way of dealing with the passing of an Indigenous person. **For that reason, it is usually sensible to prepare a will to make sure that the estate goes to the family and community members that the artist believes should receive 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 New South Wales at the time he or she passed away.

## 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.

However, that is not possible if the estate includes real property (ie land) or a large bank account, or where galleries or art centres hold unsold artwork. 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. Royalties may be paid 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. Who owns the copyright is a question that must be determined by the laws of intestacy. 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.

The 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<sup>1</sup> persons:

- The deceased's "**spouse**" is entitled to the whole estate, as long as the deceased is not also survived by any children from a previous relationship.
  - A "**spouse**" means a person:
    - who was legally married to the deceased immediately before the artist's death, or
    - who was in a domestic partnership with the artist immediately before the artist's death.
  - To be recognised as married, the couple must have met the formalities of a legal marriage set out in the *Marriage Act 1961* (Cth). This means that the marriage ceremony must have been conducted in the presence of someone authorised as a celebrant under the Marriage Act, two other persons must have attested to witnessing the ceremony and a certificate of marriage must have been issued following the ceremony.
  - A domestic partnership is defined as a relationship that is a registered relationship within the meaning of the *Relationships Register Act 2010* (NSW), or a de facto relationship that: (a) has been in existence for a continuous period of 2 years, or (b) has resulted in the birth of a child.<sup>2</sup>
  - A 'de facto' relationship occurs where two people live together as a couple but who are not married to each other or related by family. Where a marriage under traditional Indigenous law does not meet the test for 'legal' marriage described above, the couple may still be recognised as being in a de facto relationship.

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<sup>1</sup> The person must survive the intestate for a period of at least 30 days. See s107 of the Act.

<sup>2</sup> See s 105 of the Act.

- If there are children from a previous relationship, the spouse is entitled to the deceased's personal effects (household items, jewellery etc), a statutory legacy of around \$350,000, and one-half of the remainder (if any) of the intestate estate. The children from a previous relationship are entitled to the other half of the remainder of the estate. However if the estate is not substantial, children from a previous relationship are unlikely to receive a share of the estate.
- The Act specifically contemplates in Part 4.2, Division 3 that a deceased may have, at the time of their death, more than one spouse (for example, both a legal wife or husband and a de facto partner). This section provides guidance as to how the estate is to be shared if there is more than one spouse.
- If there is no spouse, the deceased's **children** are entitled to the whole estate in equal shares.
  - Children are defined to include children that have been conceived but not yet born.<sup>3</sup> For example, if an artist passes away leaving a pregnant wife and the child is born after the date of death, that child is still entitled to share in the deceased artist's estate in the same way as the artist's other children born before his death.
  - For the purposes of the Act, adopted children are considered to be the children of their adopted parents, not their natural parents.<sup>4</sup> Many Indigenous families have children who are adopted under traditional law or who have been cared for as part of their family but the adoption has never been formally recognized under the New South Wales adoption laws. Such children will NOT be considered part of that family for the purpose of the intestacy laws. To qualify as an adopted child the formal processes of the adoption legislation 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.

**This is another good reason to make a will so that it is clear that all children, including children adopted under traditional law, can share in the artist's estate.**
  - If a child of the deceased has died, leaving a surviving child or 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).
  - If an intestate's grandchild would have been entitled to share in the estate but has not survived and leaves any surviving children, then those great-grandchildren of the deceased are entitled to equal shares of what the grandchild would have had (and so forth until the entitlement is exhausted).
- Where the deceased has neither a spouse nor children, the deceased's surviving **parents** are entitled to the whole estate (in equal shares).
- Where the deceased has no spouse, child or parent, 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

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<sup>3</sup> S 3(2) of the Act.

<sup>4</sup> S 109 of the Act.

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, child, parent, or sibling, the deceased's surviving **grandparents** are entitled to the whole estate (in equal shares).
- Where the deceased has no spouse, child, parent, sibling or grandparent, the deceased'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 any surviving children, then that cousin(s) of the deceased are entitled to the share of the estate that would have gone to their parent. The intestacy rules do not allow the estate to be distributed to anyone more remote than a first cousin of the deceased.
- Where there is no next of kin the estate is described as '*bona vacanti*' and the State takes the assets. While the State has entitlement, there is a provision for the State to distribute the assets to anyone with a 'moral claim' to the assets. This could include an informally adopted child or any other person who was dependent on the deceased at the time of death.<sup>5</sup>

The family members who are entitled to the assets of the deceased under the intestacy rules are called the "**beneficiaries**" of the estate. More detail about the rules for distributing an intestate estate are set out in Chapter 4 of the Act, and are summarised in [Schedule 1](#) of this Kit.

### Variations to the intestacy rules

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.

The Act contains express provisions which allow Indigenous communities to apply to the Court for orders allowing the distribution of an intestate estate in New South Wales to occur in a different way to that set out in Parts 4.2 and 4.3 of the Act. Part 4.4 of the Act allows a personal representative of a deceased Indigenous person who passed away intestate or a person claiming to be entitled to share in an intestate estate under the laws, customs, traditions and practices of the deceased's Indigenous community or group to apply to the Court for an order for distribution of the intestate estate.

The application must be made within 12 months of the grant of administration and before the intestate estate has been fully distributed. The Court may then order that the estate be distributed in a particular manner, having regard to the laws, customs, traditions and practices of the Indigenous community or group to which the deceased belonged. The Court must be satisfied that this manner of distribution is just and equitable.

### How are the assets of the deceased's estate distributed?

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 the following:

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<sup>5</sup> Section 137 of the Act

- 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.

The administration of estates in New South Wales is governed by the *Probate and Administration Act 1898* (NSW) (the **PA Act**). Until the Supreme Court of New South Wales (**Court**) makes a grant of letters of administration, the real and personal estate of the deceased person vests in the NSW Trustee & Guardian.

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

- Option 1:** The person can apply to the Court to be appointed as the formal administrator of the estate; or
- Option 2:** The person can ask the NSW Trustee & Guardian to administer the estate; or
- Option 3:** The 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.

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 New South Wales intestacy laws.

### **Option 1: One or more persons can apply to the 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**" (also known as the "**personal representative**") of the estate. If successful, this is known as a "**grant of letters of administration**". If granted, the estate becomes vested in that person or persons.<sup>6</sup> 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 New South Wales 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 NSW Trustee & Guardian can be asked to administer the estate. This can sometimes be a quicker and cheaper process. More about this process is set out below, at Option 2.

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<sup>6</sup> Section 44 of the *Probate and Administration Act 1898*

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. 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 New South Wales. However, if there is no family member willing to apply, the Court may appoint someone else.

When hearing an application by a family member, evidence of there being a family relationship 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 for administration where there is intestacy are form numbers 92, 98, 98A, 101, 102 and 103. These forms must be filed at the Court's Registry:

- UCPR Form 111 - *Summons for administration*
- SCR Form 92 - *Notice of intended application*. This notice must be published prior to any application for letters of administration being made. This notice may be published in a newspaper circulating in the district where the deceased resided (within New South Wales) or in a Sydney daily newspaper. The notice calls upon creditors to provide particulars of their claims.
- SCR Form 98 - *Affidavit of Applicant for Administration*
- SCR Form 98A - *Affidavit negating existence of de facto wife or de facto husband*
- SCR Form 101 - *Consent to administration*
- SCR Form 102 - *Administration bond*
- SCR Form 103 - *Affidavit of surety*

In most cases, the help of a solicitor will be necessary to prepare these documents (which may accrue 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. Completed forms may be either typed or in legible print. In addition, you will need to file the will (if there is one), death certificate and any other relevant certificates, as

appropriate. Only original documents are accepted (no photocopies) and these will not be released or returned after the grant is made.

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. Assets should be valued at the date of the deceased's passing. While the value of the artwork still owned by the artist may increase in the future, it is the current value which needs to be considered in valuing the estate.

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 the copyright is 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 no filing fee payable in respect of an estate with a gross value less than \$50,000. However a fee is payable in respect of estates valued at more than \$50,000. Fees are subject to change and for current fees payable in respect of larger estates you should consult the website or telephone the Court. For example, in 2011, an application for an estate with a value of up to \$250,000 costs \$687. 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. Once an application has been filed with the Court it will be examined within 3 working days. If it is in order the grant will be made at that time and the parchment prepared and mailed to you within a further 3 working days. 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 art work 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 artist's debts, the administrator must distribute the remaining assets to the beneficiaries at least 6 months after the intestate's death, and without unnecessary delay. Before any distribution of assets is made, the personal representative should publish a notice of intended distribution that complies with s 92 of the PA Act. Section 92 of the PA Act permits the executor or administrator to make a distribution of assets after giving at least 30 days notice. 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 has no further 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 2 – Refer the administration of the estate to the NSW Trustee & Guardian**

Where there is no one who is able or willing to apply for letters of administration, the beneficiaries can approach the NSW Trustee & Guardian and ask them to administer the estate. The NSW Trustee & Guardian is a statutory authority that is a branch of the New South Wales government.

*[Document A](#) is a template letter to the NSW Trustee & Guardian requesting that it administer the estate of the deceased artist.*

The NSW Trustee & Guardian must first agree to administer the estate. The NSW Trustee & Guardian will not often refuse to do this, but may do so if, for example, the estate is insolvent. It cannot however decline to administer estate purely on the basis of the estate's low value. In applying to the Public Trustee, information on the value of the estate, including present value of any artwork and any licensing agreement, will need to be provided.

Like an individual applicant, the NSW Trustee & Guardian must apply to the Court to be appointed as an administrator of the estate. However, it can do so in a streamlined matter which involves a quicker process as fewer documents are required to be filed.

The NSW Trustee & Guardian charges a capital commission on a sliding scale starting at 4.4%. However, all estate money is held in the NSW Trustee & Guardian's Common Fund which earns interest calculated on daily balances. This can potentially offset the cost of administration. In addition to its standard charges, the NSW Trustee & Guardian 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. An example of the sort of charges the Public Trustee might incur in administering an intestate estate is set out below.

### **Example:**

An Indigenous artist dies intestate with the following property:

- A bank account with \$10,000;
- \$55,000 of unsold artworks at the art centre;
- \$30,000 of unsold artworks at a gallery in Melbourne: and
- \$5,000 held in the artist's art centre bank account from sales completed prior to the artist's passing.

Altogether, this estate is worth \$100,000. The artist had no husband so her three children are the only beneficiaries.

If there were no difficulties or complexities encountered, the Public Trustee's standard charges for administering such an estate would probably be between \$1000 to \$2000 (its minimum charge of \$200 plus Court filing fees of \$687, an account fee of \$11 per month and a tax return fee of \$220 plus disbursements).

If any complexities were encountered, for example if the Public Trustee needed to spend time finding beneficiaries or preparing a family tree, the Public Trustee's charges would increase, depending on how long these tasks took.

According to the NSW Trustee & Guardian, in most cases, administration of an intestate estate can be completed within 9 months. However, more complicated cases can sometimes take years to be complete.

Once the NSW Trustee & Guardian has received the grant of administration, it takes legal responsibility for ensuring the estate is administered properly. The NSW Trustee & Guardian would become responsible for arranging the sale of the art works 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 NSW Trustee & Guardian may be obligated to continue those arrangements put into place during the artist's lifetime. Even where there is no such arrangement, the NSW Trustee & Guardian 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.

### **Option 3 – Administration of the estate in accordance with the laws of intestacy 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 letters of administration or involving the NSW Trustee & Guardian. An alternative is to administer the estate informally, without applying to the 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.

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 Arts Law.

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 which 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.

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

**1. 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 you to go in to a branch and prove your identity by producing, for example, your 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 you 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.

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

If the art centre is confident that it is dealing with the proper beneficiaries of the deceased's estate, it may be prepared to sell the paintings in its possession and give the money (after deduction of its commission) to the beneficiaries as well as any other moneys held for the artist in its account. [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. Arts Law can help you prepare such a document if it is required.

- Notifying the NSW Trustee & Guardian of the proposed distribution so that it can intervene if it considers it appropriate to do so. This is because the NSW Trustee & Guardian is legally vested with the property and assets of the deceased. [Document E](#) is a template letter to the NSW Trustee & Guardian.
- 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 F](#) 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.

### **3. Money and paintings held by a commercial gallery or dealer.**

Any arrangement with a commercial gallery or dealer is likely to be terminated upon the artist's death. However the beneficiaries may request the gallery or dealer to proceed with the sale of any the paintings and pay the proceeds to them. [Document G](#) is a suggested template letter to send to a gallery or dealer. If the gallery or dealer does not agree, the beneficiaries should seek legal advice. It may be necessary to get a grant of letters of administration.

### **4. 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 copyright in the way set out in the legislation. 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 art work. It will also be difficult to negotiate any future copyright licences. We recommend that the artist's copyright be registered with the appropriate collecting societies so that they can receive an income stream from copyright licensing opportunities. For information about collecting societies generally, see Art's Law information sheet: [Copyright Collecting Societies](#).

*Copyright Agency Limited (CAL):*

CAL manages the statutory royalties payable where artworks are reproduced in certain types of government and educational publications such as educational materials (both hard copy and online). See the CAL website (<http://www.copyright.com.au/licences>).

Contact CAL to find out if the deceased artist was registered for statutory royalties. Tollfree number: 1800 066 844.

If the artist is registered with CAL and the accumulated statutory royalty due is \$10,000 or less, CAL will generally be prepared to pay future statutory royalties directly to the artist's beneficiaries in the following circumstances:

- a. If the artist was a member of an Indigenous art centre, a letter from the art centre is provided which confirms:
  - i. the date of death;
  - ii. that the artist was a member of the art centre;
  - iii. that the artist had no will and that no one has applied for letters of administration,

- iv. providing details of the names, relationship to the artist and contact details for all known surviving members of the artist's family.

If the artist wasn't registered then the beneficiaries can apply for membership with [Copyright Agency online](#) or using the attached [form](#). Beneficiaries should mark the box "Owner of copyright in works created by Artist".

**Document H** is a suggested template letter from the art centre to CAL.

- b. If the artist was not a member of an art centre, documents are provided which confirm:
  - i. the date of death;
  - ii. that the artist had no will and that no one has applied for letters of administration,
  - iii. providing details of the names, relationship to the artist and contact details for all known surviving members of the artist's family.
  - iv. evidence of the entitlement of the relevant family members to royalties such as evidence of advice from Arts Law or the Public Trustee.

In all other circumstances, CAL will not usually pay statutory royalties to beneficiaries without a grant of letters of administration.

If the deceased artist was not a CAL member, the first step is register the artist's estate with CAL and then follow the steps above.

*Viscopy:*

Viscopy can manage copyright licensing for the beneficiaries of the deceased artist's estate. 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 ([www.viscopy.org.au/licensing](http://www.viscopy.org.au/licensing)).

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

Contact Viscopy to find out if the deceased artist was registered for copyright royalties. Tollfree number: 1800 649 901.

Viscopy's policy in the situation where an artist has passed away intestate 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:

- i. the date of death;
- ii. that the artist had no will and that no one has applied for letters of administration,

- iii. details of the names, relationship to the artist and contact details for all known surviving members of the artist's family.

If the artist was not registered with Viscopy, check whether the artist was 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.

*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, it can 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 ([www.aboriginalartists.com.au/](http://www.aboriginalartists.com.au/)).

Contact Anthony Wallis at AAA by phone: 0417 230 464 or email: [anthony@aboriginalartists.com.au](mailto: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 intestate on a case by case basis. It tries to work with families to find a solution.

*Screenrights:*

Screenrights manages statutory copyright licences for certain uses of audiovisual 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 (<http://www.screenrights.org/sites/default/files/uploads/AWIP0210.pdf>).

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](mailto:memberservices@screenrights.org).

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

Screenrights currently doesn't have a fixed policy about payments in the situation where an artist has passed away intestate. In this situation you will need to discuss with the Member Relations Manager how you should proceed to arrange for payments to go to the beneficiaries.

### *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 1** is a 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 letters of administration in order to deal with these licences.

For 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.

## **5. 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 CAL and further information can also be found on the CAL website ([www.resaleroyalty.org.au/about-resale-royalty.aspx](http://www.resaleroyalty.org.au/about-resale-royalty.aspx)).

Contact CAL to find out if the deceased artist was registered for resale royalties. Tollfree number: 1800 066 844. Email: [resale@copyright.org.au](mailto:resale@copyright.org.au)

If the artist is registered with CAL and the accumulated resale royalty due is \$10,000 or less, CAL will generally be prepared to pay future resale royalties directly to the artist's beneficiaries in the following circumstances:

If the artist is registered with CAL and the accumulated statutory royalty due is \$10,000 or less, CAL will generally be prepared to pay future statutory royalties directly to the artist's beneficiaries in the following circumstances:

- a. If the artist was a member of an Indigenous art centre, a letter from the art centre is provided which confirms:
  - i. the date of death;

- ii. that the artist was a member of the art centre;
- iii. that the artist had no will and that no one has applied for letters of administration,
- iv. details of the names, relationship to the artist and contact details for all known surviving members of the artist's family.

*Document H is a suggested template letter from the art centre to CAL which deals with both statutory and resale royalties.*

- b. If the artist was not a member of an art centre, documents are provided which confirm:
  - i. the date of death;
  - ii. that the artist had no will and that no one has applied for letters of administration,
  - iii. details of the names, relationship to the artist and contact details for all known surviving members of the artist's family.
  - iv. evidence of the entitlement of the relevant family members to royalties such as evidence of advice from Arts Law or the Public Trustee.

In all other circumstances, CAL will not usually pay resale royalties to beneficiaries without a grant of letters of administration.

If the deceased artist was not a CAL member, the first step is the registration of the artist's estate with CAL. Once that is done, follow the steps above.

## **Where someone dies 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 who has died intestate. 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 drivers licence, advise the Department of Motor Registry that the artist has passed away.
- f. 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' the Australia Tax Office while alive and 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.
- g. 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.

- h. Ascertain any other debts of the artist. These must be paid before any distribution to the beneficiaries.

## SCHEDULE OF DOCUMENTS

1. [Schedule 1](#) contains a general guide of the way in which the Act will distribute an intestate estate.
2. [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 New South Wales intestacy laws.
3. **Documents A to I** 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.
  - a. [Document A](#) is a template letter to the NSW Trustee & Guardian Public Trustee requesting that it administer the estate of the deceased artist.
  - b. [Document B](#) is a suggested authority which the beneficiaries could sign nominating who will act on behalf of all of them.
  - c. [Document C](#) is a suggested template letter to send to the bank
  - d. [Document D](#) is a suggested template letter to send to the art centre.
  - e. [Document E](#) is a template letter to the Public Trustee & Guardian notifying it of the proposed distribution
  - f. [Document F](#) is a suggested form of advertisement to ensure that the correct beneficiaries have been identified
  - g. [Document G](#) is a suggested template letter to send to a gallery or dealer.
  - h. [Document H](#) is a letter from the artist's art centre to CAL seeking payment of resale and statutory royalties due to the artist.
  - i. [Document I](#) is a letter requesting the copyright licensee to pay any royalties to the beneficiaries in the future.

## SCHEDULE 1

### Summary of intestacy rules under the *Succession Act 2006 (NSW)*

| Circumstance                                                  | Distribution                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|---------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Where the deceased leaves a spouse</b>                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>1. Spouse and no children from a previous relationship</b> | <p><b>a.</b> If there is only one surviving spouse, the spouse is entitled to the whole of the estate. This is the case even if there are children from the relationship between the spouse and the deceased.</p> <p><b>b.</b> If there is more than one surviving spouse, they are entitled to share the whole of the estate in equal shares</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>2. Spouse and children from a previous relationship</b>    | <p><b>a.</b> If there is only one surviving spouse, the spouse is entitled to:</p> <ul style="list-style-type: none"> <li>i. the intestate's personal effects (household items, jewellery etc);</li> <li>ii. the statutory legacy (of around \$350,000); and</li> <li>iii. one-half of the remainder (if any) of the intestate estate.</li> </ul> <p><b>b.</b> If there is more than one surviving spouse and children who are not issue of a surviving spouse, the spouses are equally entitled to:</p> <ul style="list-style-type: none"> <li>(i) the intestate's personal effects;</li> <li>(ii) shares of the statutory legacy; and</li> <li>(iii) shares of one-half of the remainder (if any) of the estate.</li> </ul> <p><b>c.</b> The children from a previous relationship are entitled to the other half of the remainder of the estate in equal shares</p> |
| <b>Where the deceased leaves no surviving spouse</b>          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>3. Children</b>                                            | <p><b>a.</b> If the intestate had only one child, the child is entitled to the whole estate.</p> <p><b>b.</b> If the intestate had two or more surviving children, the children take the whole estate in equal shares.</p> <p><b>c.</b> If a intestate'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> <p><b>d.</b> If an intestate's grandchild would have been entitled to share in the estate under <b>3c</b>, but has not survived and leaves any surviving children, then those great-grandchildren of the deceased are entitled</p>                                                                                                                                     |

|                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                              | to the share that the grandchild would have had, in equal shares (and so forth until the entitlement is exhausted).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>4. Parent or parents (but no children)</b>                                                                | Parent or parents are entitled to the whole estate (if both survive, in equal shares).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>5. Brothers and/or sisters (but no children or parents,)</b>                                              | <ul style="list-style-type: none"> <li>a. The intestate's surviving brothers and sisters are entitled to the whole estate, in equal shares if there are more than one.</li> <li>b. If a intestate's sibling has not survived, but leaves a surviving child or children of that deceased sibling, 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.</li> <li>c. If an intestate's nephew or niece would have been entitled to a share in the estate under <b>5b</b> 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).</li> </ul> |
| <b>6. Grandparents (but no children, parents, or siblings)</b>                                               | Grandparent or grandparents are entitled to the whole estate (if more than one in equal shares).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>7. Aunts or uncles (but no children, parents, siblings or grandparents)</b>                               | <ul style="list-style-type: none"> <li>a. The intestate's aunts or uncles are entitled to the whole estate (if more than one, in equal shares).</li> <li>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.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>8. First cousins (but no children, parents, siblings, grandparents, aunts, uncles, nephews or nieces)</b> | First cousins are entitled to a share of the estate under <b>7b</b> (in equal shares if there is more than one cousin).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>9. No children, parents, siblings, grandparents, aunts, uncles, nephews, nieces or first cousins.</b>     | 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 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 have 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 NSW Trustee &amp; Guardian]

*[Date]**[please insert your name and address]*

## NSW Trustee &amp; Guardian

*[Please insert address of nearest NSW Trustee & Guardian Office, or choose from the following:*

GPO Box 7, Sydney NSW 2001; Shops 10-11 Beardy Street, (cnr Marsh Street), Armidale NSW 2350; 58 Kitchener Parade, Bankstown NSW 2200; 230 Howick Street, Bathurst NSW 2795; 1st Floor, 30 Campbell Street, Blacktown NSW 2148; Court House, Argent Street, Broken Hill NSW 2880; Suite 3, Level 2, 74 Burwood Road, Burwood NSW 2134; 7th Floor, 13 Spring Street, Chatswood NSW 2067; Suite 1, 874 Pittwater Road, Dee Why NSW 2099; 1 Watt Street, Gosford NSW 2250; Level 5, Suite 2, 12 Butler Road, Hurstville NSW 2220; 6 Zadoc Street, Lismore NSW 2480; 112 Moore Street, Liverpool NSW 2170; Shop 3/629, The Kingsway, Miranda NSW 2228; 158 King Street (Cnr Brown St), Newcastle NSW 2300; 3rd Floor, 60 Macquarie Street, Parramatta NSW 2150; Shop 2, Centreport, 114 William Street, Port Macquarie NSW 2444; 19 O'Connell Street, Sydney NSW 2000; 59 Market Street, Wollongong NSW 2500]

Dear Sir

*[Name of deceased]* (deceased)

I am writing to inform you that the above named has died and I **enclose** a certified copy of *[his/her]* death certificate.

The deceased passed away without a will. To the best of my knowledge, 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 assets in the deceased's estate are:

1. The moneys in the deceased's bank account with *[name of bank]*, numbered *[account number]*.
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]*

To the best of my knowledge, no person has, or intends, to apply for letters of administration. I request that the NSW Trustee & Guardian administer the Estate.

Please let me know if the NSW Trustee & Guardian 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 *[his/her]* death certificate.

We authorise *[name of person to act on behalf of beneficiaries]* of *[person's address]* to act on all our behalf 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 has died and I **enclose** a certified copy of *[his/her]* 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:

| <b>Name of family member</b>   | <b>Relationship to deceased</b>   | <b>Address</b>   |
|--------------------------------|-----------------------------------|------------------|
| <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 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. 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**

| <b>Name</b> | <b>Signature</b> |
|-------------|------------------|
|-------------|------------------|

*[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 has died and I **enclose** a certified copy of *[his/her]* 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, *[Name of arts centre]*.

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.

[If you have concerns about releasing the money and paintings to me, you may like to notify the Public Trustee of the proposed distribution so that it can intervene if it considers it appropriate to do so, or 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 *[To be provided if possible. This section may otherwise be deleted]***

| <b>Name</b> | <b>Signature</b> |
|-------------|------------------|
|-------------|------------------|

*[Other beneficiaries to provide name and sign letter]*

**DOCUMENT E**

[Letter to NSW Trustee & Guardian re proposed distribution]

*[Date]*

*[Insert your name and address]*

**NSW Trustee & Guardian**

*[Please insert address of nearest NSW Trustee & Guardian Office, or choose from the following:*

**GPO Box 7, Sydney NSW 2001; Shops 10-11 Beardy Street, (cnr Marsh Street), Armidale NSW 2350; 58 Kitchener Parade, Bankstown NSW 2200; 230 Howick Street, Bathurst NSW 2795; 1st Floor, 30 Campbell Street, Blacktown NSW 2148; Court House, Argent Street, Broken Hill NSW 2880; Suite 3, Level 2, 74 Burwood Road, Burwood NSW 2134; 7th Floor, 13 Spring Street, Chatswood NSW 2067; Suite 1, 874 Pittwater Road, Dee Why NSW 2099; 1 Watt Street, Gosford NSW 2250; Level 5, Suite 2, 12 Butler Road, Hurstville NSW 2220; 6 Zadoc Street, Lismore NSW 2480; 112 Moore Street, Liverpool NSW 2170; Shop 3/629, The Kingsway, Miranda NSW 2228; 158 King Street (Cnr Brown St), Newcastle NSW 2300; 3rd Floor, 60 Macquarie Street, Parramatta NSW 2150; Shop 2, Centreport, 114 William Street, Port Macquarie NSW 2444; 19 O'Connell Street, Sydney NSW 2000; 59 Market Street, Wollongong NSW 2500]**

Dear Sir

*[Name of deceased]* (deceased)

We have received instructions from each of the next of kin of *[insert full name of deceased]*, the deceased.

**Background regarding the estate**

We are instructed that the deceased:

- a. died on *[date]*;
- b. died without having made a will;
- c. was survived by the following next of kin:
  1. *[List names of beneficiaries and relationship to deceased.]*
  - 2.
  - 3.
  - 4.
- d. did not have any liabilities and all funeral expenses have been met by the beneficiaries;

e. did not have any assets of any significance, other than the following property and funds held by **[name of arts centre]**:

- A. **[List any funds held by arts centre]**
- B. **List any paintings or artworks held by arts centre]**
- C. **List any copyright licences pursuant to which money is paid to the art centre for the artist**
- D. **List any other assets held by arts centre]**

### Entitlements in the estate

We understand that those entitled to an interest in the estate are the following beneficiaries and they are entitled to equal shares of the estate:

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

### Proposed distribution in the estate

The beneficiaries have instructed us to sell the paintings in our possession and distribute the proceeds (after deduction of our commission) equally between them. The Art Centre's agreement with the deceased entitles it to sell any paintings created by the deceased with the assistance of the Art Centre and retain a **[percent]** commission.

For your information, we enclose a copy of an 'Authority, Waiver and Indemnity Form' signed by the beneficiaries of the estate as well as an 'Authority to Act on behalf of All Beneficiaries' which authorises **[Name of person acting on behalf of beneficiaries]** to act on behalf of the beneficiaries in relation to the administration of the estate.

We understand that there are risks associated with making a distribution in the estate without sighting a copy of a Grant of Letters of Administration.

The purpose of this letter is to notify you prior to making any distribution of funds in the estate in case you regard it as appropriate to intervene before such a distribution takes place.

If we do not hear from you within 28 days, we assume that you are content for us to proceed as indicated in this letter.

Yours sincerely

*[Name of person/arts centre]*

## DOCUMENT F

**[Advertisement to identify beneficiaries]**

RE: **[name of deceased]** (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 *Succession Act 2006* (NSW).

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 G**      **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 has died and I **enclose** a certified copy of *[his/her]* 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]*

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:

- a. sell all artwork and paintings of the deceased in your possession or control on the same commission and payment terms that applied to sales of the deceased's paintings and artwork during *[his/her]* lifetime; and
- b. transfer all property held by you and/or release all funds held by you to the above listed beneficiaries without requiring a Grant of 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 *Succession Act 2006* (NSW). 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 notify the NSW Trustee & Guardian of the proposed distribution so that it can intervene if it considers it appropriate to do so, or 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 names 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](mailto: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 passed away without a will. 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.

We have made enquiries with the deceased's family and understand that it is not likely that any application for letters of administration will be lodged.

The deceased's surviving next of kin are:

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

In the circumstances, could you please register the family members listed above as the recipients of any resale royalties and statutory royalties due to the deceased artist. I attach photocopies of Identification evidence (drivers licences and/or Centrelink cards) for each family member as well as bank account details.

Please let me know if you have any questions.

Yours sincerely

Manager, Art Centre

**DOCUMENT I** [Letter to licensee re royalties]

[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 has died and I **enclose** a certified copy of [his/her] **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]

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 *Succession Act 2006* (NSW). 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 names and sign letter]

## Disclaimer

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

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