

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

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 Tasmania, the laws of intestacy are set out in the *Intestacy Act 2010* (Tas) (the **Act**). The laws that otherwise govern succession and the distribution of estates are set out in the *Administration and Probate Act 1935* (Tas). The rules in the Act apply to the estate of any person who was living in Tasmania at the time of their death and did not leave a will. These rules will also apply to any property that was not covered by the deceased person's will if they did leave one.

Different rules may apply in relation to property that is located outside Tasmania or to property in Tasmania 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 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 Tasmania 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 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 surviving family members as the ones entitled to the artist’s estate after he or she passes away¹. Those family members are called the ‘**beneficiaries**’ or the ‘**eligible relatives**’.

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.

¹ Section 8 of the Act provides that if any family member passes away within 30 days of the artist, the intestacy rules operate as if that person did not survive the deceased.

The *Intestacy 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:

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

The deceased's **spouse** is entitled to the whole estate if the artist has no children. A spouse means a person who:

- was married to the deceased person immediately before their death, meaning they met the formalities of a legal marriage set out in the *Marriage Act 1961 (Cth)*; or
- was a party to a personal relationship with the deceased person that had been registered on the Tasmanian Relationships Register; or
- immediately before the deceased's death, was a party to a significant relationship with the deceased (whether or not registered) that:
 - had been in existence for a continuous period of at least 2 years; or
 - had resulted in the birth of a child.

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 '**registered personal relationship**²' means either:

- a significant relationship (a relationship between two adult persons who are a couple and who are not married to one another or related by family); or
- a caring relationship (a relationship other than a marriage or significant relationship) which is a relationship between two adult persons whether or not related by family, one or each of whom provides the other with domestic support and personal care.

The meaning of 'couple' for the purposes of a '**significant relationship**' involves consideration of a number of circumstances including 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 but the extent to which they are present or absent gives an overall indication of whether there is a couple relationship. If there has been a marriage under traditional Indigenous law, the couple may still be recognized as being in a significant relationship.

If the deceased artist is survived by a spouse and also by children, grandchildren or great grandchildren, then different rules apply depending on whether the children (grandchildren or great grandchildren) are also those of the spouse:

- If the children are also those of the surviving spouse, the spouse is entitled to the whole of the estate.
- If the children include children are **not** those of the spouse, the spouse is entitled to:

² *Relationships Act 2003 (Tas) Part 2*

- the deceased's personal effects; and
- a CPI adjusted statutory legacy which was \$350,000 as at 1 January 2012; and
- one-half of the remainder (if any) of the deceased's estate.

The remaining half (after the statutory legacy) is divided among the children.

When the deceased artist has more than one spouse or partner who is still alive?

The Act specifically contemplates that the deceased may have, at the time of their death, more than one spouse (for example, both a wife or husband and a partner, or two or more partners).³ The Act provides that where the deceased had more than one spouse at the time of death, each spouse shall be entitled to share in the estate.

Where the deceased had more than one spouse at the time of death and all surviving children are children of one or more of the surviving spouses, the spouses are entitled to the whole of the estate.

Where the deceased had more than one spouse at the time of death as well as children who include children who are **not** children of a surviving spouse:

- the spouses are entitled to share in the deceased's personal effects; and
- each spouse is entitled to a statutory legacy (\$350,000 as at 1 January 2012); and
- the spouses are entitled to share one-half of the remainder (if any) of the intestate estate and the rest is divided equally among the children.

The spouses will share their entitlement in one of three ways⁴:

- 1) in accordance with a written "distribution agreement";
- 2) in accordance with a "distribution order" made by the Court; or
- 3) equally if they have not made an agreement or obtained a court order.

When there is no surviving spouse?

If the artist passes away and is not survived by a spouse or partner but there are surviving children, the children are entitled to the whole of the intestate estate as follows:

- adopted children are considered to be the children of their adopted parents, not their natural parents;
- a step child is not recognised for the purposes of intestacy and receives nothing;
- 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

³ *Intestacy Act* Part 2 Division 3

⁴ *Intestacy Act* section 26

- to the share of the estate that would have gone to their deceased parent (in equal shares);
- if a 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).

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 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.

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

Where the deceased artist has no spouse or any direct descendants or '**issue**' (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, the deceased's surviving **brothers and sisters** (siblings) are entitled to the whole estate (in equal shares). If a sibling of the deceased has died, leaving any surviving children, then those nephews/nieces of the deceased are entitled to the share of the estate that would have gone to their parent.

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

Where the deceased has no spouse, direct descendants (e.g. children and grandchildren), parents, siblings, nephews/nieces or grandparents, the deceased's parent's siblings (the deceased's **aunts and uncles**) are entitled to the whole of the intestate 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.

The intestacy rules do not provide for the deceased's estate to be distributed to anyone more remote than the first cousins of the deceased.

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 State of Tasmania⁵. 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.⁶

More details about the rules for distributing an intestate estate are set out in Parts 2 and 3 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.

However, in Tasmania, Part 4 of the Act contains express provisions that allow Aboriginal families to apply to the Court for orders allowing an intestate estate of an Aboriginal person in Tasmania to occur in a different way to that set out in Parts 2 and 3 of the Act. An application can be made either by the personal representative of an Indigenous estate, or a person claiming to be entitled to a share in an intestate estate under the laws, customs, traditions and practices of the Indigenous community or group to which the deceased artist belonged.

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.

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 beneficiaries.

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 sharing out the assets to the appropriate beneficiaries according to the rules set out above.

⁵ *Intestacy Act* section 37

⁶ Section 36A of the *Public Trustee Act 1930* (Tas) provides a time limit of 21 years for making claims for money paid improperly to the State (for example where the deceased artist did have next of kin who was not known at the time the estate was declared *bona vacanti*).

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.

It will be important for the assets of the artist's estate to be valued. This is because the intestacy rules provide in some cases for assets to be distributed in a particular way depending on the value. This occurs in the case where there is a surviving spouse and children. Valuation may be difficult for paintings and the related copyright and resale royalty assets. It is important to remember that it is the asset's value at the date of the deceased's passing which is relevant. If that value is indeterminable (for example in the case of unlicensed copyright), the asset still needs to be considered in order to ensure that the rights in the asset pass to the appropriate family member.

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 can be asked to manage the estate.

Option 2: A beneficiary or other person can apply to the Supreme Court of Tasmania to be appointed as the formal administrator of the estate. This is called a '**Grant of Letters of Administration**'. The family may prefer that a family member or trusted friend carry out those responsibilities rather than the Public Trustee. A Grant of Administration is necessary where businesses or institutions which hold the deceased's assets are not 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 Tasmanian intestacy laws.

Option 1 – Asking the Public Trustee to manage the estate

Intestate estates in Tasmania are generally administered by the Public Trustee under Section 17 of the *Public Trustee Act 1930* (Tas). Where there is no one who is able or willing to apply for Letters of Administration, the beneficiaries can approach the Public Trustee and ask it to administer the estate.

[Document A](#) is a template letter to the Public Trustee requesting that it administer the estate of the deceased artist. Alternatively, the beneficiaries may contact the Public Trustee by phone on (03) 6233 7598.

The Public Trustee 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.

Like an individual applicant, the Public Trustee must apply to the Court to be appointed as an administrator of the estate however it may be able to do so in a streamlined manner which involves a quicker process.

When a estate is administered by the Public Trustee, a scaled fee is charged on assets held in the sole name of the deceased that are either realised or transferred to a beneficiary. The scale is as follows:

- On the first \$100,000 or part: 4.4%
- On the next \$200,000 or part: 3.3%
- On the next \$200,000 or part: 2.2%
- On amounts above \$500,000: 1.1%

The fee will be reduced:

- if the deceased owned assets (e.g. house or land) as a joint tenant, in which case no fee is charged at all
- if the deceased had solely-owned assets which are classed as 'matrimonial assets' and which are transferred to a surviving spouse (e.g. the family home, motor vehicle, household effects and furniture), in which case the fee charged on these assets is only 2.2%.

In addition to its standard charges, the Public Trustee 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.

In most cases, administration of an intestate estate can be completed within 6-12 months. However, more complicated cases can sometimes take years to be complete.

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 \$4,400, plus disbursements. The Court filing fees would be \$270.

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.

Once the Public Trustee has received the Grant of Letters of Administration, it takes legal responsibility for ensuring the estate is administered properly. The Public Trustee becomes 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 Public Trustee 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 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.

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 (also known as the "**personal representative**") 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 Tasmanian 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 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 make a Grant of Letters of Administration, 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 Tasmania. SCHEDULE 3 to this Kit contains general information about proving family relationships for the purposes of the intestacy rules.

[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.

Prior to making the application for a Grant of Letters of Administration, an advertisement must be published in the Gazette and in a newspaper that notifies the intention of the applicant to apply for a Grant of Letters of Administration. It must be published for 14 days prior to any originating motion being filed. The standard form of advertisement is available from the Court's website.⁷

Once the 14 day period following the publishing of the notice of application has passed, the forms that must usually be filed at the Court's Registry for the purposes of the application for a Grant of Letters of Administration in the case of intestacy are as follows:

- Form 1 - Notice of Intention
- Form 3A - Short form Affidavit (this must list an inventory of the deceased's Assets and Liabilities)
- Form 4 - Administration Bond
- Form 22 - Administrator's Oath
- Proof of Death (certified copy of the death registration of the deceased)

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 are filing fees payable in respect of a scale corresponding to the value of the estate which, as at 1 May 2012, were as follows:

Estate value less than \$50,000:	\$110.00
Estate value between \$50,000-\$100,000:	\$270.00
Estate value more than \$100,000:	\$430.00

Fees are subject to change and for current fees payable consult the website or telephone the Court. The Registrar of the Supreme Court has the power to waive this filing fee if financial hardship can be demonstrated. The application form for a waiver is on the Supreme Court website

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. 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.

⁷ Rule 26 of the *Probate Rules 1936* (Tas)

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. 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 Letters of Administration. Requirements vary from one bank or society to another. 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.

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 you sign a statutory declaration (identifying the deceased, the relevant asset and the beneficiary).

[Document C](#) is a suggested template letter and statutory declaration 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 also request the beneficiaries or their representative to sign an "indemnity" document, which can mean that you are liable for any losses the bank suffers as a result of the administration of the estate. If the bank requests that you sign such a document, you should seek legal advice. The Arts Law Centre can provide you 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.

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 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.

[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 a Grant of Letters of Administration has 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 a Grant of 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.

- Notifying the Public Trustee of the proposed distribution so that it can intervene if it considers it appropriate to do so.

[Document E](#) is a template letter for the art centre (or a beneficiary) to send to the Public Trustee.

- 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.

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 G](#) 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 H](#) 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

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 that:
 - (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

[Document I](#) 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.

- 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 to the entitlement of the relevant family members to royalties such as evidence of advice from Arts Law or the Public Trustee.

[Document J](#) 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.

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

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.

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

- 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 beneficiaries can contact Viscopy on its tollfree number: 1800 649 901.

Viscopy's policy in the situation where an artist has passed away 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 no will,
- details of the names, contact details and bank account details for the next of kin under the intestacy rules.

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 no will,
- details of the names, contact details and bank account details for the next of kin under the intestacy rules.

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' Artistic Works Coordinator to find out if the deceased artist was registered for statutory royalties. Telephone 02 9904 0133 or email art@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 Letters of 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 beneficiaries.

[Document K](#) 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 L](#) 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 Department of Infrastructure, Energy and Resources that the artist has passed away.
- h. What did the artist own at the date of passing away?
 - Paintings
 - Car
 - Bank account
 - House or property
 - Personal belongings
 - 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 TASMANIAN 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 Tasmanian intestacy rules.

[SCHEDULE 3](#) contains general information about proving family relationships for the purposes of the intestacy rules.

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 Tasmanian Public Trustee requesting that it administer the estate of the deceased artist.

[Document B](#) is a suggested authority that 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 a suggested template letter to send to the Public Trustee.

[Document F](#) is suggested form of advertisement that the art centre can use to try to ensure that the correct beneficiaries have been identified.

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

[Document I](#) is a letter from the artist's art centre to Copyright Agency requesting registration of the estate for resale and statutory royalties.

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

[Document K](#) 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 L](#) 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 *Intestacy Act 2010 (Tas)*

Circumstance	Distribution
<i>Where the deceased leaves a spouse</i>	
1. Spouse and no children	<ul style="list-style-type: none"> a. If there is only one surviving spouse, the spouse is entitled to the whole of the estate. b. If there is more than one surviving spouse, each spouse shall be entitled to share in the estate: <ul style="list-style-type: none"> 1. in accordance with a written "distribution agreement"; 2. in accordance with a Court "distribution order"; or 3. a personal representative can make an equal division of the property between spouses.
2. Spouse and children	<ul style="list-style-type: none"> a. If there is only one surviving spouse with children of the surviving spouse, the spouse is entitled to the whole of the estate. b. If there is more than one surviving spouse, and all surviving children are children of one or more of the surviving spouses, the spouses are entitled to the whole of the intestate in shares according to the rule describe in 1b. c. If there is a surviving spouse (or several surviving spouses) with children that are not of the surviving spouse(s), the spouse(s) is/are entitled to: <ul style="list-style-type: none"> o the deceased's personal effects; and o a statutory legacy; and o one-half of the remainder (if any) of the deceased's estate. <p style="margin-left: 40px;">The child(ren) are entitled to the remainder of the estate (in equal shares).</p>
<i>Where the deceased leaves no surviving spouse</i>	
3. Children	<ul style="list-style-type: none"> a. If the intestate had only one child, the child is entitled to the whole estate. b. If the intestate had two or more surviving children, the children take the whole estate in equal shares. c. If an 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>d. If an intestate's grandchild would have been entitled to share in the estate under 3c, but has not survived and leaves any surviving children, then those great-grandchildren of the deceased are entitled to the share that the grandchild would have had, in equal shares (and so forth until the entitlement is exhausted).</p>
4. Parent or parents (but no children)	Parent or parents are entitled to the whole estate (if both survive, in equal shares).
5. Brothers and/or sisters (but no children or parents)	<p>a. The intestate's surviving brothers and sisters are entitled to the whole estate, in equal shares if there are more than one.</p> <p>b. If an 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.</p>
6. Grandparents (but no children, parents, siblings or nieces/nephews)	Grandparent or grandparents are entitled to the whole estate (if more than one in equal shares).
7. Aunts and/or uncles (but no children, parents, siblings, nieces/nephews or grandparents)	<p>a. The intestate's deceased parent's siblings are entitled to the whole estate (in equal shares).</p> <p>b. If an intestate's deceased parent's sibling has not survived, but leaves a surviving child or children of that deceased parent's 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.</p>
8. No children, parents, siblings, nephews/nieces or grandparents.	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 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?

SCHEDULE 3

Proving identity and familial relationships

1. If making an application for a Grant of Letters of Administration, proof of your identity will be required.
2. If you do not have a birth certificate, examples of other forms of identity that can prove your identity include:
 - Drivers licence
 - ATM, credit or debit card
 - Bank account statement
 - Birth certificate of your child showing you named as a parent
 - Marriage certificate
 - Passport
 - Medicare card
 - Current tenancy agreement or lease in your name
 - Motor vehicle registration
 - Rates or utility notices issued in your name
 - Employment records such as a report or reference from an employer in your name
3. In order to show a beneficiary's relationship with the deceased, the simplest way is to provide a chain of birth certificates.
4. If birth certificates are not available to show the familial relationship, in some cases a genealogical report may need to be prepared which identifies the beneficiaries of the estate. A genealogist preparing a report will be assisted by providing whatever information you can including, for example, a family tree.

DOCUMENT A

[Letter to the Public Trustee]

[Date]

[please insert your name and address]

The Public Trustee

[Please insert address of nearest Public Trustee office:

116 Murray Street Hobart TAS 7000; OR Ground Floor, 33 George Street
 Launceston TAS 7250; OR 1st Floor, Bass House Cnr Edward and Best Streets Devonport
 TAS 7310; OR Columnar Court Complex, 22 Wilmot Street Burnie TAS 7320]

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 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 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]

I request that the Public Trustee administer the Estate.

[If Document B applicable: "Please find **enclosed** a signed authority from the other beneficiaries, which authorises me to make this request on their behalf.]

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

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 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/Madam

[Name of deceased] (deceased)

I am writing to inform you that the above named has died and 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
[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 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 cheque 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 *Intestacy Act 2010* (Tas). 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.

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 has passed away and 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]*

[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 assets, including to receive assets from the estate of the deceased.]

[OPTIONAL: 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

Name	Signature
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[Other beneficiaries to provide name and sign letter]

DOCUMENT E**[Letter to the Public Trustee re proposed distribution]****[Date]****[Insert Art Centre name and address]****The Public Trustee****[Please insert address of nearest Public Trustee office:****116 Murray Street Hobart TAS 7000; OR Ground Floor, 33 George Street
Launceston TAS 7250; OR 1st Floor, Bass House Cnr Edward and Best Streets
Devonport TAS 7310; OR Columnar Court Complex, 22 Wilmot Street Burnie TAS
7320]**

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:

1. died on **[date]**;
2. died without having made a will;
3. was survived by the following next of kin:
 - a) **[List names of beneficiaries and relationship to deceased]**
4. did not have any liabilities and all funeral expenses have been met by the beneficiaries;
5. did not have any assets of any significance, other than the property and funds held by:
 - a) **[name of arts centre]** which holds the following property/funds of the estate: **[List funds/assets held by arts centre]**
 - b) copyright and resale royalty entitlements
 - c) **[other]**

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
[Name of family member]	[Relationship to deceased]	[Address]
[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>

Proposed distribution in the estate

The beneficiaries have instructed us to sell the paintings in our possession and distribute the funds equally between them. 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 *Intestacy Act (2010)* (Tas).

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 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 *Intestacy Act (2010)* (Tas). 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.

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 H 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 *Intestacy Act 2010* (Tas). 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.] 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.

[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 I 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

Names and Signatures of Beneficiaries

Name

Signature

[Beneficiaries to provide name and sign letter]

DOCUMENT J Letter to Copyright Agency from beneficiary*[Date]*

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
- 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
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[Other beneficiaries to provide name and sign letter]

State of Tasmania

Statutory Declaration

I, [insert name of declarant] of [address of declarant], [occupation], do solemnly and sincerely declare that:

4 On or around [date], [name of artist] (**deceased**) passed away.

5 I am the [relationship to deceased] of the deceased.

6 The deceased passed away without a will.

7 To my knowledge, the only moneys in the deceased's estate are:

7.1 The moneys in the deceased's bank account with you, numbered [please insert number]..

7.2 Moneys and paintings of an unknown value held by [Name of arts centre], an art centre where the deceased was a member.

7.3 [Other]

8 To the best of my knowledge, in accordance with the intestacy rules set out in the *Intestacy Act 2010* (Tas), the beneficiaries of the deceased's estate are:

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

I acknowledge that this declaration is true and correct, and I make it with the understanding and belief that a person who makes a false declaration is liable to the penalties of perjury.

Declared at [address] on [day, month, year] before me:

.....
Signature of authorised witness

.....
Signature of declarant

.....
Name of witness (print)

.....
Qualification of witness

DOCUMENT K 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 L**[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 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 *Intestacy Act 2010* (Tas). 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
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[Other beneficiaries to provide name and sign letter]

Disclaimer

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