

## WILLS KIT - WHEN AN ABORIGINAL OR TORRES STRAITS ISLANDER ARTIST PASSES AWAY LEAVING A WILL IN NEW SOUTH WALES

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### 1. What is a "Will"?

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

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

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

In this information sheet, we focus on the process that is followed when an Aboriginal or Torres Strait Island visual artist passes away after having made a Will.

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

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

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

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

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

### 3. Who are the 'Beneficiaries'?

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

If the Willmaker married after the date on which he or she made the Will then the Will may be invalid either completely or partly. In that case, all or part of the estate will be distributed according to the intestacy laws and NOT according to the Will. If you think this may be the case, you should get legal advice.

Certain family members including the deceased artist's spouse or de facto partner, a child or grandchild have a right to challenge the way the Will states the estate should be distributed. They may have been left out of the Will or believe that they should receive a larger share of the estate. The executor has to deal with any such claims, which generally must be made within 12 months of the date the artist passed away. The executor will generally need legal assistance if that occurs.

### 4. Who is the 'Executor'?

Most wills nominate one person to be the 'trustee' or 'executor' of the Will. It is usually a trusted family member or friend but can be a lawyer or the NSW Trustee and Guardian. The [NSW Trustee and Guardian](#) is an agency of the New South Wales Australian Attorney General's Department responsible for providing services in making wills and managing deceased estates, and financial management services for people with decision-making disabilities.

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

Some Wills don't appoint any executor or the executor may already have passed away. (Sometimes a Will is made many years before the artist actually passes away.) In that case, a family member or other person can apply to be appointed as the executor or the NSW Trustee and Guardian can be asked to administer the estate in accordance with the terms of the Will.

The executor has responsibility for the "**administration**" of the Will and the deceased's estate. The administration of the deceased's estate will involve collecting the deceased's assets, establishing what debts and tax the estate owes, paying them, and then distributing the assets to the beneficiaries named in the Will.

The NSW Trustee and Guardian website has a useful brochure entitled '[A Guide to Executorship and Probate](#)' which contains a useful table showing the process which is followed by an executor to administer a deceased estate.

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

The executor is personally responsible paying the deceased person's debts and distributing the remaining assets in accordance with the will. Claims may be made against an executor who ignores the will or distributes assets before paying all the debts.

The Tax Office can hold the executor responsible for any income tax that the estate owes and which wasn't paid before the executor distributed final shares in the estate to the beneficiaries. For this reason, an executor is not obliged to take on that role if he or she does not want that role or does think they can manage it.

## 5. Should the executor have a 'reading' of the Will?

One of the executor's first jobs is to find and look after the original Will. If it was not among the papers of the deceased, it may have been held by a solicitor or by the artist's art centre. It must be handed to the executor. In New South Wales, the Will may have been deposited with the Supreme Court. If that is the case, the executor can write to the Supreme Court Registrar to obtain the Will.

The executor must read the Will carefully and understand how the artist wanted his or her estate to be distributed. It is important to identify which family members are entitled to the deceased artist's assets according to the Will (ie the beneficiaries). If you don't understand the Will, you may need to get legal advice. If the deceased person was an artist, you can contact the Arts Law Centre for help.

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

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

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

- a. Any person mentioned in the Will (or any earlier Will) such as a beneficiary;
- b. Any spouse, de facto partner, parent, child or grandchild of the person who made the Will;
- c. Any parent or guardian of a person mentioned in a Will who is a minor;

- d. Any person who would be entitled to share in the estate if the Willmaker had died intestate (without a will); and
- e. Any person to whom the willmaker owed money (a creditor).

## 6. Funeral Arrangements

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

The executor should consider that a very expensive funeral will mean that there is less money in the estate for the beneficiaries. The funeral should not cost more than the estate can afford. The funeral expenses before other any debtors are paid and before distributing any money to the family. If the art centre is holding money for the artist from art sales, it may release money from the artist's account for the funeral.

If there is not enough money to cover the funeral expenses the family can apply to the NSW Aboriginal Land Council for a [Funeral Assistance Grant](#) of up to \$1000.

## 7. Carrying out the instructions in the Will

There are three options for administering the estate:

- Option 1:** The NSW Trustee and Guardian (known as the NSW Public Trustee up until 1 July 2009) can manage the estate. The Will may nominate the NSW Trustee and Guardian (or Public Trustee) as executor. However the beneficiaries can also ask the NSW Trustee and Guardian to manage the estate even if the Will appointed someone else. This is usually appropriate if the Will does not name an executor or the executor who is named in the Will has also passed away or cannot take on the job of executor AND no one in the family of the deceased is prepared to take on that responsibility.
- Option 2:** The executor named in the Will can apply to the Supreme Court for an order confirming his or her authority to manage the estate. This is called a '**Grant of Probate**'. Where there is no executor, a family member or other person can apply to the Supreme Court for permission to manage the estate. This is called a '**Grant of Administration**' and is appropriate if the Will does not name an executor or the executor who is named in the Will has also passed away or cannot take on the job of executor. The family may prefer that a family member or trusted friend carry out those responsibilities rather than the NSW Trustee and Guardian. A Grant of Probate or Administration is necessary where businesses or institutions which hold the deceased's assets are not be prepared to release them to the executor unless he or she has such a Court order confirming his or her authority.
- Option 3:** There is no statutory requirement to obtain probate. The executor named in the Will can try to manage the estate and distribute all the assets in accordance with the instructions in the Will without a Grant of Probate or Administration. This may be possible for smaller estates where there is no real property (land) involved.

### Option 1 – Asking the NSW Trustee and Guardian to manage the estate

If the Will nominates the NSW Trustee and Guardian as the executor, the NSW Trustee and Guardian must be notified that the artist has passed away.

Where there is no executor named in the Will, or that person does not want to, or cannot take on the job of executor, the named executor or the beneficiaries can also approach the NSW Trustee and Guardian and ask it to administer the estate (provided the Will does not expressly prohibit this). The NSW Trustee and Guardian is not obliged to administer the estate (even if it was named as the executor by the Will) but (unlike in some other States) cannot refuse purely on the basis of the small size of the estate.

The *Probate and Administration Act 1898 (NSW)* sets out the procedure for appointing the NSW Trustee and Guardian (or another trustee company) as the executor. It includes giving 28 days' notice to any co-executors and all the beneficiaries.

**Document A** is a template letter to the NSW Trustee and Guardian requesting that it administer the estate of the deceased artist in accordance with the terms of the Will.

NSW Trustee and Guardian has a network of branches throughout metropolitan Sydney and regional areas across NSW. Additionally, where a NSW Trustee and Guardian branch is not accessible, the Registrar of the Local Court acts as its agent for trustee services. For a full list of branches go to the [NSW Trustee and Guardian website](#).

The procedure that the NSW Trustee and Guardian must follow to administer an estate (and therefore also the speed of the process and costs involved) can vary, depending on the size of the estate:

- Where the gross value of the estate (not counting any debts or taxes owed) is **more than \$100,000**, the NSW Trustee and Guardian must apply to the Supreme Court for an order that it be appointed as administrator of the estate. This is called an 'Order to Administer'.
- Where the gross value of the estate is **\$100,000 or less**, the NSW Trustee and Guardian can simply file an 'Election to Administer' the estate with the Supreme Court. This is quicker and cheaper than an application for an Order to Administer.
- Where the net value (taking into account any debts or taxes owed) of the estate is **\$20,000 or less**, the NSW Trustee and Guardian is able to pay any debts of the deceased and share out the remaining assets among the beneficiaries named in the Will without having either to seek an Order to Administer or to file an Election to Administer. This eliminates the costs and time associated with the Court process, such as court filing fees.

Regardless of which procedure is used, the NSW Trustee and Guardian will charge its own fees that must be paid by the estate before it is distributed to the beneficiaries. The NSW Trustee and Guardian's total charges will vary, depending on the size and complexity of the estate. As at 1 January 2016, it charges a commission based on the gross value of all assets owned solely by the deceased artist (excluding the value of any house in joint names or any joint bank account). The fee is a sliding scale starting at 4.4% for estates valued up to \$100,000 decreasing to 1.1% on estates valued at over \$300,000. The minimum charge is \$200. There are additional charges where a tax return has to be filed or disputes to be resolved. In addition to its standard charges, the NSW Trustee and Guardian may also incur certain additional costs that must be paid out of the estate (known as disbursements), such as court filing costs, or the cost of obtaining a Death Certificate. An example of the sort of charges the NSW Trustee and Guardian might incur in administering an estate is set out below.

#### Example:

An Indigenous artist has passed away. Her Will leaves everything to be divided equally among 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.

If there were no difficulties or complexities encountered, the NSW Trustee and Guardian's standard charges for administering such an estate would probably be at least \$4,400, plus disbursements.

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

It takes a minimum of 6 months to complete the administration of an estate in New South Wales. However, more complicated cases can sometimes take years to be completed.

Once the NSW Trustee and Guardian is appointed, it takes legal responsibility for ensuring the estate is administered properly. The NSW Trustee and Guardian will pay any debts and will be responsible for arranging the sale of any artworks and collecting the proceeds of sale. It will contact each of the beneficiaries and arrange to pay them their share of the estate.

Where the artist had an agreement with the art centre under which the art centre was entitled to sell and retain commission on works painted at the art centre, the NSW Trustee and Guardian may be obligated to continue those arrangements put into place during the artist's lifetime. Even where there is no such arrangement, the NSW Trustee and Guardian 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 NSW Trustee and Guardian's role generally, see the [NSW Trustee and Guardian's website](#).

### Option 2: The executor or a family member can apply to the Supreme Court to be appointed as the formal administrator of the estate

Where an estate contains substantial assets, the executor named in the Will may need to apply to the Supreme Court for a 'Grant of Probate' or formal confirmation of his or her authority to manage the estate. The Grant of Probate is a document that can be shown to the persons with whom the executor is dealing as evidence that they are dealing with the correct person.

An important advantage of obtaining a Grant of Probate from the Supreme Court is that the executor can obtain some protection against claims by creditors or family members who disagree with the way that the Will distributes the estate<sup>1</sup>. The executor will need to wait at least 6 months from the date on which the artist passed away before distributing the assets to the beneficiaries and must not have been aware of those claims at the time of making the final distribution. The executor must also place an advertisement in a local newspaper at least 30 days before he or she makes that final distribution.



If the executor named in the Will does NOT apply for probate within three months of the artist's passing, another person interested in the estate can make an application for a Grant of Administration.

In order to make an application for a Grant of Probate, an advertisement has to be placed on the [NSW Online Registry](#) advertising the application at least 14 days before filing the documents with the Court. At least 14 days after the advertisement appears, the following documents must be filed with the Supreme Court:

1. A Summons seeking a Grant of Probate – UCPR form 111;
2. A draft order granting Probate – UCPR form 112
3. An affidavit in support of the Application – UCPR form 118 - sworn by the person applying for Probate which must annex the following:
  - a. an inventory of the assets and liabilities of the estate – UCPR 117;
  - b. the advertisement giving notice of the executor's intention to apply for a Grant of Probate; and
  - c. the original death certificate.

If more than six months had passed since the artist passed away, the affidavit needs to explain the delay;

4. The original Will and any codicils;
5. A certified copy of the Death Certificate of the deceased
6. Two stapled sets of copies of the draft Grant, the Will (and any codicils) and the inventory of assets and liabilities;
7. The amount of the Court filing fee or an application to waive payment. As at 1 January 2016, the filing fee depends on the size of the estate. There is no filing fee for estates worth less than \$100,000. For estates worth between \$100,000 and \$250,000 the filing fee is \$702. The Registrar of the Supreme Court has the power to waive this filing fee if financial hardship can be demonstrated. Further information can be found on the [Supreme Court website](#).
8. A stamped self-addressed A4 size envelope (so that the Court can mail the Grant of Probate to you when it is ready).

Templates of UCPR forms 111, 112, 117 and 118 can be downloaded from the [Supreme Court website](#).

Before it will issue a Grant of Probate, the Court must be satisfied that the Will appointing the executor is valid and is the last Will. The Court may require the executor to lodge and administration bond with the Court.

In addition to the filing fee, preparing the application may involve some other upfront costs that will need to be paid, such as the purchase of a Death Certificate from the New South Wales Registry of Births, Deaths and Marriages. These costs can be reimbursed from the money in the estate.

Once the papers are filed, the Grant should be issued and posted within about three weeks. If there are any problems, a staff member from the Supreme Court will contact you.

If the person applying to the Court is not the executor named in the Will, a similar process is involved known as obtaining a Grant of Administration with the Will annexed. Before it will make a Grant of Administration to someone, the Court must be satisfied that the applicant is an appropriate person to be appointed as the administrator. The Court generally will not grant the right to administer a deceased's estate to a person unrelated to the deceased (such as an art centre) when there are beneficiaries who can be identified and are living in New South Wales. However, if there is no family member willing to apply, or all the beneficiaries are under age, the Court may appoint someone else.

Applying for a Grant of Probate or Administration can involve costs, and can be a complex and time-consuming process. In most cases, the help of a solicitor in New South Wales is likely to be necessary to prepare these documents (which may accrue solicitor's costs). The process of preparing all the necessary documents for filing with the Supreme Court, applying to the Supreme Court and satisfying any requisitions from the Supreme Court may take some time.

Once the Grant of Probate or Administration is issued, it can be used by the executor to show that he or she 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. Some businesses will not release the property of a deceased person unless they are provided with a Grant of Probate or Administration.

The executor can usually obtain reimbursement from the assets of the estate for any costs, expenses or fees associated with the administration of the estate (such as the costs of the application to the Supreme Court). After payment of funeral expenses and the artist's debts, the executor can distribute the remaining assets to the beneficiaries in accordance with the terms of the Will.

The art centre or bank holding money or property belonging to the estate must comply with the instructions of the executor or administrator holding a Grant of Probate or Administration. Upon payment of money or the transfer of any property to the executor, he or she 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 executor can also receive resale royalties or licensing fees for distribution to the beneficiaries. Alternatively, the executor will notify the collecting society of the persons to whom those royalties should be paid in the future.

The executor may need to file a tax return for the estate. The position of executor involves substantial responsibility and he or she will be held responsible for any improper distribution.

The executor may be required to file accounts with the Supreme Court accounts showing how the assets in the estate have been distributed.

### 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 NSW Trustee and Guardian. An alternative is for the executor to administer the estate informally, without applying to the Supreme Court.

This can be cheaper and quicker but involves a greater risk for the executor or administrator and the entities holding the assets as the protection provided by a Grant of Probate or Administration is not available.

## 8. Administration of the estate in accordance with the terms of the Will 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 either a Grant of Administration or a Grant of Probate 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 an executor who has not had his or her appointment confirmed by the Court.

Who should take charge?



In most cases, the executor named in the Will take responsibility for managing the estate. If that person is not willing or not able to take on that role, a family member may be able to do so. If the named executor cannot act, then it is preferable if all of the beneficiaries can reach agreement about how to proceed. The beneficiaries can authorise one or two people to manage the estate.

**Document B** is a suggested authority that can be used if the executor named in the Will cannot take on that role. The beneficiaries can sign this document to nominate who will act on behalf of all of them. This document can be used to demonstrate that all the beneficiaries agree. Whenever it is necessary to provide a copy of the Will, a copy of this authority should also accompany it.

The rest of this information sheet assumes that the person managing the estate is the executor named in the Will. However, if it is a different person, that person can still follow the steps set out below.

### Does the estate need its own bank account?

It is usually sensible to set up a bank account for the estate that is operated by the executor. This is not a personal account for the executor 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 the executor is sure that all expenses have been paid, it can use this account to pay the rest to the beneficiaries in the shares set out in the Will. 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 executor setting up a separate account. The art centre may not be comfortable with this approach. If it does agree, the manager of the art centre will want to see the Will and will usually require the executor to provide written instructions 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 does the executor get hold of the assets in the estate?

Set out below are some suggestions as to how the executor can approach the different organizations who hold the various assets which are part of the deceased artist's estate.

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

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

**Document C** is a suggested template letter to send to the bank. It should attach a certified copy of the Will as well as a copy of the death certificate and the most recent statement or the passbook and chequebook, if any.

The bank may require the executor to go in to a branch and prove his or her identity by producing, for example, a driver's licence or passport. Once the bank account can be accessed, it should be used to pay any outstanding funeral expenses. Otherwise the money should be kept until it is clear how the estate will be distributed among the beneficiaries. Before allowing access to the account, the bank may request that the executor sign an "indemnity" document, which can mean that the executor will be personally liable for any losses the bank suffers as a result of its decision to release the funds. If the

bank requests that you sign such a document, you should seek legal advice. The Arts Law Centre can provide you with help in this respect.

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

Most Indigenous art centres operate on the basis of an agreement with their artist members that entitles the art centre to a share of the sales proceeds of any artworks made through the art centre (such as art made using canvases and paints supplied by the art centre). In that case, after the artist passes away, the art centre is generally entitled to arrange the sale of all paintings and artwork created by the artist with the assistance of the art centre. The executor 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 to give directly to the beneficiaries 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 estate doesn't have its own bank account, the art centre may be willing to hold the money on trust for the estate in the art centre's own account until the executor is sure that all debts have been paid. The executor can instruct the art centre to make payments directly to the beneficiaries when appropriate.

*Document D* is a suggested template letter to send to the art centre asking that payments be made into the estate's bank account.

*Document E* is an alternative template letter to the art centre authorising it to hold any funds in its account until the executor directs that payments can be made to the beneficiaries.

If the executor is 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.

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 executor is entitled to ask for the paintings to be returned and any amounts due to be paid into the estate's bank account. The executor might do this if it is decided to collect all the artist's works together and arrange for one major retrospective after a suitable period of time has passed.

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

Alternatively, if the executor decides that the best way to manage the assets is to proceed with those particular exhibition or consignment arrangements, the executor can request the gallery or dealer to sell the paintings and to pay the proceeds into the estate's bank account or directly to the beneficiaries.

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

d. Personal Property Securities Act – works on consignment

If the artist had artworks on consignment with a gallery or art centre, it is important to consider the impact of the *Personal Property Securities Act 2009 (PPSA)* which commenced on 30 January 2012. If the gallery or art centre went into receivership or liquidation or bankruptcy before the works were sold or returned, the estate may not be able to get the works back unless it registers its interest under the PPSA. If the executor leaves any works on consignment, those works should be registered. For more information see the [Personal Property Securities Register](#) website or contact Arts Law.

e. Resale royalties and statutory copyright 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 toll-free number: 1800 066 844. Email: [resale@copyright.org.au](mailto:resale@copyright.org.au)

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

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

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

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

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

f. Copyright, including entitlements to licensing royalties from collecting societies or under licensing deals negotiated during the artist's lifetime.

Most Wills don't specifically mention copyright in which case the copyright is simply divided up like the rest of the estate. If there are a number of beneficiaries who all share in the copyright, it can be very

difficult to manage the copyright in a way that earns any money for the beneficiaries. The executor may have to consider how the copyright should be divided between the beneficiaries in order both to comply with the Will and help the beneficiaries to benefit in a practical way.

Some Wills specifically gift the copyright to one or two people. In that case, the executor should give each of those beneficiaries a certified copy of the Will and the death certificate, which they can use to demonstrate that they now own the copyright. The *Copyright Act* automatically vests the ownership of the copyright in the beneficiaries named in the Will. They can use the Will to prove their ownership and register themselves with any collecting society.

Some Wills nominate the executor or another named 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 and the executor's job is complete. The copyright trustee will need to open an account into which any copyright royalties can be deposited and he or she will then be responsible for distributing such payments to the beneficiaries.

Managing the copyright involves negotiating licence agreements and claiming royalties when the deceased artist's work is reproduced. Unless the copyright trustee or the beneficiaries have the time and expertise to manage this, Arts Law recommends that the deceased artist's copyright be registered 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](#).

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.

#### Example:

A well-known Indigenous artist from the Northern Rivers area has passed away. His works have been featured in books and films and he earned substantial copyright royalties during his lifetime. His Will leaves everything to his wife and four children. His eldest daughter is the executor. She registers the estate with Aboriginal Artists Agency (AAA) and instructs them that all royalties must be divided equally among the five 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. AAA negotiates all the licensing agreements with the National Gallery including airfares for the family to attend the opening of the exhibition. AAA collects the royalties on behalf of the family and distributes them to the five beneficiaries. The following year, the films are broadcast on SBS and further royalties are paid to Screenrights which then distributes them to the five 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.

If the artist was a member of an art centre, the executor's 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 executor should contact each collecting society directly and:

- Find out if the artist was registered;
- If so, advise that the artist has passed away and that the artist had a Will;
- 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.

The executor will usually need to update the registration details in one of the following ways:

- Register the executor as the person responsible for administering the estate and direct that any royalties are paid into the estate's bank account until the executor has paid all the estate's liabilities and is ready to make distributions to the beneficiaries;
- Register the beneficiaries as the new owners of copyright and direct that future royalties be paid directly into their accounts; or
- Register the copyright trustee as the new owner of copyright and direct that future royalties be paid directly into the trustee's account so that he or she can then share those royalties among the beneficiaries.

If the executor or copyright trustee does not have a separate bank account, it may be appropriate to ask to use the account of the art centre where the artist was a member.

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

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

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

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

- the date of death;
- that the artist had a will,

- details of the names, contact details and bank account details for the executor, the copyright trustee (if applicable) and the beneficiaries.

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

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

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

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

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

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

iv. *Screenrights:*

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

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

Screenrights can also distribute the statutory royalties collected for the artist's estate by 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 letters of probate in order to update registration and payment details for the estates of Indigenous artists. The executor should discuss with the Member Relations Manager how to proceed to arrange for payments to go to the copyright trustee or the beneficiaries.

i. *Other licensing arrangements:*



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

*Document K* is a template letter requesting the licensee to pay any royalties to the beneficiaries in the future. If the licensee does not agree, seek legal advice as to whether the licence should be terminated. It may be necessary to get a grant of probate or 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's will left everything to his three children in equal shares. 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 executor registered the artist's estate with Viscopy in the names of the three children. The hotel agreed to licence the artwork through Viscopy. Viscopy then distributed the royalties to the three beneficiaries after deducting its commission.

#### g. Real Estate

Land and Property Information (LPI), is a division of the New South Wales Department of Finance, Service and Innovation. Since April 2011, it has carried out the functions formerly carried out by the New South Wales Land Titles Registry. It requires a grant of Probate or Administration to be obtained before it will transfer or allow the sale of any property owned by a deceased person. For more information contact the Land & Property Information Office on 1 300 052637 or see the LPI [website](#). If the deceased artist owned land as a joint tenant, the executor does not need to take any action as the other joint tenant (often the spouse or partner of the deceased person) will automatically become the sole owner after filing a Notice of Death form, also available on the LPI website. There is a step-by-step guide on the [NSW LawAccess website](#).

#### h. Cars and caravans

If the deceased owned a car, it will need to be transferred into the name of the correct beneficiary or, if the car is to be sold so that money can be divided among several beneficiaries, the name of the purchaser. New South Wales Roads and Maritime Services will normally be notified by the NSW registry of Births, Deaths and Marriages when a person passes away. It has strict requirements for the transfer of registration which are set out on the [NSW Roads and Maritime website](#) which include proof that the owner is deceased (if this is not already recorded in its system), a copy of the will or a signed

advice from a solicitor, proof of identity of the beneficiary or purchaser, the certificate of registration and a completed application for transfer of the vehicle.

#### i. 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 Will.

If the insurance or superannuation payments are covered by the Will, the executor will need to contact the insurance company or superannuation fund to find out whether or not they require a Grant of Probate in order to release the funds to the executor for distribution. In most cases, the trustee of the fund will have the discretion to release the funds directly to the named beneficiaries or the executor without a grant of probate.

#### j. Nursing home accommodation bonds

The executor 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 to the executor. In many cases, nursing homes will require a grant of probate or letters of administration.

### 9. What to do when a beneficiary is under the age of 18, under a disability or can't be found

In many cases, the beneficiaries may be children under the age of 18. Sometimes a beneficiary may be a person who is not capable of understanding the significance of their entitlements under the Will (such as a person with a mental disability).

In some cases, the executor may be able to give that beneficiary's share to his or her legal guardian (such as a parent) to manage for the benefit of that beneficiary. Alternatively, many wills direct the executor to look after the shares of minor children and beneficiaries under a disability. That could be a very big job if, for example, a beneficiary is only very young when the artist passes away. If the executor is not willing to be responsible for the shares of minor children and beneficiaries under a disability, the executor can write to the NSW Trustee and Guardian and request that it look after any money and assets for those beneficiaries<sup>ii</sup>.

The executor can also ask the NSW Trustee and Guardian to look after the share of any beneficiary who cannot be found.

*Document L* is a letter to the NSW Trustee and Guardian requesting it to manage the shares of those beneficiaries who are under the age of 18, under a disability, or who cannot be found.

### 10. Getting started – Checklist for executors

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

- a. Find the original Will and make sure that it is the last Will made by the artist.
- b. What was the date on which the artist passed away? Do you have a copy of the Death Certificate? You will probably need one or more certified copies of the Death Certificate and the

Will. The Will and 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.

- c. Do you have contact details for all the beneficiaries named in the will? Are any of them under 18? Do any of them have mental or physical disabilities that will affect their understanding of the Will?
- d. Have you contacted all the beneficiaries and explained the terms of the Will. Provide them with a copy of the Will if they ask for one.
- e. Have all the funeral expenses been paid? If so by whom? 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.
- f. If the artist was receiving any benefits from Centrelink, advise Centrelink that the artist has passed away.
- g. If the artist had a car or a drivers licence, advise the Department of Motor Registry that the artist has passed away.
- h. What did the Artist own at the date of passing away?
  - o Paintings
  - o Car
  - o Bank account
  - o House or property
  - o Personal belongings
  - o Shares, life insurance, superannuation
- i. What's the approximate total value of those items listed above? More than \$20,000?
- j. Was the artist a member of an art centre? Which one? Do they hold any money or paintings belonging to the artist?
- k. 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. Some Indigenous artists operated as 'hobbyists' and did not complete tax returns dealing with income earned from their art during their lifetime. If that is the case then it may not be necessary to file a tax return for the period up to the date of death. However, the Australian Taxation Office and the Public Trustee has taken the view that some of these artists were not properly categorized as hobbyists and that they should pay 'back taxes' for the period prior to their death. Certainly, in relation to any money earned by the estate from sales of artwork after the artist's death, tax may be payable. Arts Law recommends getting the advice of an accountant if you are unsure.
- l. Ascertain any other debts of the artist. These must be paid before any distribution to the beneficiaries.
- m. Are there any art galleries holding works of the artist for exhibition and sale? Do you have contact details for them?

- n. Did the Artist have any agreements or licenses about the use of his/her art? If so, can you provide any details?
- o. Did the Artist get royalties from Viscopy or Copyright Agency?
- p. Is the artist registered for Resale royalties?

# TEMPLATE DOCUMENTS FOR USE WITH THE NEW SOUTH WALES WILLS KIT

## SCHEDULE OF DOCUMENTS

*Document A* is a template letter to the NSW Trustee and Guardian requesting that it administer the estate of the deceased artist in accordance with the terms of the Will.

*Document B* is a suggested authority that can be used if the executor named in the Will cannot take on that role.

*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 asking that payments be made into the estate's bank account.

*Document E* is an alternative template letter to the art centre authorising it to hold any funds in its account until the executor directs that payments can be made to the beneficiaries.

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

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

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

*Document I* is a suggested template letter and statutory declaration which can be signed by the executor and used instead of the art centre letter if the artist was not a member of an art centre.

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

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

*Document L* is a letter to the NSW Trustee and Guardian requesting it to manage the shares of those beneficiaries who are under the age of 18, under a disability, or who cannot be found.

## 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: *[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.



**DOCUMENT A***[Date]**[Insert your name and address]***NSW Trustee and Guardian**

Locked Bag 5115  
Parramatta NSW 2124

Dear Sir

*[Name of deceased] (deceased)*

I am writing to inform you that the above named person has passed away. I **enclose** a certified copy of the death certificate. The deceased had a will, a copy of which is also **enclosed**.

*Delete whichever is inapplicable:* The will does not name an executor **OR** The executor named in the will passed away on *[date]* **OR** is unable or unwilling to act.

The assets in the deceased's estate include:

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

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

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

Yours sincerely

*[Beneficiary making application to provide name and sign letter]*

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

Name	Signature
------	-----------

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

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

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

We **enclose** certified copies of *[his/her]* last will and death certificate.

*Delete whichever is inapplicable:*

The will does not name an executor **OR**

The executor named in the will passed away on *[date]* **OR** is unable or unwilling to act.

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

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

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

**DOCUMENT C**

*[Date]*

*[Insert your name and address]*

*[Name]* Bank  
*[Insert address]*

Dear Sir

*[Name of deceased]* (deceased)

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

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.

I am the executor named in the will **OR**

The executor named in the will is unable to act/has passed away and I have agreed to undertake the administration of the estate. The other beneficiaries have consented to this and I enclose an authority signed by them.

The only moneys in the deceased's estate are:

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

*[Other]*

In the circumstances, 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 willing and able to proceed in this way.

Yours sincerely

**Executor/Administrator**

**DOCUMENT D**

*[Date]*

*[Insert your name and address]*

*[Name of arts centre]*  
*[Insert address]*

Dear Manager

*[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 and the deceased's last will.

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.

**EITHER** I am the executor named in the will **OR**

The executor named in the will is unable to act/has passed away and I have agreed to undertake the administration of the estate. The other beneficiaries have consented to this and I enclose an authority signed by them.

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.

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]*

Yours sincerely

**Executor/Administrator**

**DOCUMENT E**

*[Date]*

*[Insert your name and address]*

*[Name of arts centre]*  
*[Insert address]*

Dear Manager

*[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 and the last will.

**EITHER** I am the executor named in the will **OR**

The executor named in the will is unable to act/has passed away and I have agreed to undertake the administration of the estate. The other beneficiaries have consented to this and I enclose an authority signed by them.

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.

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.

I would be grateful if you could hold all proceeds of such sales and all funds in your account in trust pending further instructions from me as to distribution. As the estate is small, I am hoping to avoid the need to go to the expense and time of obtaining Letters of Administration. Could you please confirm if you are happy to proceed in this way?

Yours sincerely

**Executor/Administrator**

**DOCUMENT F**

*[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 and the deceased's last will..

**EITHER** I am the executor named in the will **OR**

The executor named in the will is unable to act/has passed away and I have agreed to undertake the administration of the estate. The other beneficiaries have consented to this and I enclose an authority signed by them.

I understand that you hold artwork placed on consignment for sale with you. Such arrangements are terminated by the death of the artist.

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 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 a reconciliation and deposit all sales proceeds 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. Please let me know if you are happy to proceed in this way.

Yours sincerely

**Executor/Administrator**



**DOCUMENT G**

*[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 and the deceased's last will.

**EITHER** I am the executor named in the will **OR** The executor named in the will is unable to act/has passed away and I have agreed to undertake the administration of the estate. The other beneficiaries have consented to this and I enclose an authority signed by them.

I understand that you hold artwork placed on consignment for sale with you. Such arrangements are terminated by the death of the artist.

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

Yours sincerely

**Executor/Administrator**

## DOCUMENT H

**[Date]**

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

By fax: +61 2 9394 7601 or email: [resale@copyright.org.au](mailto:resale@copyright.org.au)

Dear Sir/Madam

**[Name of deceased] (deceased)**

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

The estate is small but includes moneys and paintings valued at approximately **[estimated value]** held at the art centre as well as the deceased's entitlement to resale and statutory royalties. We have made enquiries with the executor and understand that it is not likely that any application for letters of probate will be lodged 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 accordance with the terms of the will.

**OR OPTION 2:** The Will nominates **[name]** as the copyright and resale trustee. **He/she** is then responsible for distributing any royalties in accordance with the will. Could you please register that person as the owner of the resale and statutory royalty rights for the artist's estate?

**OR OPTION 3:** The Will nominates **[name]** as the executor. Could you please register the executor as the holder of the resale and statutory royalty rights pending a final distribution of the estate?

I enclose:

- A copy of the Will and 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

**Manager, Art Centre**

## DOCUMENT I

**[Date]**

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

By fax: +61 2 9394 7601 or email: [resale@copyright.org.au](mailto:resale@copyright.org.au)

Dear Sir/Madam

**[Name of deceased] (deceased)**

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

I enclose:

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

**EITHER** I am the executor named in the will **OR** The executor named in the will is unable to act/has passed away and I have agreed to undertake the administration of the estate. The other beneficiaries have consented to this and I enclose an authority signed by them.

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. I am not intending to apply for letters of probate given the size of the estate.

**EITHER OPTION 1:** Could you please register me as the holder of the resale and statutory royalty rights pending a final distribution of the estate.

**OR OPTION 2:** Could you please register the beneficiaries as the recipients of any resale royalties and statutory royalties due to the deceased artist's estate in accordance with the terms of the will.

**OR OPTION 3:** The Will nominates **[name]** as the copyright and resale trustee. **He/she** is then responsible for distributing any royalties in accordance with the will. Could you please register that person as the owner of the resale and statutory royalty rights for the artist's estate?

Yours sincerely

**Executor/Administrator**

Oaths Act 1900  
Statutory Declaration  
New South Wales

I *[insert full name]*

Of *[insert address]* in the State of New South WAles

Do hereby solemnly declare and affirm that:

1. [name] passed away on [date].
2. I attach a true copy of the deceased’s last will.
3. To the best of my knowledge there is no later will and no challenge to the validity of this will.

And I make this solemn declaration, as to the matters aforesaid, according to the law in this behalf made and subject to the punishment by law provided for any wilfully false statement in any such declaration.

Signature of declarant

Taken and declared before me at *[location]*

This .....day of .....

A Justice of the Peace/Commissioner for Declarations

**DOCUMENT J**

**[Date]** Choose either AAA or Viscopy – not both

**Aboriginal Artists Agency Limited**

PO Box 282  
CAMMERAY 2062  
email: [antnywallis@aol.com](mailto:antnywallis@aol.com)

**Viscopy**

Level 15, 233 Castlereagh St  
Sydney NSW, 2000  
email: [viscopy@viscopy.org.au](mailto:viscopy@viscopy.org.au)

**Screenrights**

PO Box 1248  
Neutral Bay NSW 2089  
email: [info@screenrights.org](mailto: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/was not registered with your collecting society with royalties going directly to the art centre account.

I enclose a copy of the artist's last will and the death certificate. 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. The executor is not intending to apply for letters of probate given the size of the estate and wishes all royalty payments to continue to be paid into the art centre account. We will distribute those payments to the beneficiaries in accordance with the will and the executor's instructions.

**EITHER OPTION 1:** Could you please register the executor [name] as the holder of all statutory and voluntary copyright royalty rights pending a final distribution of the estate.

**OR OPTION 2:** Could you please register the beneficiaries as the recipients of all statutory and voluntary copyright royalties due to the deceased artist's estate in accordance with the terms of the will.

**OR OPTION 3:** The Will nominates **[name]** as the copyright and resale trustee. **He/she** is then responsible for distributing any royalties in accordance with the will. Could you please register that person as the owner of all statutory and voluntary copyright royalty rights for the artist's estate?

Please note that I have already contacted Copyright Agency Limited in relation to the resale and statutory royalty rights it administers. Please let me know if you have any questions.

Yours sincerely

**Manager, Art Centre**

**DOCUMENT K**

*[Date]*

*[Insert author name and address]*

*[Insert name and address of licensee]*

Dear *[Name]*

*[Name of deceased]* (deceased)

I am writing to inform you that the above named person has passed away. I **enclose** a certified copy of the death certificate and the deceased's last will.

**EITHER** I am the executor named in the will **OR** The executor named in the will is unable to act/has passed away and I have agreed to undertake the administration of the estate. The other beneficiaries have consented to this and I enclose an authority signed by them.

As the estate is small, I am hoping to avoid the need to go to the expense and time of obtaining Letters of Administration.

The beneficiaries wish to continue with the licensing arrangements made during the deceased's lifetime. The beneficiaries entitled to the proceeds of the licensing agreement are as follows:

*[List beneficiaries and shares]*

Please forward me a new licensing agreement for signature.

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.

Thank you in advance for your co-operation.

Yours sincerely

**Executor/Administrator**

**DOCUMENT L***[Date]**[Insert your name and address]***NSW Trustee and Guardian**Locked Bag 5115  
Parramatta NSW 2124

Dear Sir

*[Name of deceased] (deceased)*

I am writing to inform you that the above named person has passed away. I **enclose** a certified copy of the death certificate. The deceased had a will, a copy of which is also **enclosed**.

**EITHER** I am the executor named in the will **OR** The executor named in the will is unable to act/has passed away and I have agreed to undertake the administration of the estate. The other beneficiaries have consented to this and I enclose an authority signed by them.

The following beneficiaries are minors or under a disability:

*[name] [date of birth] [contact details]**[name] [date of birth] [contact details]*

I have attempted to locate the following beneficiaries but have not been able to find them:

*[name] [date of birth] [last known contact details]**[name] [date of birth] [last known contact details]*

The estate contains assets to which the beneficiaries listed above are entitled with a total value of approximately \$*[insert sum of \$\$\$]* including:

- Funds in the estate's bank account
- Moneys and paintings of an unknown value held by [name of arts centre], an art centre where the deceased was a member.
- Copyright and resale royalty entitlements
- **[OTHER]**

I request that the NSW Trustee and Guardian administer the entitlements of the above beneficiaries.

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

Yours sincerely

**Executor/Administrator**



## Disclaimer

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

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*This information kit was developed with funding from the Copyright Agency Ltd.*




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<sup>i</sup> *Succession Act* section 93 and *Probate and Administration Act* section 92

<sup>ii</sup> *Public Trustee Act* section 43