

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

### 1. What is intestacy?

Usually, when an artist or other person passes away, their will is the document that sets out how they want their belongings to be distributed among their family and friends. If a person passes away without leaving a valid will, that person is said to have died “intestate”. If they have a will but it only deals with some of that person’s belongings, that person is said to have passed away “partially intestate”.

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), motor vehicles, insurance policies, money in bank accounts, shares, artwork, furniture, jewellery and clothes and even debts owed to the person such as money due from the sale of artwork. The estate may also owe money such as for credit card bills or car payments.

If a person passes away intestate, the laws of intestacy will determine who is entitled to have that person’s estate. If the person passes away partially intestate, then the law determines how to distribute those things that are not covered by the will.

In the Northern Territory, the laws of intestacy are set out in the *Administration and Probate Act (NT)* (the **Act**). The rules in this Act apply to the estate of any person who was living in the Northern Territory 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 a will.

Different rules may apply in relation to property that is located outside the Northern Territory or to property in the Northern Territory that belonged to a person who lived elsewhere at the time of their death. Contact Arts Law for more information in this situation.

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, although the Northern Territory has made a concerted effort to recognize some aspects of Indigenous customary law in the area of intestacy, the 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 Northern Territory at the time he or she passed away.

## 2. What is the "Estate"?

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

The estate can include real estate (property), cars, insurance policies, money in bank accounts, shares, artwork, furniture, jewellery and clothes and even debts owed to the person such as money due from the sale of artwork. Sometimes the estate will also include mining royalties or superannuation. The estate may also owe money, such as for credit card bills or car payments.

Importantly, every artist's estate is likely to include copyright in the artwork created during his or her lifetime. Copyright can be an important source of income for an artist's family as it lasts for 70 years after the artist passes away. The estate can earn royalties for the right to reproduce the artist's paintings in auction catalogues, art books and merchandise long after the paintings themselves are sold and the artist has died.

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

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

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

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

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

## 3. Who are the 'Beneficiaries'?

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

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

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

However, that is not possible if the estate includes real property (ie land) or a large bank account, or where galleries or art centres hold unsold artwork. Importantly, every artist's estate is likely to include copyright in the artwork created during his or her lifetime. Copyright can be an important

source of income for an artist's family as it lasts for 70 years after the artist passes away. Royalties may be paid for the right to reproduce the artist's paintings in auction catalogues, art books and merchandise long after the paintings themselves are sold and the artist has died. Who owns the copyright is a question that must be determined by the laws of intestacy. In addition, with the passing of the *Resale Royalty Right for Visual Artists Act 2009* (Cth), the artist's estate will include the entitlement to resale royalties on all eligible commercial resales of the artist's works which take place in the 70 years after the artist's passing.

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

According to the rules set out in the Act, where an Indigenous artist dies intestate, the artist's estate will be divided among the following surviving<sup>1</sup> persons:

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

The deceased's **spouse** or **de facto** is entitled to the whole estate if the artist has no children, grandchildren or great-grandchildren. A spouse means a person who was:

- the deceased's husband or wife at the time of the deceased's death in a marriage recognized as a legal marriage under Northern Territory law.
- An Aboriginal person in a relationship with another Aboriginal person that is that is recognized as a traditional marriage by the Indigenous community or group to which either of them belongs<sup>2</sup>.

A de facto partner is defined as a person who was not legally married to the artist but was in a 'marriage-like relationship'<sup>3</sup>.

The recognition of traditional Indigenous marriages by the Northern Territory intestacy laws is in contrast to most other States that do not specifically recognize traditional marriages.

If the deceased artist is survived by a spouse or de facto and also by **children, grandchildren or their children** (also referred to as "**issue**"), then different rules apply depending on the value of the estate.

If the estate (excluding personal chattels) is worth less than \$120,000, the surviving spouse or de facto is entitled to the whole of the intestate estate. If the estate (excluding personal chattels) is worth more than \$120,000, then the surviving spouse or de facto is entitled to the personal chattels, the first \$120,000 plus a portion of the remainder with the rest being shared among the children (or other issue).

A de facto generally has no rights unless they were either:

- In that relationship with the artist for the two years immediately prior to the artist's death and the artist did not also live with the legal husband or wife during that time; or
- is the mother or father of any of the artist's surviving children or the grandparent of any of the artist's surviving grandchildren.

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<sup>1</sup> *Administration and Probate Act (NT)* section 63 provides that persons under 18 and not married at the time the artist passes away do not receive their entitlement until they reach 18 or marry. If they pass away before reaching 18 years of age or marrying, they are considered to have predeceased the artist. This rule doesn't affect the operation of other laws which allow the use of money in the estate to care for infants younger than 18 years of age.

<sup>2</sup> Section 6(4) of the Act and the *Interpretation Act (NT)* section 19A

<sup>3</sup> *De Facto Relationship Act 1991 (NT)*, s 3A(1)

It is however possible to apply to vary the intestacy rules in relation to a deceased Aboriginal person. This is discussed in more detail below. This could have the result of enabling a child adopted under customary law to receive a share of the estate.

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

There are specific rules for the situation of a surviving spouse and de facto. The Act also specifically contemplates that Indigenous people may have more than one spouse. The Act provides that if an Indigenous person has more than one spouse at the time of death, the spouses will share equally in the spouse's portion of the estate<sup>4</sup>.

### When there is no surviving spouse?

If the artist passes away and is not survived by a spouse or partner but there are surviving issue (children, grandchildren and so on), they are entitled to the whole of the intestate estate. If a child of the deceased artist passed away before the artist leaving a surviving child or children, then those grandchildren of the deceased are entitled to the share of the estate that would have gone to their deceased parent (in equal shares).

If a grandchild would have been entitled to share in the estate but has not survived and leaves any surviving children, then those great-grandchildren are entitled to equal shares in the portion that the grandchild would have had (and so forth until the entitlement is exhausted).

### What about traditional adoption under Indigenous laws?

For the purposes of the Act, adopted children are considered to be the children of their adopted parents, not their natural parents. However, the adoption must have taken place in accordance with the adoption laws of the Northern Territory. Many Indigenous families have children who are adopted under traditional law or who have been cared for as part of their family but the adoption has never been formally recognized under the Northern Territory adoption laws. Such children will NOT be considered part of that family for the purpose of the intestacy laws. To qualify as an adopted child the formal processes of the adoption legislation must have been complied with. This includes the adoption being facilitated by the relevant government department or an accredited adoption service provider, consent of each parent of the child being given to the adoption and an adoption order being issued by a court.

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

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

Where the deceased has neither spouse nor issue, the estate will be distributed among the following blood relatives of the artist known as the "**next of kin**":

- The artist's **parents**;
- The artist's **brothers and sisters and their issue** (nieces and nephews, great nieces and nephews and so on).

The intestacy rules do not allow the estate to be distributed to anyone more remote than the issue of siblings – for example aunts and uncles and cousins have no entitlement.

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

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<sup>4</sup> *Administration and Probate Act (NT)* s 67 A

## 5. When can the intestacy rules be varied?

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

In many Aboriginal kinship systems, there are also important cultural and familial obligations and rights existing between persons who are not blood relations.

The Northern Territory has tried to address these problems for intestate Indigenous estates in Division 4A of the Act. That Division provides that the Supreme Court of the Northern Territory can make an order for the estate of a deceased Indigenous artist to be distributed in accordance with the traditions of the Indigenous community or group to which the artist belonged.<sup>5</sup> However this is only possible where:

- The artist had not been in a legal marriage (rather than a traditional law marriage or de facto relationship); and
- An order for administration has been made in respect of the artist's estate.

In other words, no application to vary the intestacy rules to provide for a traditional distribution is possible where the artist was in a valid marriage under the *Marriage Act 1961* of the Commonwealth.

The application to the Court must be made either by a professional personal representative (like the Public Trustee) or a person who is entitled to an interest in the intestate estate under the customs and traditions of the relevant Indigenous community or group. The application must be made within six months after the grant of administration (although extensions are possible) and must be accompanied a plan of distribution prepared in accordance with the traditions of the community or group to which the intestate Indigenous artist belonged.<sup>6</sup>

In 2000, the Supreme Court made a decision under this Division in relation to the estate of a deceased Aboriginal man who passed away leaving no family members within the categories identified in the Act. He had been 'grown up' by a member of the Jawoyn clan (although he was from a different clan). His adopted father had passed away leaving three living children, Kevin, Kathleen and Lisa. The Court accepted the application of the Public Trustee that the estate should not go to the State but should be distributed to three members of the Jawoyn people who were not his blood relatives but were his close 'family' and entitled to his possessions in accordance with the customs and traditions of the Jawoyn people.

7

## 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.

<sup>5</sup> *Administration and Probate Act (NT)* Division 4A

<sup>6</sup> *Administration and Probate Act (NT)* s 71 B

<sup>7</sup> *Application by the Public Trustee for the Northern Territory*, [2000] NTSC 52

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

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

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

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

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

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

**Option 2:** A beneficiary or other person can apply to the Supreme Court to be appointed as the formal administrator of the estate. This is called a '**Grant of Administration**'. The family may prefer that a family member or trusted friend carry out those responsibilities rather than the Public Trustee. A Grant of Administration is necessary where businesses or institutions which hold the deceased's assets are not be prepared to release them without such a Court order.

**Option 3:** A beneficiary or other person can locate the assets and distribute them according to the rules of intestacy without going through the formal process of applying to the Court. This may be possible for smaller estates where there is no real property (land) involved but there are risks associated with proceeding in this way as the person will not be entitled to the same level of protection from personal liability that a formal Grant of Administration confers.

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 Northern Territory intestacy laws.

### Option 1 –Asking the Public Trustee to manage the estate



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

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

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. In applying to the Public Trustee, information on the value of the estate, including present value of any artwork and any licensing agreements, will need to be provided. The procedure the Public Trustee must follow to administer an intestate estate (and therefore also the speed of the process and costs involved) can vary, depending on the size of the estate. Regardless of which procedure is used, the Public Trustee will charge fees that must be paid by the estate before it is distributed to the beneficiaries:

- Where the value of the estate is **less than \$20,000** the Public Trustee (or other personal professional representative) is able to administer the estate without having to apply to Supreme Court. This eliminates the costs and time associated with the Court process, such as court filing fees.
- Where the value of the estate is **more than \$20,000 but less than \$80,000**, the Public Trustee (or other personal professional representative) does not need to obtain a formal grant of administration but can simply file an “election to administer”
- Where the value of the estate is more than **\$80,000**, the Public Trustee (or other personal professional representative) must apply to the Supreme Court for a Grant of Administration, as outlined above.

The Public Trustee's charges for administering intestate estates will vary, depending on the size and complexity of the estate, and the number of beneficiaries. 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.

The Public Trustee's fees are based on a sliding scale depending on the value of the whole estate. As at 1 October 2014, the management fees charged for estates worth up to \$200,000 are a commission of 4.4% with a minimum fee of \$570.90. Additional fees may be charged to locate next of kin, inspect or locate assets, collect rent and manage trusts (for example money that must be managed until minor children reach 18 years of age). An example of the sort of charges the Public Trustee might incur in administering an intestate estate is set out below.

### Example:

An Indigenous artist dies intestate with the following property:

- 35 paintings by the deceased artist held at the art centre with an approximate total value of about \$40,000
- Another fifteen paintings in the possession of other galleries with an approximate total value of \$10,000
- The art centre has money held in its account for the artist in the amount of \$5,000 being proceeds from the sale of certain paintings after deduction of the art centre's commission
- The artist also had a personal bank account containing a small amount of money

Altogether this estate is worth about \$55,000. The artist had no spouse and his three children all survived him. They are the only beneficiaries. If there are no difficulties or complexities encountered, the Public Trustee's charges for administering such an estate are likely to range between \$4400 and \$5500.

It may take some time for the Public Trustee to obtain all necessary instructions in the estate, prepare the documents to be filed with the Court and for the estate to be administered.

Once the Public Trustee receives the grant of administration; the Public Trustee takes legal responsibility for ensuring the estate is administered properly. If appointed, the Public Trustee would become responsible for arranging the sale of the art works and collecting the proceeds of sale.

Where the artist had an agreement with the art centre whereby 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 Supreme Court to be formally appointed as the "**administrator**" (also known as the "**personal representative**") of the estate. If successful, this is known as a "**Grant of Letters of Administration**". It is preferable that the person or persons applying to be the administrators of the estate have the consent of all the beneficiaries.

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 grant letters of administration to someone, the Court must be satisfied that the applicant is an appropriate person to be appointed as the administrator. The Court generally will not grant the right to administer a deceased's estate to a person unrelated to the deceased (such as an art centre) when there are spouses, children or other next of kin who can be identified and are living in the Northern Territory. However, if there is no family member willing to apply, the Court may appoint someone else.

The Act makes a distinction between estates that are considered 'small estates' and all other estates. If the estate is categorised as a small estate there are simplified procedures for intestate estates and the Registrar of the Supreme Court helps people applying for administration of a small estate. To be characterised as a small estate, all of the assets owned by the artist must have a gross value of less than \$20,000 (as at October 2014).

For example, if the art centre holds 10 paintings worth \$16000 and \$8000 from sales completed prior to the artist's death then the estate has a value of least \$24000 and is not a 'small estate'.

If the estate is a 'small estate' then a 'professional personal representative' can manage the estate without making an application to the Supreme Court.<sup>8</sup> A professional personal representative is the Public Trustee, a professional trustee company or a lawyer. The maximum fee that can be charged to the estate for administering it is \$1,500.

<sup>8</sup> *Administration and Probate Act (NT)* Section 110A.



In order to make an application for a grant of letters of administration, an advertisement has to be placed in a newspaper advertising the application. Then the following documents must be filed with the Supreme Court:

1. Application for Letters of Administration;
2. Affidavit in support of the application sworn by the person applying for Letters of Administration;
3. Affidavit of publication and searches;
4. Affidavit of assets and liabilities;
5. Oath of office (if applicable);
6. Affidavit of death;
7. Consents of people entitled to apply for a grant of administration;
8. Draft Grant of Letters of Administration;

There are templates for some of these documents available in the "Probate Kit" on the [website of the Northern Territory Supreme Court](#). In addition, as mentioned above, for small estates, the Registrar will provide assistance. However, in most cases the help of a solicitor in the Northern Territory may be necessary to prepare these documents. 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.

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

The application should also identify the potential for the estate to earn income from resale royalties and licensing or sale of the copyright in the artwork (if copyright is still owned by the deceased at the time of passing). Although it is often difficult to place a value on that asset, it is an asset that needs to be distributed in accordance with the rules of intestacy. If the copyright is subject to a licensing agreement at the time of the deceased's passing, the value of that licensing agreement should be considered in making the application.

There is a filing and search fee of \$1055 (as at October 2014) which must be paid to the Court when the documents are lodged. The Registrar of the Supreme Court has the power to waive the filing fee if financial hardship can be demonstrated.<sup>9</sup> An application for waiver of the fee must be supported by a statutory declaration describing the circumstances of financial hardship.

In addition to the filing fee, making an application for letters of administration may involve some other upfront costs that will need to be paid, such as the purchase of Certificates from the Northern Territory Office of the Registrar of Births, Deaths and Marriages. Applications for copies of certificates of death, birth and marriage can be made [online](#), by facsimile or post (GPO Box 3021 Darwin NT 0801 or PO Box 8043 Alice Springs NT 0871) or in person at the offices in Darwin, Alice Springs or Tennant Creek.

As a condition of granting letters of administration to an applicant, the Court may require the applicant to pay a bond. The bond guarantees that the applicant will properly administer the estate.

If the application is successful, the person to whom the Court grants administration (**the personal representative**) has the legal right to deal with the assets of the estate, including the right to provide instructions in relation to the sale of art work and to collect money owed to the estate. The personal representative 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 personal representative can distribute the remaining assets to the beneficiaries. A personal

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<sup>9</sup> *Supreme Court Regulations*, regulation 5

representative has the same rights as a person administering the estate under a will (known as an "executor").

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

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

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

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

Given the complexity, cost and time involved in Options 1 and 2, the beneficiaries of the estate may prefer not to proceed through the formal process of applying for a Court order or involving the Public Trustee. An alternative is for the family to administer the estate informally, without applying to the Supreme Court. However this should not be done if there are substantial assets or any uncertainty as to the identity of the beneficiaries.

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

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

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

### Who should take charge?

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

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

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

It is usually sensible for the person administering the estate to set up a bank account for the estate. This is not a personal account for the beneficiaries and must not be used for anything other than

the business of managing the estate. The name of the account will be the words "Estate of..." followed by the name of the deceased artist. This account can be used for depositing any funds owed to the estate such as resale royalties or sales proceeds from artwork. It can be used to pay any debts such as taxes or credit card amounts. Once all expenses have been paid, the remaining funds in this account can be paid to the beneficiaries in the shares specified by the intestacy rules. Once all the distributions have been made, the account can be closed.

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

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

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

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

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

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

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

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

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

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

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

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. If the art centre is confident that it is dealing with the proper beneficiaries of the deceased's estate under the intestacy rules, it may be willing to pay the balance directly to the beneficiaries.

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

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

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

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

- Obtaining a signed document from each of the beneficiaries receiving the money that expressly states that they have waived their rights to apply for letters of administration and they indemnify the art centre against any claims or losses arising from the payment of money to them in such circumstances. However, this has significant risks for the persons signing that indemnity. The Arts Law Centre can help you prepare such a document if it is required.
- 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 to the Public Trustee.

[Document E](#) is a template letter 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.

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](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 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.

[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.

Each applicant for registration (whether a beneficiary, copyright trustee or executor) will also need to complete the '[Registration Form for Artist's beneficiaries](#)' available on the



Copyright Agency website and submit it with the letter or statutory declaration. If more than one beneficiary is entitled to be registered, then one form needs to be completed for each beneficiary. The forms should be sent in together with a copy of the Will and evidence of the identity of the person or persons seeking registration.

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

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

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

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

### Example:

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

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

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



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

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

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

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

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

i. *Copyright Agency | Viscopy:*

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](#).

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

Copyright Agency now also manages the functions previously carried out separately by Viscopy, namely non-statutory or voluntary copyright licensing. 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 Copyright Agency | Viscopy for a license. If the artist’s estate is registered for non-statutory licensing, they will negotiate a royalty for that use and, after deducting a fee, will pay the remainder to the persons registered as the artist’s beneficiaries. For information, see [Viscopy’s website](#).

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

The executor can contact Copyright Agency | Viscopy on its tollfree number: 1800 066 844.

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 (see below). If not, then Arts Law recommends that families enquire as to how the beneficiaries can become registered with Copyright Agency| Viscopy (or AAA) for non-statutory royalties.

ii. *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](mailto:anthony@aboriginalartists.com.au) to find out if the deceased artist was registered for copyright royalties. If the artist was not registered, Arts Law recommends that families enquire as to how the beneficiaries can become registered with AAA (or Viscopy) so that it can manage the deceased artist's copyright for non- statutory royalties.

AAA generally deals with the situation where an artist has passed away 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.

iii. *Screenrights:*

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

If you know that artworks by the deceased artist appeared in a film or television broadcast, contact Screenrights' Member Services Department to find out if the deceased artist was registered for statutory royalties. Telephone: 02 9904 0133 or email [memberservices@screenrights.org](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 a Grant of Probate or Administration in order to update registration and payment details for the estates of Indigenous artists. The executor

should discuss with the Member Relations Manager how to proceed to arrange for payments to go to the copyright trustee or the beneficiaries.

[Document 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.

iv. *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 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. 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 NORTHERN TERRITORY INTESTACY KIT

## SCHEDULE OF DOCUMENTS

[SCHEDULE 1](#) contains a general guide about the way in which the Act will distribute an intestate estate.

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

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

[Document A](#) is a template letter to the Northern Territory Public Trustee requesting that it administer the estate of the deceased artist.

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

[Document C](#) is a suggested template letter to send to the bank.

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

[Document E](#) is 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 which 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 which 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 *Probate and Administration Act***

Notes:

- i. Value of estate is calculated as excluding personal chattels (clothes, jewellery, cars etc)
- ii. If the deceased Aboriginal had more than one spouse then the spouse's share is divided equally among those spouses.

<b>Circumstance</b>	<b>Distribution</b>
<b><i>Where the deceased left a spouse (including a traditional law spouse) but no de facto partner</i></b>	
<b>1. Spouse and no issue, parents, siblings, nieces or nephews</b>	<ul style="list-style-type: none"> <li>a. If there is only one surviving spouse, the spouse is entitled to the whole of the estate.</li> </ul>
<b>2. Spouse and next of kin but no issue</b>	<ul style="list-style-type: none"> <li>a. If the estate is worth less than \$120,000, the surviving spouse is entitled to the whole of the intestate estate.</li> <li>b. If the estate is worth more than \$120,000:               <ul style="list-style-type: none"> <li>(i) the surviving spouse is entitled to \$120,000 plus one half of the remainder;</li> <li>(ii) the remainder to the surviving parents;</li> <li>(iii) if there are no surviving parents, the remainder to the surviving brothers and sisters and the surviving children of any siblings who pre-deceased the deceased;</li> </ul> </li> </ul>
<b>3. Spouse and issue</b>	<ul style="list-style-type: none"> <li>a. If the estate is worth less than \$120,000, the surviving spouse is entitled to the whole of the intestate estate.</li> <li>b. If the estate is worth more than \$120,000 and there is only one surviving child and no other issue:               <ul style="list-style-type: none"> <li>(i) the surviving spouse is entitled to \$120,000 plus one half of the remainder;</li> <li>(ii) the remainder to the surviving child;</li> </ul> </li> <li>c. In any other case:               <ul style="list-style-type: none"> <li>(i) the surviving spouse is entitled to \$120,000 plus one third of the remainder;</li> <li>(ii) the remainder to the surviving issue;</li> </ul> </li> </ul>
<b><i>Where the deceased left a surviving de facto but no surviving spouse</i></b>	
<b>1. De facto and no issue, parents, siblings, nieces or nephews</b>	The de facto is entitled to the whole of the estate
<b>2. De Facto and no issue</b>	<ul style="list-style-type: none"> <li>a. If the estate is worth less than \$120,000,</li> </ul>

	<p>the surviving de facto is entitled to the whole of the intestate estate.</p> <p><b>b.</b> If the estate is worth more than \$120,000:</p> <ul style="list-style-type: none"> <li>(i) the surviving de facto is entitled to \$120,000 plus one half of the remainder;</li> <li>(ii) the remainder to the surviving parents;</li> <li>(iii) if there are no surviving parents, the remainder to the surviving brothers and sisters and the children of any siblings who did not survive the deceased.</li> </ul>
<b>3. De facto and issue</b>	<p><b>a.</b> Where either the de facto was the partner of the deceased for a continuous period of at least 2 years immediately prior to the death of the deceased or the issue include the issue of the deceased and the de facto:</p> <ul style="list-style-type: none"> <li>(i) If the estate is worth less than \$120,000, the surviving de facto is entitled to the whole of the intestate estate;</li> <li>(ii) If the estate is worth more than \$120,000 and there is only one surviving child and no other issue: <ul style="list-style-type: none"> <li>I. the surviving de facto is entitled to \$120,000 plus one half of the remainder;</li> <li>II. the remainder to the surviving child;</li> </ul> </li> <li>(iii) In any other case: <ul style="list-style-type: none"> <li>I. the surviving de facto is entitled to \$120,000 plus one third of the remainder;</li> <li>II. the remainder to the surviving issue;</li> </ul> </li> </ul> <p><b>b.</b> In all other cases, the issue (being issue of the deceased and someone other than the de facto) are entitled to the whole of the estate</p>
<b><i>Where the deceased is survived by both a spouse and a de facto</i></b>	
<b>1. Spouse and de facto but no issue, parents, siblings, nieces or nephews</b>	<p><b>a.</b> If the deceased was with the de facto partner for the two years immediately prior to death and did not live with the spouse during that time, the de facto is entitled to the whole of the estate.</p> <p><b>b.</b> In all other cases, the spouse is entitled to the whole of the estate.</p>
<b>2. Spouse, de facto and next of kin but no issue</b>	<p><b>a.</b> If the deceased was with the de facto partner for the two years immediately prior to death and did not live with the</p>

	<p>spouse and the estate is worth less than \$120,000, the surviving de facto is entitled to the whole of the intestate estate.</p> <p><b>b.</b> If the deceased was with the de facto partner for the two years immediately prior to death and did not live with the spouse and the estate is worth more than \$120,000:</p> <p>(i) the surviving de facto is entitled to \$120,000 plus one half of the remainder;</p> <p>(ii) the rest goes to the surviving parents;</p> <p>(iii) if there are no surviving parents, the remainder to the surviving brothers and sisters and the children of any siblings who pre-deceased the deceased.</p> <p><b>c.</b> In all other cases:</p> <p>(i) the surviving spouse is entitled to \$120,000 plus one half of the remainder;</p> <p>(ii) If there is more than one traditional law surviving spouse, they are entitled to share the amount in (i) in equal shares.</p> <p>(iii) the rest goes to the surviving parents;</p> <p>(iv) if there are no surviving parents, the remainder to the surviving brothers and sisters and the children of any siblings who pre-deceased the deceased.</p>
<p><b>2. Spouse, de facto and issue</b></p>	<p><b>a.</b> If the deceased was with the de facto partner for the two years immediately prior to death and did not live with the spouse:</p> <p>(i) if the estate is worth less than \$120,000, the surviving de facto is entitled to the whole of the intestate estate;</p> <p>(ii) if the estate is worth more than \$120,000 and there is only one surviving child and no other issue then the surviving de facto is entitled to \$120,000 plus one half of the remainder and the rest goes to the surviving child;</p> <p>(iii) In any other case, the surviving de facto is entitled to \$120,000 plus one third of the remainder and the rest goes to the surviving issue.</p> <p><b>b.</b> If the issue include issue of the deceased and the de facto:</p> <p>(i) if the estate is worth less than</p>

	<p>\$120,000, the surviving de facto is entitled to the whole of the intestate estate</p> <p>(ii) if the estate is worth more than \$120,000 and there is only one surviving child and no other issue then the surviving de facto is entitled to \$120,000 plus one half of the remainder and the rest goes to the surviving child;</p> <p>(iii) In any other case, the surviving de facto is entitled to \$120,000 plus one third of the remainder and the rest goes to the surviving issue.</p> <p><b>c.</b> In all other cases the de facto has no entitlement and:</p> <p>(i) if the estate is worth less than \$120,000, the surviving spouse is entitled to the whole of the intestate estate</p> <p>(ii) if the estate is worth more than \$120,000 and there is only one surviving child and no other issue then the surviving spouse is entitled to \$120,000 plus one half of the remainder and the rest goes to the surviving child;</p> <p>(iii) In any other case, the surviving spouse is entitled to \$120,000 plus one third of the remainder and the rest goes to the surviving issue.</p>
<b><i>Where the deceased left neither spouse nor de facto</i></b>	
<p><b>1. Issue</b></p>	<p><b>a.</b> If the deceased had only one child and the child survived, the child takes the whole estate.</p> <p><b>b.</b> If the deceased had two or more children, all of whom survived, the children take the whole estate in equal shares.</p> <p><b>c.</b> If the deceased had two or more children, of whom some survived and the remainder did not survive and did not leave surviving issue, the surviving children take the whole estate in equal shares.</p> <p><b>d.</b> If subsections (a) to (c) do not apply, the entitlement is divided into as many equal shares as the deceased had children who survived or who did not survive but left surviving issue (grandchildren or great grandchildren).</p> <p><b>e.</b> The equal shares are then taken as follows</p>

	<p>(i) The intestate's surviving children (if any) take one share each.</p> <p>(ii) For each child of the intestate who did not survive but left surviving issue, one share is taken by representation by the child's surviving issue (grandchildren).</p>
<b>4. No issue but parent or parents</b>	The parent or parents are entitled to the whole estate (if both survive, in equal shares).
<b>5. Brothers and/or sisters and children of deceased brothers or sisters (but no issue or parents)</b>	<p>a. If the intestate had only one brother or sister and they survived, they take the whole estate.</p> <p>b. If the intestate had two or more brothers or sisters, all of whom survived, they take the whole estate in equal shares.</p> <p>c. If the intestate had two or more brothers and/or sisters, of whom some survived and the remainder did not survive and did not leave surviving issue, the surviving brothers and/or sisters take the whole estate in equal shares.</p> <p>d. If subsections (a) to (c) do not apply, the entitlement is divided into as many equal shares as the Intestate had brothers and/or sisters who survived or who did not survive but left surviving issue.</p> <p>e. The equal shares are then taken as follows:</p> <p>(i) The intestate's surviving brothers and/or sisters (if any) take one share each.</p> <p>(ii) For each brother and/or sister of the intestate who did not survive but left surviving issue, one share is taken by representation by the brother or sister's surviving issue (nephews and/or nieces).</p>
<b>6. Nephews and/or nieces (but no issue, parents or brothers or sisters)</b>	<p>a. If the intestate had only one nephew or niece and they survived, they take the whole estate.</p> <p>b. If the intestate had two or more nephews and/or nieces, all of whom survived, they take the whole estate in equal shares.</p> <p>c. If the intestate had two or more nephews and/or nieces, of whom some survived and the remainder did not survive, the surviving nephews and/or nieces take the whole estate in equal shares.</p>
<b>7. If no issue, parents, brothers, sisters, nephews, nieces, grandparents, uncles, aunts or first cousins survived</b>	Deemed to be <i>bona vacantia</i> . The Crown takes the whole estate.



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

1. What is the full name of the Artist?
2. What is the date on which the Artist passed away?
3. Do you have an original certificate showing the date that the Artist passed away?
4. Was the Artist married at the time of passing away? Date married? Name and address of spouse.
5. Was the Artist in a de facto relationship at the time of passing away? Approximately how long was that relationship? Name and address of de facto.
6. Was the Artist divorced at the time of passing away? Date divorced?
7. Was the Artist survived by any children? List their names and addresses (if known). How old are the Artist's surviving children? Have any of them passed away since the Artist died?
8. If the Artist was not survived either by a spouse or children, who are the closest relatives? What is their relationship to the Artist – grandchildren, parent, brother or sister, niece or nephew?
9. Who is the primary contact from the family? What relationship to the Artist?
10. What was the arrangement between the Artist and art centre?
  - a. Did the art centre buy the paintings outright?
  - b. Did the art centre provide paints and canvases?
  - c. What was the art centre's commission?
  - d. How many paintings are still at the art centre?
  - e. What is their approximate value?
  - f. Have any been sold since the Artist passed away?
  - g. Are any paintings or artworks out at other galleries on commission?
  - h. Is the art centre holding any money from sales of paintings for the Artist?
11. What did the Artist own at the date of passing away?
  - a. Paintings?
  - b. Car?
  - c. Bank account?
  - d. House or property?
  - e. Personal belongings?
  - f. Shares, life insurance, superannuation?
  - g. What else?
12. What's the approximate total value of those items listed above, including the paintings?  
More than \$10,000?

13. Do you know if the Artist has any outstanding debts? (i.e. credit cards, laybys, loan repayments etc.)?
  - a. What about any money owed to the art centre?
14. Did the Artist have any agreements or licenses about the use of his/her art? If so, can you provide any details?
15. Did the Artist get royalties from Viscopy?
16. Did the Artist receive any mining royalties?

## DOCUMENT A

## [Letter to the Public Trustee]

[Date]

[please insert your name and address]

Public Trustee of Northern Territory

[Please insert address of nearest Public Trustee Office, or choose from the following:

GPO Box 470, Darwin NT 0801, GPO Box 8043, Alice Springs NT 0871]

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.

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 of Northern Territory 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** *[To be provided if possible. This section may otherwise be deleted]*

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

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

## DOCUMENT B

## Authority to Act on behalf of All Beneficiaries

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

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

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

We authorise [*name of person to act on behalf of beneficiaries*] of [*person's address*] to act on 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 *Administration and Probate Act (NT)*. The other beneficiaries have consented to this by signing this letter.

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



Yours sincerely

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

**Names and Signatures of Other Beneficiaries**

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

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

## DOCUMENT D

## [Letter to Art Centre]

[Date]

[please insert your name and address]

[Name of arts centre]

[Insert address]

Dear Sir/Madam

[Name of deceased] (deceased)

I am writing to inform you that the above named has 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
[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 estate is small but includes moneys and paintings of an unknown value held by you.

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

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

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

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

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

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

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

Account name: *[account name]*

BSB: *[BSB number]*

Account number: *[insert account number]*

**[OPTIONAL:** If you have concerns about releasing the money and paintings to me, you may like to notify the Public Trustee of the proposed distribution so that it can intervene if it considers it appropriate to do so, or like to place an advertisement in a publication to assure yourself that the correct beneficiaries have been identified.]

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

Yours sincerely

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

### **Names and Signatures of Other Beneficiaries**

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

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

## DOCUMENT E

### [Letter to Public Trustee re proposed distribution]

*[Date]*

*[please insert your name and address]*

Public Trustee of Northern Territory

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

GPO Box 470, Darwin NT 0801, GPO Box 8043, Alice Springs NT 0871]

Dear Sir/Madam

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

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

### Background regarding the estate

We are instructed that the deceased:

- a. died on ***[date]***;
- b. died without having made a will;
- c. did not have any liabilities and all funeral expenses have been met by the beneficiaries;
- d. did not have any assets of any significance, other than the following property and funds held by ***[name of arts centre]***:
  - A. ***[List any funds held by arts centre]***
  - B. ***List any paintings or artworks held by arts centre]***
  - C. ***List any copyright licences pursuant to which money is paid to the art centre for the artist***
  - D. ***List any other assets held by arts centre]***

### Entitlements in the estate

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

***[Names of beneficiaries, addresses and relationships to deceased]***

### Proposed distribution in the estate

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

For your information, we enclose a copy of an 'Authority, Waiver and Indemnity Form' signed by the beneficiaries of the estate as well as an 'Authority to Act on behalf of All Beneficiaries' which

authorises **[Name of person acting on behalf of beneficiaries]** to act on behalf of the beneficiaries in relation to the administration of the estate.

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

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

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

Yours sincerely

**[Name of person/arts centre]**

**DOCUMENT F****Advertisement to identify beneficiaries**

RE: **[name of deceased]**

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

**[Names of beneficiaries and relationships to deceased]**

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

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

Any other person with a claim against the estate as beneficiary must notify **[name of arts centre or other business]** within 30 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 *Administration and Probate Act* (NT). 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 *Administration and Probate Act* (NT). The other beneficiaries have consented to this by signing this letter. If you have concerns about releasing the money and paintings to me, you may like to place an advertisement in a publication to assure yourself that the correct beneficiaries have been identified.

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

Yours sincerely

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

**Names and Signatures of Other Beneficiaries**

**Name**

**Signature**

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

**DOCUMENT 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](mailto:resale@copyright.org.au)

Dear Sir/Madam

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

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

I enclose:

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

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

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

**[Names of beneficiaries and shares]**

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

Yours sincerely

**Manager**

INSERT IF OPTION 2, OTHERWISE DELETE:

**Names and Signatures of Beneficiaries**

**Name**

**Signature**

*[Beneficiaries to provide name and sign letter]*

**DOCUMENT 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](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 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**

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

THE NORTHERN TERRITORY OF AUSTRALIA  
Oaths Act  
Statutory Declaration

I **[insert full name]**

Of **[insert address]** in the Northern Territory of Australia:

Do solemnly and sincerely declare that:

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

***Names of beneficiaries, addresses and relationship to deceased and shares***

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

And I make this solemn declaration by virtue of the *Oaths Act* and conscientiously believing the statements contained in this declaration to be true in every particular.

Declared at **[location]** the                      day of                      20

**Signature of declarant**

Before me:

**Signature of person taking declaration, with name and contact details**

**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](mailto:anthony@aboriginalartists.com.au)

**Viscopy**

Level 15, 233 Castlereagh St  
Sydney NSW, 2000  
email: [viscopylicensing@copyright.com.au](mailto:viscopylicensing@copyright.com.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 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 *Administration and Probate Act* (NT). The other beneficiaries have consented to this by signing this letter.

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

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

We thank you in advance for your co-operation.

Yours sincerely

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

**Names and Signatures of Other Beneficiaries**

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

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

## Disclaimer

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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