

WHEN AN ABORIGINAL OR TORRES STRAITS ISLANDER ARTIST PASSES AWAY LEAVING A WILL IN WESTERN AUSTRALIA

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In this information sheet, we focus on the process which is followed when an artist passes away after having made a Will.

1. What is a "Will"?

A Will is a legal document that an artist or other person makes during their lifetime that sets out how they want their money and other belongings (their "**estate**") to be distributed among their family and friends when they pass away. Provided the Will is valid, the estate of that deceased person shall be distributed in accordance with the terms of the Will.

If a person passes away without leaving a valid Will, that person is said to have died "**intestate**". In this case, the laws of intestacy in a state or territory will determine who is entitled to have that person's estate, including any copyright and resale royalty.

If the person leaves a valid Will, but it only deals with some (but not all) of that person's belongings, that person is said to have passed away "**partially intestate**". In that case, the laws of intestacy determine how to distribute the things that are not covered by the Will.

The laws of intestacy may require the deceased person's assets to be distributed in a way which is very different to the outcome that the family of the deceased person expect and may also be different to the result that the deceased person would have wanted. Importantly, these laws may be very different from the traditional or customary way of dealing with the passing of an Indigenous person. **For that reason, we recommend that you prepare a Will to make sure that your estate goes to the family and community members of your choosing.**



Making a Will helps to look after the next generation - Photo D Everard

Public Trustee of the Western Australia - Will drafting service

The Public Trustee of the Western Australia runs a Will drafting service. This service may involve nominating the Public Trustee as your Executor ([Click here to go to 'Who is the 'Executor'?'](#)).

To obtain the help of the Public Trustee's drafting service you should call the Public Trustee on 1300 746 116 to arrange a face-to-face Will appointment. A time and date for this meeting will be allocated, and the Public Trustee will send you paperwork to fill out prior to your appointment.

If you live further than 50kms from the Perth Central District you are eligible for a telephone Will appointment. Call the Public Trustee on 1300 746 116 to book a time and date and arrange for your paperwork to be submitted appropriately.

The Public Trustee will charge a fee that must be paid by the estate after the person passes away before the rest of the estate is distributed to the beneficiaries. The fee is smaller if the drafted Will nominates the Public Trustee as executor.

Public Trustee's Will drafting services fees as of 1st July 2019

	Public Trustee as executor	Private executor
Concession holders	\$50	\$347
Non-concession holders	\$347	\$347
Couple (at least one is a concession holder)	\$39 (each)	\$232 (each)
Couple (non-concession holders)	\$232 (each)	\$232 (each)

The Arts Law Centre of Australia (**Arts Law**) can also help you by drafting your Will, subject to eligibility criteria.

A Will is an important document. Your original Will should be kept somewhere safe from any loss, theft or damage. The Public Trustee of the Western Australia also provides a Will Bank service, which you can use to store your Will, and which is free to use. To store your Will using the Will Bank Service, you should complete a Will Bank Deposit Form and bring it to the Public Trustee located at:

565 Hay St, Perth Western Australia 6000
(Open: 8:30am – 4:15pm - Monday to Friday)

[Document A](#) is the [WA Will Bank Deposit Form](#) required to store your Will in the Western Australia Will Bank

For further information, call the Public Trustee's Wills Bank on 1300 746 116.

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 anything owned by the person, such as real estate (property), cars, insurance policies, money in bank accounts, shares, artwork, furniture, jewellery, clothes, copyright royalties, 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, car payments, or income tax. The executor of the estate will pay off these debts before distributing the remaining amounts in the estate in accordance with the Will (but not before paying for the person’s funeral expenses).

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. After 70 years, the copyright is said to be ‘in the public domain’ and is able to be used without making royalty payments to the artist’s estate. Within that 70 year period after the artist’s death, however, the estate can earn royalties for the right to reproduce the artist’s artworks, for example, in auction catalogues, art books and merchandise, usually even if the physical artworks themselves have been sold.

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 Islander 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 an art centre from the sale of artworks;
3. Artworks held by an art centre, or by 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.

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 contact Arts Law for legal advice as to the appropriate procedure for dealing with them.

3. Who are the ‘Beneficiaries’?

The people who are named in the Will as the ones who should receive the artist’s estate after he or she passes away are called the “**beneficiaries**”. If a beneficiary passes away within 30 days of the date on which the artist died, that beneficiary is not entitled to inherit anything under the Will.

If a person dies intestate (without a valid Will), the relevant laws of intestacy will determine who the beneficiaries are.

4. Who is the 'Executor'?

Most Wills nominate one person to be the “**executor**” of the Will (this person is also called the ‘trustee’). Usually the executor is a trusted family member or friend, but it can also be a lawyer, or the Public Trustee. The role of executor is an important responsibility that should not be taken lightly.

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

The executor is responsible for the “**administration**” of the Will and the deceased's estate. The administration of the deceased's estate involves collecting the deceased's assets, establishing what debts and tax the estate owes, paying those debts, and then distributing the assets to the beneficiaries named in the Will after paying for the funeral expenses of the deceased. The executor may also need to file a tax return for the estate.

Some Wills don’t appoint an executor, or the executor appointed under the Will may have already passed away by the time the artist dies. In that case, a family member or other person can apply to the Supreme Court to be appointed as the executor, or otherwise request the Public Trustee to administer the estate in accordance with the terms of the Will.

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

The Public Trustee can assist private executors with certain aspects of administration. For further information relating to these services (and the fees charged) you can telephone the Public Trustee on 1300 746 116 or read the information sheet provided on the [Public Trustee Website](#). Fees for this service are deducted from the estate before distribution of cash or assets to beneficiaries.

5. Should the executor have a ‘reading’ of the Will?

One of the executor’s first jobs is to find and look after the original Will. If the Will was not among the papers of the deceased, it may have been held by a solicitor or by the artist’s art centre. It must be handed to the executor.

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

The executor must read the Will carefully and understand how the artist wanted his or her estate to be distributed. It is important to identify which family members are entitled to the deceased artist’s assets according to the Will (i.e. the beneficiaries).

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

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

- a. Any person mentioned in the Will (or any earlier Will) such as a beneficiary;
- b. Any spouse, parent, child or grandchild of the deceased;
- c. Any parent or guardian of a person mentioned in a Will who is a minor; and
- d. Any person to whom the deceased owed money (a creditor).

6. Funeral Arrangements

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

The executor should consider that a very expensive funeral will mean that there is less money in the estate for the beneficiaries. The funeral should not cost more than the estate can afford.

The executor must pay funeral expenses and the costs of administration (such as Court filing fees, postage etc) before any debtors are paid and before distributing any money to the family.

Whether there are insufficient funds in a deceased person's estate to pay for a funeral, and when the deceased person's family are unable to meet the funeral costs the Bereavement Assistance of the Department for Child Protection Program could provide assistance to community members. For further information you can call free the Department for Child Protection Program 1800 854 925. You can also refer to the [Department for Child Protection Program Website](#).

The Australian Securities and Investments Commission also has a useful information sheet explaining solution for paying for funerals, [which you can access by clicking here](#).

7. Carrying out the instructions in the Will

There are three options for administering the estate:

Option 1: The Public Trustee can manage the estate. The Will may nominate the Public Trustee as executor. However, the beneficiaries can also ask the Public Trustee to manage the estate even if the Will appointed someone else. This is usually appropriate if the Will does not name an executor or the executor who is named in the Will has also passed away or cannot take on the job of executor, and no one in the family of the deceased is prepared to take on that responsibility.

Option 2: The executor named in the Will can apply to the Supreme Court for an order confirming his or her authority to manage the estate. This is called a "**Grant of Probate**". Where there is no executor, a family member or other person can apply to the Supreme Court for permission to manage the estate. This is called "**Letters of Administration**" and is appropriate if the Will does not name an executor or the executor who is named in the Will has also passed away or cannot take on the job of executor. The family may prefer that a family member or trusted friend carry out those responsibilities rather than the Public Trustee. A Grant of Probate or Letters of Administration is necessary where businesses or institutions which hold the deceased's assets are not be prepared to release them to the executor unless he or she has such a Court order confirming his or her authority.

Option 3: The executor named in the Will can try to manage the estate and distribute all the assets in accordance with the instructions in the Will without a Grant of Probate or Administration. This may be possible for smaller estates where there is no real property (land) involved.



Option 1 – Asking the Public Trustee to manage the estate

If the Will nominates the Public Trustee as the executor, the Public Trustee must be notified that the artist has passed away. Where there is no executor named in the Will, or that person does not want to, or cannot take on the job of trustee, the beneficiaries can also approach the Public Trustee and ask it to administer the estate.

The Public Trustee is a statutory authority that is a branch of the Western Australian governmentⁱⁱ. The Public Trustee is not obliged to administer the estate (even if it was named as the executor by the Will). The Public Trustee will not often refuse to administer an estate, but may do so if, for example, the estate is insolvent (or has so few assets that there is not enough to cover the Public Trustee's costs).

An application to the Public Trustee should include information on the value of the estate, including the present value of any artwork and any licensing agreements.

Document B is a template letter to the Public Trustee requesting that it administer the estate of the deceased artist in accordance with the terms of the Will.

Fees are calculated by determining the number and types of tasks that need to be completed to administer the deceased estate. The Public Trustee's total charges (including fees, estate management, etc.) will vary, notably 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.

A [standard schedule](#) is used to determine how many and the types of tasks that are involved in the process, as well as the cost to perform these tasks. However, the value of the estate doesn't influence the cost to administer it.

The following example illustrates the cost of administering a deceased estate.

Example:

An Indigenous artist has passed away. Her Will leaves everything to be divided equally among her three children. Her estate contains the following property:

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

Altogether, this estate is worth \$100,000. The fee to administer the estate is approximately \$6,593.

This artist also owned a house with the surviving spouse. As the house was jointly owned, it did not form part of the deceased estate and her share was transferred directly to the spouse.

The Public Trustee has confirmed that in most cases, the administration of an estate can be completed within 6 months. However, more complicated cases can sometimes take years to be completed.

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

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

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

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

i. Does the executor need a Grant of Probate or a Grant of Administration?

Obtaining a **Grant of Probate** is the first step of estate management, if one is required. It's a legal document that authorises the appointed executor to deal with the estate of a deceased person in accordance with the terms of the Will.

Applying for a Grant of Probate can involve certain costs and can be a complex and time-consuming process. To determine whether a Grant of Probate is needed, the person appointed executor in the Will must check with the organisations with which the deceased held assets (e.g. a bank), to determine if those organisations require probate for transfer of those assets to the executor or the beneficiaries.

If an individual dies without a Will, or if there is no executor appointed under a Will, or if the executors that have been appointed are unable to carry out their duties, it will be necessary for an interested party to apply to the Supreme Court to be granted **Letters of Administration**, by which the court authorises the applicant to administer the assets and liabilities of the deceased person. The person who obtains the Letters of Administration will usually be one of the beneficiaries who will receive a gift from the estate, usually under the intestacy rules which operate to define the priority of relatives who will receive the assets when there is no Will. An application for Letters of Administration must be made within 6 months of the date of death of the deceased. If 6 months has already elapsed, the executor/applicant should draft an affidavit explaining the reasons for the delay in making the application.

Note: If the named executor cannot act, then it is preferable if all of the beneficiaries can reach agreement about how to proceed. The beneficiaries can authorise one or two people to manage the estate.

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

ii. *How to obtain a Grant of Probate or a Grant of Administration?*

The person appointed by a Will as executor may apply for a grant Probate to the Registrar of the Supreme Court of the Western Australia. This process is called "proving a Will". Before it will issue a Grant of Probate, the Court must be satisfied that the Will appointing the executor is valid and is the last Will of the deceased.

You can prepare an application for a probate online via the website of the Supreme Court of the Western Australia [by clicking here](#).

See the [Supreme Court website](#) for further information on how to prepare an application for probate and to [contact](#) the Supreme Court Registry

Where online application is unavailable, you must lodge the following at the Court's Probate office, which is located on the Level 11, 28 Barrack Street, Perth:

1. The Application for a Grant of Probate;
2. An affidavit in support of the Application, sworn by the person applying for Letters of Administration;
3. The original and a photocopy of the Death Certificate of the deceased. You can obtain a certificate of Death from the Registry of Births, Deaths & Marriages of the Western Australia by [clicking here](#).
4. The original Will; and
5. The lodgement fee.

In most cases, the help of a Western Australian solicitor will be necessary to prepare these documents (which may result in incurring solicitor's fees). 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 also take some time and include some fees. The table below contains a summary of the fees charged by the Supreme Court as of 1st July 2019:

Description	Fee
Filing application for a grant of probate or administration	\$370
Depositing a Will of a deceased person	\$96.50
Depositing a Will or instrument under the Wills Act 1970 s.44(1)	\$96.50
Copy of a Will or any other document per page	\$2.05
Certification fee	\$23.50
Exemplification of a grant	\$121.50
For settling and sealing a citation or a subpoena	
Search Fee	\$49

You should obtain legal or accounting advice as to any tax issues that may arise following the death of the deceased. There is no probate duty payable.

In addition to the filing fee above, the application may involve some other upfront costs that will need to be paid, such as those charged by the Registry of Births, Deaths & Marriages of the Western Australia. These costs can be reimbursed from the money in the estate.

Once the documents required for a Grant of Probate are filed, the Grant should be issued within about 6 weeks. If there are any problems, a staff member from the Supreme Court will contact you.

If the person applying to the Court is not the executor named in the Will, a similar process is involved. 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 beneficiaries who can be identified and are living in Western Australia. However, if there is no family member willing to apply, or all the beneficiaries are underage, the Court may appoint someone else.

Once the Grant of Probate or Administration is issued, it can be used by the executor to show that he or she has the legal right to deal with the assets of the estate, including the right to provide instructions in relation to the sale of artwork and to collect money owed to the estate. Some businesses will not release the property of a deceased person unless they are provided with a Grant of Probate or Administration.

The Supreme Court of the Western Australia website has a [Probate Online Application Form](#) which is a useful tool to assist you to prepare an application for a grant of probate.

The executor can usually obtain reimbursement from the assets of the estate for any costs, expenses or fees associated with the administration of the estate (such as the costs of the application to the Supreme Court).

[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 executor to administer the estate informally, without applying to the Supreme Court.

This option will only be possible if those holding property or money on behalf of the estate (such as a bank or art centre) do not insist on sighting either a Grant of Administration or a Grant of Probate before they will release the property or money belonging to the estate. In other words, the bank or art centre must be prepared to transfer the property or release the money to an executor who has not had his or her appointment confirmed by the Court.

If the deceased person owns land as a joint tenant, the property will automatically revert to the other legal owner (who is ordinarily their spouse). If the property is owned as tenants in common, the deceased's share must be included in their Will. Probate is not required in these situations.

8. Administration of the estate in accordance with the terms of the Will

The main aim of this section is to propose a general guide helping the executor to administer the estate in accordance with the terms of the Will. It concerns an executor who needs a Grant of Probate or Letters of Administration (as set out above in Section 7 - Option 2) as well as an executor who doesn't need this kind of Grant (as set out above in Section 7 - Option 3).

Does the estate need its own bank account?

It is usually sensible to set up a bank account for the estate that is operated by the executor. This is not a personal account for the executor - it must not be used for anything other than the business of managing the estate. In other words, the executor should take care not to mix their own personal money with the money held by the estate.

This account can be used for depositing any funds owed to the estate such as resale royalties or sales proceeds from artwork. It can also be used to pay any debts such as taxes or credit cards. Once the executor is certain that all expenses have been paid they can distribute the remaining funds to the beneficiaries as set out in the Will. Once all distributions have been made, the account can be closed.

How does the executor get hold of the assets in the estate?

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

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

A bank may release funds in a deceased person's bank account to the executor or beneficiaries, if the bank account does not contain a substantial amount of money.

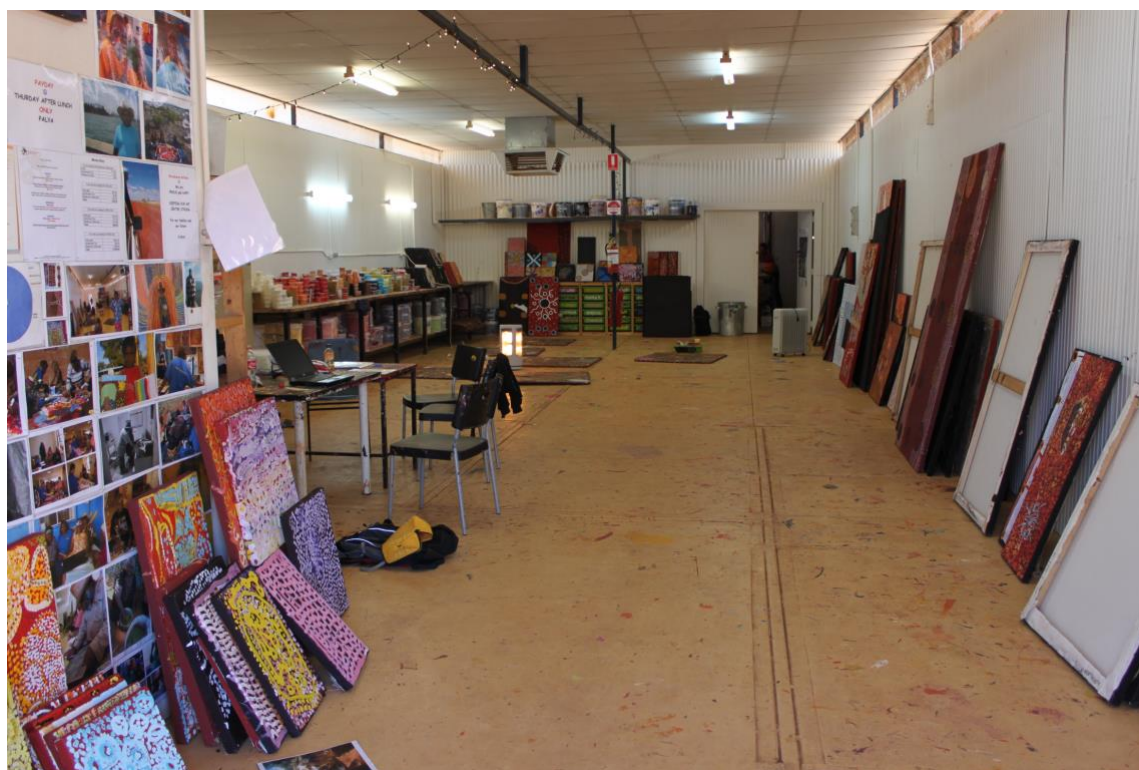
Document D is a suggested template letter to send to the bank. It should attach a certified copy of the Will as well as a copy of the death certificate and the deceased's most recent bank statement, if any.

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

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 this case, after the artist passes away, the art centre is generally entitled to arrange the sale of all paintings and artwork created by the artist with the assistance of the art centre. The executor also cannot give the paintings to another gallery or auction house to sell without the consent of the art centre and cannot keep any of that artwork to give directly to the beneficiaries unless the art centre agrees. In such cases, the simplest approach is for the art centre to sell the paintings in its possession and deposit the funds into the estate's bank account, as well as any other moneys held for the artist in its account (after deduction of its share of the proceeds).



Art centres provide canvases, paints and support to their member artists - Photo D Everard

If the estate doesn't have its own bank account, the art centre may be willing to hold the money on trust for the estate in the art centre's own account until the executor is sure that all debts have been paid. The executor can instruct the art centre to make payments directly to the beneficiaries when appropriate.

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

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

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

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

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

Document 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 executor decides that the best way to manage the assets is to proceed with a particular exhibition or consignment arrangements, the executor can request that the gallery or dealer sells the paintings and pays the proceeds into the estate's bank account or directly to the beneficiaries.

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 organisation nominated by the Federal Government to manage the resale royalty scheme is the Copyright Agency and further information can also be found on the [Copyright Agency Website](#).

The 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](#).

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

In most cases, the 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 three options – registration of the beneficiaries, registration of a copyright trustee, or registration of the executor.

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

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

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

Example:

A well-known Indigenous artist from the Cape York Peninsular has passed away. His works have been featured in books and films and he earned substantial copyright royalties during his lifetime. His Will leaves everything to his wife and four children. His eldest daughter is the executor. She registers the estate with Aboriginal Artists Agency (AAA) and instructs them that all royalties must be divided equally among the five beneficiaries. The National Gallery of Australia wish to conduct a major retrospective of the artist's work which will involve showing films of him painting and publishing a hardcover collectors' catalogue. AAA negotiates all the licensing agreements with the National Gallery including airfares for the family to attend the opening of the exhibition. AAA collects the royalties on behalf of the family and distributes them to the five beneficiaries. The following year, the films are broadcast on SBS and further royalties are paid to Screenrights which then distributes them to the five beneficiaries.

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

Most Wills don't specifically mention copyright, in which case the copyright is simply divided up like the rest of the estate. If there are a number of beneficiaries who all share in the copyright, it can be very difficult to manage the copyright in a way that earns any money for the beneficiaries. The executor may have to consider how the copyright should be divided between the beneficiaries in order both to comply with the Will and help the beneficiaries to benefit in a practical way.

Some Wills nominate the executor or another named person as the ‘trustee’ of copyright with an ongoing responsibility to manage the copyright on behalf of a group of beneficiaries. This responsibility can continue well after all the other assets in the estate have been shared out among the beneficiaries and the executor’s job is complete. The copyright trustee will need to open an account into which any copyright royalties can be deposited and he or she will then be responsible for distributing such payments to the beneficiaries.

Managing the copyright involves negotiating licence agreements and claiming royalties when the deceased artist’s work is reproduced. Unless the copyright trustee or the beneficiaries have the time and expertise to manage this, Arts Law recommends that the deceased artist’s copyright be registered with the appropriate collecting societies so that the beneficiaries can receive an income stream from copyright licensing opportunities.

For information about collecting societies generally, see Arts Law’s information sheet: [Copyright Collecting Societies](#). This information sheet gives some guidance below about how to deal with the different collecting societies that might be relevant to the copyright of a visual artist.

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

In all other situations, the executor should contact each collecting society directly and:

- Find out if the artist was registered;
- If so, advise that the artist has passed away and that the artist had a Will; and
- Find out which bank account the artist was using to receive royalties and make sure that any money in this bank account is included in the estate.

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

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

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

Document 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.

i. *Copyright Agency:*

See the section on Resale Royalty above for information on approaching the 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](#).

The Copyright Agency can manage non-statutory or voluntary copyright licensing for the beneficiaries of the deceased artist's estate. For example, businesses that want to use copies of the deceased artist's artworks in books, on websites, greeting cards and posters, in newspapers, magazines, television, exhibition catalogues, merchandise, advertising and film can approach the Copyright Agency for a license. If the artist's estate is registered with the Copyright Agency, the Copyright Agency 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 the [Copyright Agency website](#).

The Copyright Agency'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 the Copyright Agency how you should proceed to arrange for payments to go to the beneficiaries. The Copyright Agency is likely to require information which confirms:

- the date of death;
- that the artist had a Will; and
- 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 the Copyright Agency, the artist may have been registered instead with AAA. If not, then Arts Law recommends that families enquire as to how the beneficiaries can become registered with the Copyright Agency (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 the Copyright Agency. If the deceased artist was registered with AAA, AAA will usually be willing to continue to manage non-statutory licensing for the beneficiaries. Businesses that want to use copies of the deceased artist's artworks in books, on websites, greeting cards and posters, in newspapers, magazines, television, exhibition catalogues, merchandise, advertising and film can approach AAA for a license which will negotiate a royalty for that use and, after deducting its fee, will pay the remainder to the persons registered as the artist's beneficiaries. For information, see [AAA's website](#).

Contact Anthony Wallis at AAA by phone: 0417 230 464 or email: anthony@aboriginalartists.com.au to find out if the deceased artist was registered for copyright royalties. If the artist was not registered, Arts Law recommends that families enquire as to how the beneficiaries can become registered with AAA (or the Copyright Agency) 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 audiovisual works (film and video) including uses by government and educational institutions. Often an artistic work such as a painting or sculpture may appear in a film or television broadcast and the owner of copyright in that artwork will share in any royalties collected by Screenrights for the use of that film. For more information, see the [Screenrights website](#).

If you know that artworks by the deceased artist appeared in a film or television broadcast, contact Screenrights' Member Services to find out if the deceased artist was registered for statutory royalties. Telephone: 02 8038 1300 or email members@screenrights.org.

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

Screenrights will not necessarily require letters of probate in order to update registration and payment details for the estates of Indigenous artists. The executor should discuss this with Screenrights' Member Services to arrange for payments to go to the copyright trustee or the beneficiaries.

iv. *Other licensing arrangements:*

If there are other licensing deals that were negotiated during the artist's lifetime without involving a collecting society, the executor needs to decide whether those contracts can and should be terminated or whether they should continue. The executor should obtain 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 pay any royalties to the beneficiaries in the future. If the licensee does not agree, seek legal advice as to whether the licence should be terminated. It may be necessary to get a grant of probate or administration in order to deal with these licences.

Example:

The artist had a licence with a souvenir business to use three artworks on stationery and gift cards. The artist's Will left everything to his three children in equal shares. The children agreed that they would each take copyright in one of the three works. The souvenir business agreed to pay royalties on the first artwork to the artist's eldest son, on the second artwork to the second son and on the third artwork to the artist's daughter.

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

f. Real Estate

Western Australia Land Information Authority requires a grant of Probate or Letters of Administration before it will transfer or allow the sale of property owned by the deceased artistⁱⁱⁱ. The executor will need to make a statutory declaration attaching the original will and a certified copy of the death certificate using Form A1 from the Landgate, Western Australia Land Information Authority [by clicking here](#).

Western Australia Land Information Authority proposes a useful guide for completing this form, which is available on their website [by clicking here](#).

If the deceased artist owned land as a joint tenant, the executor does not need to take any action as the other joint tenant (often the spouse or partner of the deceased person) will automatically become the sole owner.

g. Cars and caravans



The estate will include any car owned by the artist – Photo D Everard

If the deceased owned a car, it will need to be transferred into the name of the correct beneficiary or, if the car is to be sold so that money can be divided among several beneficiaries, the name of the purchaser.

Department of Transport of Western Australia requires a grant of Probate or Letters of Administration before it will transfer or allow the sale of property owned by the deceased artist.

The executor will need to make a statutory declaration attaching the original Will and a certified copy of the death certificate to a Statutory Declaration Deceased Estates Form [MR172](#) from the Department of Transport of Western Australia.

The Department of Transport of Western Australia has a useful website which you can access [by clicking here](#).

h. Insurance policies and superannuation funds

Some types of insurance or superannuation policy will include provision for a named beneficiary in the event of the death of the policy holder and may therefore not be covered by the Will because the fund will pay directly to the named beneficiary.

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

i. Nursing home accommodation bonds

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

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

In many cases, the beneficiaries may be children under the age of 18 years old. The Will should contain instructions about how to manage the minor beneficiary's funds, for instance, whether the executor is to safeguard these funds until the child reaches a certain age nominated in the Will. In this case, the executor must set up and maintain a trust fund for this person until that age is reached.

10. Getting started – Checklist for executors

As can be seen from the above, there are a number of things to think about when managing the affairs of a deceased artist who made a Will before passing away. Set out below is a checklist of matters to consider when embarking on one of the options outlined above:

- a. Find the original Will and make sure that it is the last Will made by the artist.
- b. What was the date on which the artist passed away? Do you have a copy of the Death Certificate? You will probably need one or more certified copies of the Death Certificate and the Will. The Will and the official Death Certificate should be photocopied several times. You can then take those copies to the local post office, pharmacy, or police station, and ask them to endorse them as certified copies.
- c. Do you need a Grant of Probate to manage the estate of the deceased person? To determine if a Grant of Probate is needed, you must check with the organisations which hold the deceased's assets to determine the organisations requirements for transfer of those assets to you or the beneficiaries.
- d. Have you contacted all the beneficiaries and explained the terms of the Will. Provide them with a copy of the Will if they ask for one.
- e. Have all the funeral expenses been paid? If so by whom? If there are outstanding debts associated with the funeral, any funds must first be applied to the payment of those before any distribution to the beneficiaries.

- f. If the artist was receiving any benefits from Centrelink, advise Centrelink that the artist has passed away.
- g. If the artist had a car or a driver's licence, advise the Department of Transport of the Western Australia that the artist has passed away.
- h. What did the Artist own at the date of passing away?
 - o Paintings
 - o Car
 - o Bank account
 - o House or property
 - o Personal belongings
 - o Shares, life insurance, superannuation
- i. What's the approximate total value of those items listed above? Less than \$10,000? Special rules may apply.
- j. Was the artist a member of an art centre? Which one? Do they hold any money or paintings belonging to the artist?
- k. Find out if the artist needs to file a tax return. If there is any tax owing, that must be paid before any money can be distributed to the beneficiaries. Many Indigenous artists were considered 'hobbyists' by the Australia Tax Office while alive and did not have to complete tax returns dealing with income earned from their art. If that is the case, then it will not be necessary to file a tax return for the period up to the date of death. However, in relation to any money earned by the estate from sales of artwork after the artist's death, tax may be payable.
- l. Ascertain any other debts of the artist. These must be paid before any distribution to the beneficiaries.
- m. Are there any art galleries holding works of the artist for exhibition and sale? Do you have contact details for them?
- n. Did the Artist have any agreements or licenses about the use of his/her art? If so, can you provide any details?
- o. Did the Artist get royalties from the Copyright Agency or AAA?
- p. Is the artist registered for Resale royalties?

SCHEDULE OF DOCUMENTS

Document A is the [WA Will Bank Deposit Form](#) required to store your Will in the Western Australia Will Bank

Document B is a template letter to the Public Trustee requesting that it administer the estate of the deceased artist in accordance with the terms of the Will.

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

Document D is a suggested template letter to send to the bank requesting a release of funds.

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

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

Document 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 the Copyright Agency requesting registration of the estate for resale and statutory royalties.

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

Document K is a letter from the art centre to AAA 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.

Disclaimer

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

While Arts Law tries to ensure that the content of this information sheet is accurate, adequate or complete, it does not represent or warrant its accuracy, adequacy or completeness. Arts Law is not responsible for any loss suffered as a result of or in relation to the use of this information sheet. To the extent permitted by law, Arts Law

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



TEMPLATE DOCUMENTS FOR USE WITH WESTERN AUSTRALIA WILLS KIT

SCHEDULE OF DOCUMENTS

Document B is a template letter to the Public Trustee requesting that it administer the estate of the deceased artist in accordance with the terms of the Will.

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

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

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

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

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

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

Document L is a letter from the art centre to AAA advising them that the artist has passed away and asking them to continue paying royalties into the art centre account.

Document M 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: **[Insert your name and address]**

Step 1

Read the accompanying information sheet.

Step 2

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

Step 3

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

Step 4

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

DOCUMENT A*[Date]**[Insert your name and address]*

Public Trustee
GPO Box M946
Perth WA 6943

Dear Sir

[Name of deceased] (deceased)

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

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

The assets in the deceased's estate include:

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

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

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

Yours sincerely

[Beneficiary making application to provide name and sign letter]

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

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

[Other beneficiaries to provide name and sign letter]

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

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

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

Delete whichever is inapplicable:

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

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

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

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

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

[Date]

[Insert your name and address]

[Name] Bank
[Insert address]

Dear Sir

[Name of deceased] (deceased)

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

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

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

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

The only moneys in the deceased's estate are:

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

[Other]

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

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

Yours sincerely

Executor/Administrator

DOCUMENT D

[Date]

[Insert your name and address]

[Name of arts centre]

[Insert address]

Dear Manager

[Name of deceased] (deceased)

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

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

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

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

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

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

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

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

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

Account name: *[account name]*

BSB: *[BSB number]*

Account number: *[insert account number]*

Yours sincerely

Executor/Administrator

DOCUMENT E

[Date]

[Insert your name and address]

[Name of arts centre]

[Insert address]

Dear Manager

[Name of deceased] (deceased)

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

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

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

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

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

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

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

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

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

Yours sincerely

Executor/Administrator

DOCUMENT F

[Date]

[Insert author name/address]

[Insert name and address of gallery/dealer]

Dear *[name]*

[Name of deceased] (deceased)

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

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

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

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

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

In respect for the artist, the family have requested that all works and images of the artist be removed from public view and sale. I would be grateful if you would make immediate arrangements to return all unsold works to *[address of art centre/gallery/other place]*.

Please provide a reconciliation and deposit all sales proceeds into the estate's bank account as follows:

Account name: *[account name]*

BSB: *[BSB number]*

Account number: *[insert account number]*

As the estate is small, I am hoping to avoid the need to go to the expense and time of obtaining Letters of Administration. Please let me know if you are happy to proceed in this way.

Yours sincerely

Executor/Administrator

DOCUMENT G*[Date]**[Insert author name/address]**[Insert name and address of gallery/dealer]*Dear *[name]**[Name of deceased]* (deceased)

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

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

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

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

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

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

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

Account name: *[account name]*BSB: *[BSB number]*Account number: *[insert account number]*

As the estate is small, I am hoping to avoid the need to go to the expense and time of obtaining Letters of Administration. Please let me know if you are happy to proceed in this way.

Yours sincerely

Executor/Administrator

DOCUMENT H**[Date]**

Copyright Agency Limited
Level 12, 66 Goulburn Street
Sydney NSW 2000 AUSTRALIA

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

Dear Sir/Madam

[Name of deceased] (deceased)

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

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

EITHER OPTION 1: Could you please register the beneficiaries as the recipients of any resale royalties and statutory royalties due to the deceased artist's estate in accordance with the terms of the will.

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

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

I enclose:

- A copy of the Will and the death certificate
- Completed artist's beneficiary resale registration form(s)
- Evidence of identity for the applicant(s) (photocopy of drivers licence or Centrelink card)

Yours sincerely

Manager, Art Centre

DOCUMENT I

[Date]

Copyright Agency Limited
Level 12, 66 Goulburn Street
Sydney NSW 2000 AUSTRALIA

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

Dear Sir/Madam

[Name of deceased] (deceased)

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

I enclose:

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

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

The estate is small but includes moneys and paintings valued at approximately **[estimated value]** held at the art centre as well as the deceased's entitlement to resale and statutory royalties. I am not intending to apply for letters of probate given the size of the estate.

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

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

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

Yours sincerely

Executor/Administrator

Oaths, Affidavits and Statutory Declaration Act 2005
Statutory Declaration
Western Australia

I **[insert full name]**

Of **[insert address]** in the State of Western Australia

Do hereby solemnly declare and affirm that:

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

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

Signature of declarant

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

Thisday of

A Justice of the Peace/Commissioner for Declarations

DOCUMENT J**[Date]****Aboriginal Artists Agency Limited**

PO Box 282

CAMMERAY 2062

email: anthony@aboriginalartists.com.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 with your collecting society with royalties going directly to the art centre account.

I enclose a copy of the artist's last will and the death certificate. The estate is small but includes moneys and paintings valued at approximately **[estimated value]** held at the art centre as well as the deceased's entitlement to statutory and voluntary copyright royalties. The executor is not intending to apply for letters of probate given the size of the estate and wishes all royalty payments to continue to be paid into the art centre account. We will distribute those payments to the beneficiaries in accordance with the will and the executor's instructions.

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

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

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

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

Yours sincerely

Manager, Art Centre

DOCUMENT K

[Date]

[Insert author name and address]

[Insert name and address of licensee]

Dear *[Name]*

[Name of deceased] (deceased)

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

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

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

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

[List beneficiaries and shares]

Please forward me a new licensing agreement for signature.

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

Thank you in advance for your co-operation.

Yours sincerely

Executor/Administrator

- i *Administration Act 1903* Fifth schedule – section 1
- ii Established by the *Public Trustee Act 1941 (WA)*
- iii *Transfer of Land Act 1893 (WA)* Section 187 (1)