

6.9 Martumili Artists Wills and Estates

Objective

To provide a framework for the disbursement of funds held in trust by the Shire of East Pilbara for member artists of Martumili, in the event of their passing.

Policy Context

The Shire operates Martumili Artists which acts as a community art centre and sales agent for Martu artists living within the Shire's District in the communities of Punmu, Parnngurr, Jigalong, Kunawarritji, Nullagine, Warralong and Newman. MMA holds the artists' work on consignment and takes a commission on sale. The proceeds of sales are deposited into the Shire's bank account and the artists' shares (after the deduction of MMA's commission) are held in trust on the artists' behalf. The Shire is also frequently the nominated agent for receipt of copyright and other royalties earned by the artists from their artwork. These funds are also deposited to the Shire's account and held in trust pending distribution to the artist.

It is frequently the case that the Shire holds funds, and MMA holds unsold artwork, when an artist passes away. This policy has been developed to provide a framework to manage those funds and artworks so that the Shire is not left holding, and responsible for, assets and funds which are not its own.

Definitions

Executor is the person named in a Will to carry out the wishes of a person after they pass away.

Will is a legal document outlining how a person wishes to distribute their property after their death.

Policy Statement

Wills

1. Artists should be encouraged to make a Will. MMA has access to *pro bono* legal assistance through the Arts Law Centre of Australia and other sources.
2. In the past, artists have tended to nominate family members as executors when making a Will. While this is a personal decision for each person, the Shire has encountered situations where family members do not have the capacity or access to resources to manage an estate, in particular, the process of obtaining probate. The Shire's preference is for artists to nominate the Public Trustee or a Lawyer which has expertise and a statutory charter to administer deceased estates and can quickly and efficiently secure a grant of probate.

Deceased Estates

3. Upon the passing of an artist, MMA will:
 - a. Notify the Public Trustee and Copyright Agency/Viscopy and, if applicable, provide a copy of any last Will held by MMA with respect to the deceased artist;
 - b. Notify the Shire's authorised finance officer, who will rename the artist's creditor profile in the Shire's accounting system "Estate of [artist name], deceased"; and
 - c. Following the funeral, contact the funeral home understood to have conducted the service and request confirmation that details have been communicated to the Western Australian

Office of Births, Deaths and Marriages to enable the issue of a death certificate.

- d. With approval of the next of kin (If there is a will, preferably the person named as executor or alternative executor) MMA will apply for a copy of the death certificate on behalf of the family.
4. All artwork created with MMA resources pursuant to a MMA artist member agreement is held by MMA on consignment and MMA is entitled to sell those works and be paid a commission. The artist's estate holds any unsold artworks subject to MMA's right of sale. All finished artwork by a deceased artist in the possession or under the control of MMA may be sold by MMA in the usual course of business, provided that MMA first consults with the artist's known family as to whether it is culturally appropriate to defer art sales until after an appropriate mourning period. If the family indicate such a preference, MMA will take reasonable steps to defer sales for a period as deemed appropriate.
5. The proceeds of artwork sales must be deposited into the Shire's account and the estate's share (after deduction of MMA's commission) credited to the estate's SAM (trust) account.
6. Any copyright or resale royalties received by the Shire for a deceased artist must be deposited into the Shire's account and credited to the estate's SAM (trust) account.

Funeral Costs

7. At the request of the next of kin and subject to sufficient funds in the artist's ledger, the MMA manager is authorised to approve an expenditure of up to \$3,000 from the funds held in an artist's estate account for funeral costs (such as blankets, travel, headstone etc). A senior family member (if there is a Will, preferably the person named as an executor or alternate executor) must sign an authority acknowledging that the funds are being paid from the artist's own funds held by the Shire and will be used for funeral expenses. Amounts over \$3,000 must be approved by the CEO.

The artist's SAM (trust) account

8. Funds may be paid out of an artist's SAM (trust) account at any time:
 - a. At the express written request of the Public Trustee confirming it is undertaking the administration of the estate and directing the transfer of funds to its account; or
 - b. By a representative of the estate upon presentation of a grant of probate or Letters of Administration bearing the Supreme Court's Seal.
9. After 3 months from the date of death, where there has been:
 - a. a death certificate issued;
 - b. no communication from the Public Trustee;
 - c. no one has presented a grant of probate or Letters of Administration;
 - d. there has been no communication from any family member, or lawyer representing a family member or executor indicating that steps are being taken to seek probate or Letters of Administration or to otherwise deal with the estate,

then the funds in the artist's SAM (trust) account may be disbursed to the beneficiaries named in the artist's will and in accordance with the terms of the will:

- e. with the approval of the MMA manager in the case of an estate where the amount held in

the artist's SAM (trust) account (after any expenditure authorised under paragraph 7) is less than \$5,000;

- f. upon the recommendation of the MMA manager and with the approval of the Shire CEO in the case of an estate where the amount held in the artist's SAM (trust) account (after any expenditure authorised under paragraph 7) is more than \$5,000 but less than \$30,000.

10. Where MMA does not hold a copy of a will for an artist and the artist is understood to have passed away intestate, funds may be disbursed after 6 months from the date of death in the following circumstances:

- a. a death certificate has been issued;
- b. where there has been no communication from the Public Trustee, or presentation of a grant of Letters of Administration and there has been no communication from any family member, a lawyer representing a family member or executor indicating that steps are being taken to seek Letters of Administration or otherwise deal with the estate; and
- c. the funds in the artist's estate ledger are less than \$5,000; and
- d. MMA has obtained legal advice as to the appropriate beneficiaries under the laws of intestacy; and
- e. the MMA manager has recommended disbursement of the funds to the legally entitled beneficiaries and the approval of the CEO has been obtained; and
- f. the Public Trustee has been notified of MMA's intention and has not raised any objection.

11. In all other cases, except with the approval of Council, funds held in estate ledgers may not be disbursed without presentation of a grant of Probate or Letters of Administration.

Authorisation Details

References:	<i>Provide any Statutory, Regulatory or Policy related documents</i>		
Authorised by:	Council		
Date:	27 June 2025	Minute No.	2025/179
Review/Amendment Date		Minute No.	
Next Review	Every four years		
Responsible Directorate			
Responsible Officer			
File No.			