

AUTHORS WILLS and their LITERARY ESTATES

An important issue for authors to think about when drafting their wills is what will happen to their literary estate. A literary estate can include variety of personal property including:

- tangible property like manuscripts, diaries, letters, and books; and
- intangible property, most importantly copyright and moral rights.

If you are a professional author this personal property could be a valuable part of your estate and you should think about how you want it handled after your death, and record this in your will.

Tangible Literary Property

For tangible literary property you may want to think about where you want items deposited (for instance a library or other cultural institution) or who will inherit them (your children, spouse, friends), and who should be granted access to different items.

Donations to Cultural Institutions

If you want to deposit or donate items, you need to know that the cultural institution to which you want to send them is willing to receive them. You may also want to clarify if the entity to which you want to donate such items is a Deductible Gift Recipient (DGR) and therefore able to offer you or your heirs a tax deduction for the value of what you wish to donate.

Access to personal/ sensitive material

With personal items that might contain sensitive information, such as diaries and letters, you may wish to consider when you would grant access to them and whether there are specific people you would be happy to access them or others you would want to specifically exclude from accessing them. Any considerations like this should be recorded clearly for your heirs or for institutions that house such documents for you.

Intangible Literary Property

Copyright and moral rights are important Intellectual Property for most authors, and continue for 70 years after your death.

1. Can my literary works continue to generate income for my heirs after my death?

Your literary works can go on earning royalties for many years after your death. Copyright does not lapse upon your death. It endures for the period set out in the Copyright Act 1968, which for literary works is 70 years after the end of the calendar year in which the author of the work died. (NB Law currently death plus 50 years, being revised in Copyright Act review 2025 to 70 years in line with international standards).

2. Can I bequeath my copyright in my will?

Copyright forms part of your personal property and, like other assets, may be bequeathed. You may state in your will who will inherit the copyright in your literary works.

Copyright will vest in the executor of your estate once probate has been granted. The executor will then distribute copyright to your beneficiaries by an assignment in writing. Once copyright passes to the beneficiary, that person will own copyright and be able to deal with your copyright in the way s/he sees fit.

3. Can I leave my copyright to multiple beneficiaries, such as my three children jointly?

Yes. As joint owners of copyright though, they must not exercise the rights in the works without the mutual agreement of all siblings. This means one sibling can effectively veto opportunities the other two favour. As a practical issue, for high-value and complex estates, often one beneficiary is charged with the day-to-day management of the literary estate (eg. via a power of attorney) where multiple children inherit.

4. Should I appoint a literary executor?

You should consider who is the most appropriate person to manage your copyright and moral rights. You may want your spouse and children to benefit financially from exploitation of your copyright and leave income from your copyright works to them as beneficiaries under your will. However, these family members may not have the necessary skills to negotiate copyright agreements in your works. In such a situation, you may want to appoint a literary executor who is a literary agent or lawyer with expertise to manage and maximise the commercial return from their works. This would be particularly relevant where a writer has an extensive copyright portfolio.

Other times, the beneficiary will also manage the rights (particularly where that person happens to have the skills and interest to do so, or the estate is not complex).

We suggest you seek the advice of a wills/estate planning solicitor and make clear your wishes in the terms of your will.

5. What should I do about unpublished works?

This is an issue that comes up frequently in literary estates. As an author you should think very carefully about unpublished manuscripts and letters and diaries. If you are sure you don't want them published, you should consider destroying them as there are many instances of literary executors or beneficiaries publishing material even when it was expressly prohibited by a deceased author.

If you have identified a person you trust to carry out your wishes to be your literary executor, you should state clearly what you want done with unpublished works. There may be a class of works you want destroyed, or that you do not want published. There may be others where you are happy for your literary executor to use their discretion and enter into publishing or access agreements accordingly.

There are also instances where beneficiaries block uses of works that many believe the author would have wanted – refusing permission for an adaptation of a work because they believe it is contrary to the building the reputation of the deceased author. Again, to ensure that your works are managed the way you would like, it is important to consider very carefully who will manage such consents.

6. Other than making my intentions clear in my will, is there anything else I should do?

It is also good practice to maintain good record keeping, such as a comprehensive creative portfolio, with a list of all your works, all licence agreements associated with those works and all income streams. This will greatly assist your beneficiaries manage income streams, chase up payments and know who to contact for any further correspondence or negotiations.