



# Should You Be A Literary Executor?

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If your clients have accumulated enough wealth so that their assets will be subject to an estate tax upon their death, then an Executor will be responsible for valuing all of their assets at that time, including manuscripts, copyrights and contractual rights derived from the publication and reproduction of their works. In addition to this conventional wisdom, your clients should pay particular attention to the administration of their letters, unpublished papers and contractual relations after they have taken their last bow and the proverbial curtain has come down.

For a novelist, playwright, lyricist, or composer, advance planning is critical to ensure that their literary legacy is protected after they die. Unless they have a well-drafted will, or have created a valid trust for the benefit of others, they may be leaving ownership and care of their copyrighted works and papers largely to chance.

## Selecting a Literary Executor

Authors should consider naming a "Literary Executor" in their will. A General Executor will often be a spouse or other family member that does not have experience with literary matters. Therefore, authors should consider entrusting the care of their papers, existing contracts and unpublished manuscripts to a Literary Executor. Keep in mind that being a Literary Executor can be a lot of work.

Ideally, a Literary Executor should understand how the entertainment industry operates and be comfortable with negotiating contracts, help exploit unpublished works, or rights that were retained by the estate. As such, the logical person could be their literary agent.

## Literary Executor's Duties

The person drafting the will must take great care in describing the scope of the Literary Executor's duties. The powers of a Literary Executor should be as broad and comprehensive as possible. In preparing the powers of a Literary Executor, one must consider the following questions:

- Will the Literary Executor have the sole and exclusive right to make all decisions regarding appropriate publication, republication, sale, license, or other exploitation of the client's work?

- Will the Literary Executor be responsible for preparing unfinished or unpublished manuscripts for publication and seeing those works through publication?

- Will the Literary Executor have the right to terminate copyright licenses?

- Will they have the power to destroy any letters or papers?

- Will the Literary Executor have the sole right to sue for infringement of copyrights?


- Will the Literary Executor have the authority to pay attorneys, subagents and others?

- In the event the Literary Executor is unwilling or unable to perform their duties, what are the provisions for appointing their successor?

## Fees for a Literary Executor

A fee of between 10% and 15% for new contracts negotiated on behalf of the estate is customary. With regard to administering existing contracts, fee arrangements can vary greatly depending upon the size of the literary estate and the responsibilities of the Literary Executor.

## Conclusion

The Executor (or Literary Executor, as the case may be) should hire an appraiser with significant experience in appraising — or valuing — these interests. Authors with significant estates should meet with their attorney or accountant to determine whether any lifetime planning can be employed to reduce the value of their estates at their death so that more assets can pass to their heirs. 

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