

## **The Legacy Kit**

in honor of Bud Webster

a driving force behind the SFWA Estates Program

Produced by the SFWA Legacy Committee:

Jean Marie Ward, Jeanne Adams, and Erin Wilcox

A Publication of the Science Fiction and Fantasy Writers of America, Inc.

©2020

*The SFWA Legacy Kit does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available in this guide are for general informational purposes only.*

## An Introduction to the Legacy Kit

We know what you're thinking. As soon as you saw that scary word—*legacy*—your brain turned left at Albuquerque and kept going.

"I'm too young to die!"<sup>1</sup>

"I'll think about that tomorrow, because tomorrow is another day."<sup>2</sup>

"Not now, Elaine. Not now! Can't you see I'm talking to the Man?"<sup>3</sup>

The Legacy Kit was created in honor of Bud Webster, a driving force behind the SFWA Estates Program. It was conceived as a way of helping SFWA members prepare their estates before becoming eligible to have their names added to the SFWA Estate Project.

It turns out you often need the same documents and directives for the good things in life as well as the bad. For instance, "the Man" mentioned above may be a production company hoping to turn your *New York Times* bestseller into a blockbuster film or TV series. They'll want to see your contracts and establish the status of your rights to the work and all its characters. This kit will help.

Say you snag that visiting professorship across the country or overseas. The people who'll be taking care of your pets and property will need everything from deeds and leases to limited power of attorney. Protecting your legacy doesn't have to mean a grim end; it can just be practical.

Meanwhile, the risk of calamity is always there. What if you need to travel for a family emergency? What if you're incapacitated, unable to express your wishes to your caregivers?

What *if* you die? Without a will, the state where you live decides how your assets will be distributed among your relatives—your *legal* relatives. In other words, the only people who will be able to inherit your real and intellectual property are your legal spouse, your children by birth and adoption, and your blood relations. Life partners, significant others, and trusted friends receive nothing if you're unprepared. Nor will you have a say in the amount your legal relations receive—that's set by the state based on a state-determined order of precedence, which may have nothing to do with your actual relationships. The process of resolving an interstate estate costs much more and takes much longer without a will. Everyone loses *except* your state department of taxation.

Unless you prepare your legacy ahead of time.

The U.S. Armed Forces long ago recognized that their personnel needed to be prepared for all these eventualities, good and bad. All individuals on deployment or hardship (i.e., family

---

<sup>1</sup> Every Bugs Bunny cartoon ever produced.

<sup>2</sup> *Gone with the Wind* (1939)

<sup>3</sup> *Arsenic and Old Lace* (1944)

separation) tours are required to have a family emergency plan that includes most of the documents writers need to manage their estates. Think of this as our version of the same.

The Legacy Kit is a guide that provides our members with a checklist of documents, sample inventories and tables, a layman's glossary of important terms, and a variety of other resources to help them create their own plans. We hope it will enhance your successes, help you manage the business of life, and aid your survivors while you can still call them your friends and loved ones.

Here's what's included:

- [Managing Your Intellectual Property Over Time.](#)
- [Letters of Instruction.](#)
- [Sample Inventories of Published and Unpublished Works.](#)
- [Your Documents: A Checklist.](#)
- [Free/Low Cost Legal Resources.](#)
- [Web Tools and Other Options.](#)
- [Legal Terms: A Layman's Glossary.](#)
- [References and Further Reading.](#)
- [Acknowledgments.](#)

As befits a writers' organization, there are also stories. Lots of stories. For additional ones that we do not include in this guide, we highly recommend Kristine Kathryn Rusch's [Estate Planning Series](#) and M. L. Buchman's *Estate Planning for Authors*. They are filled with stories—success stories and cautionary tales about estate planning that are wilder than anything most of us science fiction and fantasy creators could imagine.

We realize this is a lot to take in. The good news is that the Legacy Kit is a lot like a novel or short story. You don't have to put everything together at once. It's a process, one that works better over time. And you don't have to go it alone. There are writers like Ms. Rusch and Mr. Buchman who have forged the path, and a host of professionals—attorneys, agents, and certified public accountants—who can help you along the way. Wherever possible, we have provided links to outside resources, and we will update the list as we discover more.

Also, anytime the jargon seems overwhelming, hop on over to our [Layman's Glossary of Legal Terms](#) for help.

## Managing Your Intellectual Property Over Time

Management of intellectual property (IP) rights begins at the time the idea is created. Ownership of IP is subject to a number of factors. These include:

- Was the idea created and executed by an individual, a partnership, or a large group?
- Was the work created and licensed/sold for publication under contract or licensed/sold through the open market?
- Was the work done for hire, and if so, did the creator retain any rights?
- What rights for the work were licensed/sold, such as print, electronic, audio, and film?
- For any work licensed/sold, what are the rights of reversion?
- Were copyrights registered, and in whose name?
- Is any of the new and original work based on fair use, public domain, or a licensed property?
- Is the created work intended for commercial purposes?
- Is the intent for the work to be published? For example, many books released posthumously may have been a work the author shelved. If the author intends a work never see the light of day, that should be specifically defined.

Most writers manage their IP in one of six ways. Writers may:

- Manage the sale, resale, and licensing of their own work.
- Form a trust to manage their literary assets. Establishing a trust requires the professional assistance of a good IP lawyer and possibly a certified public accountant. Trusts can provide tax benefits and can be passed immediately to a beneficiary when you die. But due to the expense of creating and maintaining them, they aren't necessarily for everyone.
- Designate an attorney-in-fact to manage their IP assets in the event that they are incapacitated.
- Form a Limited Liability Company (LLC) or Partnership to own and manage the IP assets.
- Release certain rights to one or more works under a Creative Commons license.
- Renounce all rights to one or more works under an anti-copyright notice or copyright waiver.

Your will provides the broad outlines of how your IP will be handled after your death. Here are some of the more popular options:

- Your beneficiaries can manage the sale, resale, and licensing of your work.
- Your executor or literary executor can manage the sale, resale, and licensing of your work on behalf of your beneficiaries.
- A trust, whether pre-existing or established under your will, can continue to manage your literary assets for the beneficiaries of the trust.

- You, or a trust that you establish, can transfer the rights to your intellectual property to a company, nonprofit organization, educational institution, religious institution, charity, or one or more individuals.
- You can release your intellectual property into the public domain.

All of these options require a will, and most require the assistance of a good lawyer—even for releasing your intellectual property into the public domain prior to your country of residence’s statutory date of release. It’s also useful to remember that a will is a broad-brush tool. It disposes of your assets, and generally speaking, it doesn’t get into particulars—unless a “testamentary” trust is created by the will.

A trust, or an entity like an LLC, is a much more complex and versatile tool, and is generally the most effective way to manage your assets over an extended period, before and after your death. If you don’t want or need to create a trust, but want to provide your literary executor with detail concerning your assets that would otherwise clutter up a will, you could use a Letter of Instruction, but such a letter isn’t a legal instrument. It’s a guide, not a command. Nevertheless, the easier you make it to use, the easier it will be for your survivors to follow.

No matter how you desire to distribute your assets, consult an experienced IP attorney and an estate attorney, so that you can develop a clear and comprehensive plan. Each IP asset comes with a bundle of rights, some of which may have been transferred, while other rights have been retained. Transferred rights are often the subject of complex contracts, most of which have not been drafted by you; the operation of their certain terms and conditions may not be apparent to anyone other than an experienced attorney. Moreover, each IP asset is subject to various laws and regulations that affect it in various ways, including its lifespan and alienability. Some transferred rights may terminate as a matter of contract and others as a matter of statute and revert to your estate or to one or more of your beneficiaries.

Finally, in estates where there are multiple beneficiaries, you should consider including language discouraging each beneficiary from attempting to challenge your estate plan. The heirs of John Steinbeck and *the heirs of the heirs* have been fighting in the courts over who owns the copyrights to his work for over fifty years. The litigation has cost his family millions, not just in legal costs but in the sale of rights to films, series, and other derivative works that have not been made in the years since his death.<sup>4</sup> What’s more, it cost them *time*. Regardless of who the courts decide owns Steinbeck’s copyrights, their ownership will expire in 2039 when his work passes into the public domain.

---

<sup>4</sup> Julia Wick. “The decades-long battle over John Steinbeck’s estate.” [The LA Times](#), September 2019.

## Letters of Instruction

Legal instruments like wills, trusts, and partnership agreements carry the force of law; that is, they legally obligate your executors, attorneys-in-fact, trustees, and partners to carry out your wishes, but they may not tell your loved ones and beneficiaries everything they need to know to do that. They can't convey the location of important documents, and they were never meant to contain your current passwords. Furthermore, when you grant your executors, attorneys-in-fact, trustees, and partners discretion in taking or not taking various actions, it is often useful to provide them with a guide describing your preferences in terms of alternatives, advisors, and outcomes. That guide is a letter of instruction (LOI). Your will, trust, designation of attorney-in-fact, or partnership agreement may request that your fiduciaries consult the LOI in fulfilling their duties.

An LOI is a way of telling your loved ones everything they need to know in event of an emergency *as it happens*. It can be short or long. You can use it to tell them the location of your will and other important documents, the status of your published works, information about your insurance, military benefits, passwords, what kind of funeral you want, et cetera.

Julian Block, a New York tax attorney, drafted a sample "Letter of Final Instructions" for the Society of Children's Book Writers and Illustrators (SCBWI) and graciously provided us a copy, which concludes this section. M. L. Buchman offers a more expansive variation in his book *Estate Planning for Authors: Your Final Letter and Why You Need It*. Buchman states that he has no problem with writers using his version as a template. But he recommends recasting it in your own voice, as it will be more meaningful to your survivors. He also recommends updating and sharing the LOI with your loved ones or executor every three months. They don't need to read every update. They just need to have it available.

We recommend reviewing both examples before you draft your first LOI. The more perspectives you have, the easier it becomes to craft the best LOI for your needs.

Regardless of the format you choose, consider including a line directing your beneficiaries and executor to SFWA's Estate Project. The Estate Project is a database that provides publishers, scholars, anthologists, filmmakers, and other potential licensors an easy, safe, and reliable means to connect with the managers of deceased writers' literary estates. The Estate Project lists deceased writers whose works are known to be in the public domain, including writers who were not SFWA members. It also displays the names of literary agencies, corporations, and public trusts acting as literary executors for specific estates. Again, membership in SFWA is not required. The Estate Project's goal is to aid all writers, regardless of their association with SFWA or any other professional writers' organization. Private individuals are not listed on the Estate Project page. Their identity is protected by directing inquiries to the Project's coordinator, Mishell Baker, at estates@sfgwa.org.

The SFWA Estate Project, created and maintained until his death by Bud Webster, is a win-win for all concerned. It puts money in your beneficiaries' pockets and helps keep your name and legacy alive by encouraging paid reprinting and licensing of your work. Seriously, put it in your LOI. Your beneficiaries will thank you.



## Letter of Final Instructions: Why Writers Should Have One

By Julian Block

When you decide it's time to do your will or update it, it's also time to prepare a "letter of instructions." Ignore the legalese. The "letter" is an informal document that spells out where you keep important personal papers and what your assets are, among other things.

Usually, you make the letter available to your spouse, one or more of your adult children, your lawyer or your executor. Keep the letter up-to-date and accessible.

The letter is worth the time and effort. Without one, your daughter, say, might find it difficult or even impossible to locate your assets when death, a serious illness or some other kind of crisis leaves you unexpectedly unable to manage your financial affairs.

**Reminders for SCBWI members and other writers.** Prepare a letter that alerts your heirs to the financial details of your writing career. In particular, spell out what they're likely to receive from book publishers, magazines, web sites, blogs and other writing endeavors. Here are some guidelines on the kinds of information to include.

**Agents and publishers.** Let's suppose you're a writer who uses literary agents to negotiate contracts with book publishers. Indicate where you keep agreements with agents and publishers and other related documents. List agents' and publishers' names, addresses, telephone numbers and email addresses.

Name the persons who are entitled to receive royalties after your death and how frequently they can expect to receive them. Who knows? You could be one of those writers whose books generate royalties long after they're gone. Think Truman Capote or J.D. Salinger.

**Be aware of twists and turns in the tax rules for writers and their heirs.** For instance, the IRS uses one set of rules when it calculates how much to exact from you and other writers on amounts received as royalties and other payments for books, magazine articles, plays, photographs or other kinds of creative efforts. But the IRS invokes other rules that ask for less when those kinds of payments go to writers' heirs.

The IRS collects income taxes from you and other writers on royalties and the like. You report those amounts on Form 1040's Schedule C (Profit or Loss From Business).

Writers who fill out Schedule C for their income taxes also have to pay another kind of tax and complete another form. They shell out for self-employment taxes (Social Security taxes for the self-employed) and calculate those taxes on Schedule SE (Self-Employment Tax).

The tax code includes a relief provision that permits you to recoup some of the SE taxes, courtesy of a deduction for one-half of the SE tax that you enter on the front of the 1040 form, same as you do for, say, alimony payments. Thus, you qualify for the write-off whether you itemize (claim donations to charities and the like on Schedule A) or use the standard deduction (the amount available to people who don't itemize).

Use the letter to remind your heirs that they qualify for a valuable tax break. Like you, they also have to pay income taxes on royalties. Unlike you, they aren't dunned for SE taxes on royalties and don't have to fill out Schedules C and SE. Instead, they complete Schedule E (Supplemental Income and Loss). Schedule E is for reporting, among other things, royalties received by those who inherit or purchase copyrights on books, photos and other material that they didn't create.

Also, heirs might overlook contracts for magazine articles that entitle you to payments for reprint rights. Remind them to ask periodically about those payments. Should there be any, heirs report them on Schedule E.

Going in the other direction, use the letter to advise heirs whether you've received unearned advances for books that might be uncompleted at your death. In the event heirs need to return those advances, they use Schedule E to deduct repayments to publishers. Your heirs should also ask a tax advisor if it is better to move IP and future earnings into trusts (if it was not done already) to protect both the IP and your heirs, as well as potential tax benefits.

**Retirement plans.** Detail all of your tax-deferred retirement accounts. The possibilities include 401(k)s and individual retirement plans. IRAs come in three flavors: traditional deductible, Roth, or traditional nondeductible.

When you do that, remind heirs of this difference: Like you, heirs have to pay income taxes on their withdrawals from traditional deductible accounts. Like you, heirs generally aren't taxed on removals from Roth IRAs or the portions of withdrawals from traditional nondeductible accounts that are attributable to nondeductible contributions. These distinctions may often be misunderstood or forgotten.

**Help your heirs cope with the IRS after you are no longer around.** Disclose where you keep copies of checks, and other documents that substantiate the amounts shown as income, deductions, and other Form 1040 figures. What if the IRS disputes those figures and substantiating records are unavailable? What winds up with your heirs will be diminished by



assessments for additional taxes, interest charges, and perhaps penalties. Ditto for any applicable state taxes.

**Getting professional help.** Those heirs might need help with taxes, contract provisions and other details. Remind them that their first step should be to contact your agents and publishers. Also, it might be advisable to discuss taxes with qualified professionals, like lawyers or CPAs, and intellectual rights with attorneys specializing in that area.



*Julian Block, an attorney in Larchmont, N.Y., has been cited as "a leading tax professional" (New York Times) and "an accomplished writer on taxes" (Wall Street Journal). His books include Julian Block's Easy Tax Guide for Writers, Photographers and Other Freelancers, praised by Professor James E. Maule of Villanova University as "an easy-to-read and well-organized explanation of the tax rules. Writers, photographers, and artists would be well advised to buy this book." To order his books, go to [julianblocktaxexpert.com](http://julianblocktaxexpert.com).*

## Sample Inventories of Published and Unpublished Works

If you hit the writerly version of the lottery, the production company interested in licensing your work will want copies of your publication contracts and complete information on the rights status and availability of your work. The easiest way to provide this is with an inventory. The best way to prepare and maintain this inventory depends on how your mind works.

M. L. Buchman advocates an Excel spreadsheet for published and pre-released works. The version he uses can be found [here](#).

Kristine Kathryn Rusch assembles this information, plus data on reviews and awards, in a single detailed paragraph for each work. You can see an example in the bibliography entry for her Kris Nelscott novel, *A Dangerous Road*, posted on her blog entry "[How to Make Fearless Inventories](#)" in her [Estate Planning Series](#).

Or you may choose to list the same material in a text document, including the following information:

- Title.
- Pen name (if any).
- Type of work (novel, short story, poem, etc.).
- Genre.
- Series/Standalone (list the name of the series if applicable).
- Location of best file copy (this could be an instruction, such as "bottom left desk drawer," or the file name on your writing computer).
- First publication (date, publisher, and format).
- Other editions.
- Foreign editions.
- Notable reviews.
- Awards and commendations.
- Options.
- Status of rights/rights reversion dates.

Although you don't need to prepare a bibliographic listing or inventory item for all your work, it's a good idea to prepare one for all published material and material under contract. It is also important to keep a record of the working title, genre, length, and location of unpublished and uncontracted works. Truman Capote's last novel, *Answered Prayers*, may never see publication in its final form, because he failed to leave a record of where to find the manuscript.

For unfinished series, especially those with a completed outline, Ms. Rusch suggests you add the outline to your inventory and describe where the relevant notes may be found. If something prevents you from finishing the series, your outline and notes may allow it to be completed as closely as possible to your original vision.

Trademarked characters are few and far between. Most are associated with billion-dollar entertainment franchises like James Bond™. If this applies to you, the relevant trademark documents should be front and center in your Legacy Kit. Likewise, your executor or personal representative needs to know whether you have sold the rights to a character, because such characters can no longer be considered part of your estate.

## Your Documents: A Checklist

This page lists the documents you, your family, your executor, or your personal representative will need in an emergency, should it be one as good as a Netflix deal or as bad as your agent forgetting to tell you about a Netflix deal. Chances are you won't need all of them, but we thought it best to err on the side of completeness.

The best collection will be determined by your unique situation. Your personal and professional history, desires and obligations, even your state of residence—it all plays a role.

## Where to Keep Your Legacy Kit

There is no one best way to assemble and maintain your Legacy Kit. You can do so digitally as a file in your computer, or through a Web-based application like Everplans®. Or keep it as a hard copy. Perhaps a combination is the best way. An electronic copy gives you a protected back-up, which can be good when you're traveling or experiencing a worst-case scenario. Written copies, however, are accepted in all states and most countries. They're also portable and physical, making them easier to present on demand in emergencies.

Some people will keep them in a portable kit, while others will choose to store the items in a fireproof safe. If you choose that last option, however, be sure to store the key or combination in a safe place. Ditto for any copies.

There is only one absolute: Whatever your kit looks like or however you choose to store it, make sure it's easy for you and your loved ones to find, reach, and use. Draw or write a map to it. Seriously. Read Ms. Rusch's [account of Truman Capote's lost manuscript](#) to find out why.

## The Documents

All of these documents should be included as applicable to your personal situation. Here is an index of the sections covered:

[Commercial Real Estate](#)

[Current Passwords](#)

[Emergency Contacts](#)

[Financial](#)

[Household Information](#)

[Insurance](#)

[Legal Instruments](#)

[Letters of Instruction](#)

[Medical Information](#)

[Ongoing Business Activity](#)

[Owned Corporations](#)

[Personal Documents](#)

[Personal Property](#)

## Pet Information

### Writing

#### **Commercial Real Estate**

- Deeds.
- Titles.
- Assessments.
- Mortgages, including notice of final payment.
- Liens.
- Major service contracts, especially those not necessarily accounted for in the Passwords document such as lawn care, pest control, plumbing, HVAC, etc.
- Condo and/or co-op agreements.
- Renters agreements.

#### **Current Passwords**

This may constitute a list, a master password to an online password manager, and/or information on biometric identifiers. Password aggregators can be found online. For those who prefer not to trust their passwords to the Cloud, a sample Microsoft Word table can be found [here](#).

Since just about everything in life needs a password, those who maintain their passwords manually may find it helpful to group the passwords by category, such as Health, Financial, Personal Websites, Professional Websites, Subscriptions, et cetera. Having an up-to-date, annotated password list may reduce the need for hard copy documentation and serve as a map to other resources.

#### **Emergency Contacts**

You should have at least two emergency contacts, preferably including one who does not live with you to cover situations in which everyone in the household is traveling together. The emergency contacts list in your kit should include their legal names, addresses, telephone numbers, and email addresses. You may also find it useful to list a preferred social media account as a last resort method of contact. Lastly, you and your emergency contacts should share a keyword or phrase that can be used as a way of preventing fraud and identity theft.

#### **Financial**

- Financial advisor and contact information.
- Preferred banking representative and contact information.
- Tax preparer and contact information.
- Legal advisor and contact information.
- Loan officer and contact information.
- Employment contract.
- Contracted work agreements.
- Employer contracts for any employees and/or contractors (personal assistants, providers, etc.).

- Annuities.
- Survivor benefits.
- Social security.
- Banks and financial institutions.
- Safe deposit boxes.
- Investment accounts (current information may be held by financial advisor).
- Beneficiary(ies) of other trusts/estates.
- Retirement accounts (current information may be held by financial advisor).
- Settlement payments (current information may be held by legal advisor).
- Outstanding loans/debts (current information may be held by loan officer).
- Student loans.
- Other income sources.
- Active credit or debit cards.
- Passbooks, bankbooks, and checkbooks.
- Alimony payments (list whether asset or liability, and list name/contact info).
- Child support payments.

### ***Household Information***

Note: This list also applies to timeshares, because their maintenance and other fees do not end with the death of the owner.

- Deeds.
- Titles.
- Assessments.
- Mortgages, including notice of final payment.
- Liens.
- Major service contracts, especially those not necessarily accounted for in the passwords document such as lawn care, pest control, plumbing, HVAC, etc.
- Condo agreements.
- Renters agreements.
- Real estate tax statements, due dates, and payment information.
- Post office boxes, external mailboxes, and their keys.

### ***Insurance***

- Insurance agent and contact information.
- Life insurance policies.
- Health insurance policies.
- Homeowners/renters/rental property policies.
- Vehicle policies.
- Personal liability policies.
- Professional liability policies.
- Other liability policies.
- Life insurance policies.
- Disability insurance policies.

**Legal Instruments**

- Contracts.
- Partnership agreement(s).
- Power of attorney.
- Trademark documentation.
- Copyright documentation.
- Library of Congress documentation.
- Trust.
- Will.
- Paperwork on any ongoing or resolved legal actions.
- Appraisals of art, jewelry, heirlooms, etc.

**Letters of Instruction**

Read our separate section for more information on what letters of instruction comprise.

**Medical Information**

- Names and contact information of primary care physicians and specialists.
- Name and contact information of court-appointed guardian.
- Names and contact information of persons who have medical or psychological power of attorney.
- List of medications.
- List of allergies.
- Vaccinations.
- Copies of insurance cards.
- Living wills and/or advance healthcare directives.
- "Do Not Resuscitate" order.
- Healthcare power of attorney.

**Ongoing Business Activity**

- Automated marketing, sales, and/or scheduled social media posts.
- Scheduled appearances or workshop participation.
- Planned online events such as blog tours, virtual readings, etc.
- Digital Millennium Copyright Act (DMCA) actions and other piracy monitoring.
- Service contracts.
- Planned business/personal trips, flight, travel, and hotel reservations.
- Management of any podcasts, vidcasts, or other digital content that is created, posted, or scheduled to be posted.
- Mentoring, tutoring, coaching, editing, artwork, or other personal/professional services due to be provided/delivered.

**Owned Corporations**

- Corporation name, incorporated location (usually a state), and any “also trading as” aliases.
- Corporation type, such as S, LLC, etc.
- Title(s), such as CEO, director, partner, etc.
- Percent ownership and/or number of shares owned.
- Incorporation documents.
- Name and contact information of corporate lawyer.
- Name and contact information of corporate accountant.
- Names and contact information of other co-owners or partners.
- Assets such as real estate, vehicles if claimed for business, non-partner employees, etc.
- Liabilities such as taxes owed, including payroll and loans, mortgages, rental contracts, major service contracts, etc.

### **Personal Documents**

- Emergency contacts with contact information.
- Birth certificate.
- Legally significant religious documents (baptismal records, *ketubot*, marriage contracts, ordination records, annulment records, etc.).
- Social security card.
- Passport.
- School transcripts.
- Marriage license.
- Separation agreement(s).
- Divorce decree(s).
- Other changes in legal status.
- Green card.
- Citizenship.
- Name change.
- Spousal death certificates.
- Pre-written obituaries and/or memorial announcements.
- Comparable documentation for family members and dependents living in your household.

### **Personal Property**

- Car/Truck/Motorcycle titles and/or deeds.
- Car/Truck/Motorcycle vehicle identification numbers (VINs).
- Boat titles and/or deeds.
- Boat VINs.
- RV/Camper/Trailer titles and/or deeds.
- Preferred service providers with contact information.
- Purchase agreements, including payment schedule and/or final settlement.
- Loans, including payment schedule and/or final settlement.
- Personal property tax statements, due dates, and payment information.



- High value artwork, furniture, and/or personal items in excess of \$5000 per item.
- Leases on storage buildings and/or lots and their combinations/access cards and keys.

**Pet Information**

- Breeding and/or adoption records.
- Medical records.
- Care instructions.
- Designated guardian.

**Writing**

- Literary executor and contact information.
- Agent(s).
- Publicist(s).
- Service providers (artists, web hosting, marketing/advertising, etc.).
- Personal assistant and contact information.
- Literary agent and contact information.
- Map and/or location finder for published and unpublished work, and research notes. This can be as simple as “Look in the ‘Fiction’ folder on my laptop. My preferred versions are the ones with the latest date” or as complex as necessary.
- Inventory of published and unpublished work. Sample inventories can be found [here](#).
- List of writing websites and passwords (may be folded into the Password list).
- Publisher(s).
- Contracts for published material.
- Contracts for publication services (e.g., editing, artwork, publication design, cover design, distribution). This should primarily be independently published work.
- Contracts for professional support (e.g., agent, PAs, public relations/marketing firms).
- Rights reversions.
- Contracts for in-process or completed work allowing for future deliverables or revisions.
- Photographs of permission letters or emails for publicity photos and any other images published in your works for which you do not own the copyright.
- Stock photo information and license agreements, which primarily applies to stock photos incorporated into cover art for independently contracted covers.
- Partnership agreements.
- Active Patreon or other crowdfunding sources and responsibilities.



## Legal Terms: A Layman's Glossary

**Anti-Copyright Notice/Copyright Waiver:** Anti-copyright notices and copyright waivers are written statements attached to a poem, song, story, or other intellectual property by the piece's creator and copyright holder. These statements typically encourage free distribution of the piece and renounce or waive all copyright claims. This immediately places the work in the public domain. Favored by anarchist publications, anti-copyright notices typically use more colorful language than the more formal copyright waivers, but both are recognized as legal instruments. This doesn't mean everybody will abide by them. According to [Wikipedia](#), Woody Guthrie famously attached an anti-copyright notice to all his songs, but several organizations still claim the copyrights. See also the [Creative Commons CC0 license](#) definition that follows in this section.

**Contract:** A formal agreement between two or more parties stipulating rights and payments in exchange for goods or services. Most publication contracts also stipulate how the work will be used and credited, where it will be available, how long the purchaser retains exclusive publication rights and reversion rights and authorial rights after the sale, and how disputes will be resolved. These aspects of a publication contract are particularly important to anyone wishing to reprint a story, novel, or game or license it for development as a film or other derivative work.

**Copyright:** Economic and moral rights granted to creators for various periods. When the [intellectual property](#) was created and how the rights were activated will determine how long they are effective, when they expire, and if any action is required to renew the rights. They are typically granted for the life of the author plus 70 years. For pseudonyms or for-hire work, that's 95 years from the date of publication or 120 years from the date of creation. In addition, copyrights established prior to 1976 or the Copyright Extension Act of 1998 have different terms and provisions.

Copyright applies to authorship of written works, music, software, image creation, et cetera. Copyrights arise automatically when works become "fixed" in a "tangible medium," such as paper, a computer file, and the like, but the works must be registered in order to pursue some forms of legal remedies. The latest legal and regulatory findings trend toward requiring registration to defend copyright in court.

**Creative Commons License:** A Creative Commons License is a public notice that allows the general public to share in certain rights usually reserved exclusively to the copyright holder. These licenses typically grant members of the public the right to share the copyrighted work worldwide, mainly for non-commercial uses. There are four main types of Creative Commons License: attribution, share-alike, no commercial use, and no derivative work. The nature of the license determines whether a derivative work can be used for commercial purposes. Regardless of the license, however, the creator retains full moral ownership of the work.

***Creative Commons CC0 - No Rights Reserved License:*** According to [the Creative Commons website](#), the CC0 license “enables scientists, educators, artists and other creators and owners of content that is protected by copyright or another database to waive those interests in their work and thereby place them as completely as possible in the public domain so that others may freely build upon, enhance, and reuse the works for any purposes without restriction under copyright or database law.” This license extends to commercial use and provides an alternative to an anti-copyright notice or waiver.

***Designs:*** A United Kingdom–specific right applying to images.

***Executor, or Literary Executor:*** A person named by the maker of a will to carry out their posthumous wishes and dispose of their property. Their duties include disbursing property to the will’s designated beneficiaries, collecting and paying debts, paying taxes and bequests, and when necessary, offering the will for probate.

A literary executor plays a similar role with respect to a writer’s literary estate. They act on behalf of a late writer’s beneficiaries, contract with publishers, collect and disperse royalties, arrange for the preservation of the writer’s papers (or in the case of Lord Byron’s literary executor, their destruction), and more.

The literary executor may be a beneficiary of the will or its primary executor. However, the complexities of the publishing industry prompt many writers to name a publishing professional, such as an agent or publisher, to carry out their wishes. Either way, the literary executor is the person most responsible for ensuring an author’s legacy. Kristine Kathryn Rusch’s [Estate Planning Series](#) details both literary estate successes, like Philip K. Dick’s, and horror stories. For your decision-making purposes, we particularly recommend the following articles in Ms. Rusch’s series:

- [“Want to be read 100 years from now? Here’s how.”](#)
- [“Agents and estates.”](#)

***Fair Use:*** Fair use is an exception to the exclusive rights granted to a copyright or trademark holder and is generally invoked when a portion of the unique, protected intellectual property of another person is used in the creation of a new unique work. For example, it’s fair use to use a quote in a written work or a sample of lyrics. The criteria applied in the determination of fair use are numerous, complex, and highly fact specific. Whether a use is fair or not generally must be defined on a case-by-case basis in the courts.

***Fiduciary:*** A person, or a business like a bank or stock brokerage, who has the power and obligation to act for another, often called the beneficiary, under circumstances that require total trust, good faith, and honesty. The most common is a trustee of a trust, but fiduciaries can include business advisers, attorneys, guardians, administrators of estates, real estate agents, bankers, stockbrokers, title companies, or anyone who undertakes to assist someone who places complete confidence and trust in that person or company.

**Intellectual Property:** Intellectual property is the unique creation of one or more people who retain rights to its ownership and use. This includes stories, poems, novels, television shows, cartoons, movies, games, letters, and nonfiction books, but it isn't limited to them. It can also include letters, ephemera, blogs, and other social media content. The term also refers to the bundle of legal rights associated with the copyrights, trademarks, et cetera. Make sure to read [our guide on maintaining your intellectual property](#).

**Living Will:** A living will or advance healthcare directive specifies the actions an individual wants to be taken, or does not want to be taken, if they are no longer able to make medical decisions for themselves. As the late Senator John McCain demonstrated, it can also stipulate what kind of funeral you want, who you want to attend, and who you don't. This can also be done through a [letter of instruction](#), but a letter of instruction doesn't carry the same legal weight. In some states, a letter of instruction may be ineffective to bind healthcare providers, and an advanced healthcare directive must be in a specific state-approved form. A healthcare power of attorney, which appoints a person to make healthcare decisions, subject to the advance healthcare directive, is often included with the directive.

**Partnership Agreement:** A contract between two or more creators who share in the development and ownership of a creative work or intellectual property such as a story, novel, graphic novel, comic, game, et cetera. It specifies each contributor's percentage of ownership in the property and the distribution of profits, royalties, and assets. It should also stipulate who has creative control of the property, should one of the creators die or become incapacitated, and whether the joint work can be added to or amended in the aftermath of such an event.

**Patents:** An official grant, which confers the right to make or sell an invention for 14 to 20 years. Patents apply to inventions and innovations.

**Power of Attorney and/or Letter of Attorney:** A document that authorizes a person, an "attorney-in-fact," to act as another's agent under specific circumstances. It is typically seen as a stopgap when someone is incapacitated by injury or ill health; however, if desired, the designation of a power of attorney may be drafted to be effective even in the absence of incapacity. For example, military personnel on assignment away from home typically use this legal instrument to allow their families or personal representatives to address household and financial matters in their absence.

**Public Domain:** Creative works that are not subject to any exclusive intellectual property rights are considered to be in the public domain. These works may have been created before copyright law existed, or their copyright may have expired. In other cases, the rights might have been forfeited or waived through an [anti-copyright notice or copyright waiver](#) or a [CC0 license](#).

**Trademark:** A word, phrase, symbol, or design that identifies the source of goods or services, usually as branding. Generally speaking, trademarks must be registered and do not expire as

long as they are in use, and as long as the trademark holder pays the registration and maintenance fees.

**Trust:** A legal arrangement that allows one person or organization, the “trustor,” to assign assets or property to a second, the “trustee,” to be managed for the benefit of a third, the “beneficiary.” It is often used to protect the assets and interests of a beneficiary who is too young or otherwise unable to manage their own affairs, or to manage assets for an extended period after the trustor’s death. It may also offer tax advantages when dealing with unusually large assets, but those advantages generally accrue only when the assignment of assets is irrevocably made before the trustor’s death.

**Will:** A legal document that describes how a person wishes their assets to be distributed after their death. It typically names one or more beneficiaries and an executor who is responsible for managing the estate until it is distributed to the beneficiaries. A writer may also wish to designate a literary executor to manage their intellectual property, as doing so requires an understanding of the publishing and entertainment industry.

Your will may be the single most important document in your Legacy Kit. It defines the person or institution who will receive your tangible and intangible assets after your death. If you desire a trust, a will directs your executor to transfer your assets to that trust, so that a trustee can manage those assets for your beneficiaries for an extended period of time. A properly crafted will, acting in concert with a trust if one is desired, can ease the burdens of your grieving loved ones and assure they are cared for in the future.

In contrast, the absence of a will could create a financial catastrophe. The state will determine your beneficiaries based on a strict hierarchy of relationships (spouse, children, parents, siblings, etc.) that excludes trusted friends and partners. The state will also decide how much each beneficiary receives in a manner that has nothing to do with the closeness of your actual relationship or their pressing needs. Finally, the cost of resolving the estate will be much, much higher without a will. In terms of both money and time, that creates additional hardship for your loved ones.

A will can be holographic (i.e., handwritten) or formally drawn up by a lawyer. Properly witnessed, handwritten wills may hold up in court, but they are more often challenged than those drafted by an attorney with a thorough knowledge of the applicable state and federal laws.

## Free/Low Cost Legal Resources

The forms and requirements of legal instruments vary from state to state. Therefore, it's critical to find a lawyer in your state who understands your state's requirements and writer-specific intellectual property matters.

### **Volunteer Lawyers and Accountants for the Arts:**

This organization maintains an online list of volunteer providers of legal services in the US and Canada, [organized by state and province](#).

### **Dwij Magazine:**

*Dwij Magazine* hosts [an older list of legal service providers in the US](#), which includes an additional Canadian listing.

### **Lawyers for the Creative Arts:**

Writers and other creative professionals located in states not covered by the lists in the previous two entries can obtain help through the Illinois-based Lawyers for the Creative Arts. Although the organization's website focuses on assistance with court cases, they also handle routine matters such as wills, trusts, et cetera. Apply using [their online form](#).

Lawyers for the Creative Arts also offers seminars on intellectual property-related issues throughout the year. Upcoming seminars are listed under [Upcoming Events](#). In 2017 alone, they sponsored roughly sixty such events. Videos of past seminars can be found under the Resources menu under "[Seminars and Videos](#)."

In addition, Lawyers for Creative Arts can arrange special programming for professional organizations in the Chicago area. Individuals and groups interested in arranging a general interest or targeted program should contact Lawyers for the Creative Arts Legal Director Marci Rolnik Walker at the phone or email listed on their [Contact Us page](#).

### **Authors Guild:**

Authors Guild members can obtain some legal services through the Guild, but not for wills or trusts (e.g., assistance with contract reviews, intervention in disputes, copyright advice, trademark advice, first amendment advice, and advice on domestic publishing agreements and agency agreements). The Guild can provide referrals to specialists in these areas. However, it has no control over the costs these specialists might charge their members.

## **Web Tools and Other Options**

Note: This list is provided for general informational purposes, and the inclusion of any particular tool or option is not an endorsement by SFWA. This list is provided as a convenience for authors interested in contracting out tasks related to their Legacy Kit and ongoing management of their intellectual property.

If you know of additional resources that may be appropriate to list here, please email [legacy@sfa.org](mailto:legacy@sfa.org).

### **Royalty Reminder:**

A Cloud-based tool for long-term tracking of contracts, royalties, and other aspects of intellectual property management. It's developed by the Ethan Ellenberg Literary Agency.



## References and Further Reading

### References

All website links were functional as of November 10, 2020.

Buchman, M. L. *Estate Planning for Authors*. Buchman Bookworks, 2017.

Creative Commons. "[Creative Commons CC0, No Rights Reserved License](#)." *Creative Commons* website.

Hill, Gerald and Kathleen. "[Fiduciary](#)." *Law.com* website.

Nettles, James P. *Business Essentials for Writers*. Author Essentials Publications, 2019.

Rusch, Kristine Kathryn. "[Estate planning series](#)." *Kris Writes* website.

Singletary, Michelle. "[Here are the documents you need to bulletproof your wishes after you die](#)." *Washington Post*, 2018.

Wick, Julia. "[The decades-long battle over John Steinbeck's estate](#)." *Los Angeles Times*, 2019.

Wikipedia. "[Advance healthcare directive \(aka living will\)](#)." *Wikipedia* website.

\_\_\_\_. [Anti-Copyright Notice](#).

\_\_\_\_. [Creative Commons License](#).

\_\_\_\_. [Contract](#).

\_\_\_\_. [Executor](#).

\_\_\_\_. [Fair Use](#).

\_\_\_\_. [Intellectual Property](#).

\_\_\_\_. [Literary Estate](#)

\_\_\_\_. [Partnership Agreement/Articles of Partnership](#).

\_\_\_\_. [Patent](#).

\_\_\_\_. [Power of Attorney](#).

\_\_\_\_. [Public Domain](#).

\_\_\_\_. [Trademark](#).

\_\_\_\_. Trust Law.

\_\_\_\_. Will and Testament.

### **Further Reading**

Dennis, Ralph. "The lost Hardman classics." *Crime Reads* website.

Ellenberg, Ethan. "Life plus 70." *The Ethan Ellenberg Literary Agency* website, 2018.

Sussman, Anna Louie. "How dead artists continue producing work." *Artsy* website.

Waters, Audrey. "The labor of open." *Hack Education* website, 2018. (*Thoughts on Creative Commons from a woman blogger who used it.*)

## **Acknowledgments**

We'd like to thank the following people for generously sharing their knowledge, expertise, and resources with the Legacy Kit:

Julian Block

M. L. Buchman

[Kim Headlee](#)

[Matthew Johnson](#)

James P. Nettles

Kristine Kathryn Rusch

Lawrence M. Schoen

Jonathan M. Wall

[Diane Whiteside](#)

If you have further questions about protecting your legacy, compiling your Legacy Kit, or anything else addressed in this resource, please contact the committee at [legacy@sfa.org](mailto:legacy@sfa.org).