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Why You Need an Estate Plan for Your Digital Assets

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According to the Pew Research Center, 87 percent of Americans use the Internet. This means most of us maintain at least some personal and financial information online. We pay bills online, keep contact records digitally, and rarely print a photo—because it's in our online photo album. Although this digitizing of information makes it easier to store and recall, it also presents some concerns when it comes to accounting for all of these “assets” in your estate.

What are digital assets?

First, let's define digital assets. These include your online financial accounts, your personal e-mail accounts, and your Facebook, Twitter, and LinkedIn accounts. The assets may or may not have a value. For example, you might own a domain name for your small business, which would have value, but the photos you uploaded to Shutterfly have sentimental value only.

The problem with digital assets in estate planning

With traditional estate planning, you take steps to ensure that your executor or personal representative can access the information needed to gather and safeguard your assets, contact creditors, and, if necessary, oversee your business after your passing. This can be especially challenging with digital assets, however, if you do not arrange the proper authorization ahead of time.

Your executor should be able to access information on your computer's hard drive relatively easily with the help of a technician. But this may not be the case for online accounts and data stored remotely. Even if you give your usernames and passwords to your executor or a family member, he or she may run up against service-agreement limitations that deny him or her the ability to access, manage, distribute, copy, delete, or even close accounts. Further, “unauthorized use” laws can lead to legal issues for your representatives if they are deemed to have exceeded permissible access levels.

New legal statute may ease access concerns

Fortunately, lawmakers are starting to pay attention. A new statute, the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA), addresses whether and how a family member, executor, attorney-in-fact, or trustee can access digital assets. Sixteen states have already adopted RUFADAA: Arizona, Colorado, Connecticut, Delaware, Florida, Idaho, Indiana, Maryland, Michigan, Minnesota, Nebraska, Oregon, Tennessee, Washington, Wisconsin, and Wyoming. The hope is that more will soon follow.

RUFADAA is different from state laws governing estate administration, powers of attorney, and trusts. It does not presume that family members and fiduciaries can access digital assets because



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of their relationship with the account owner. Instead, the statute requires express authorization before anyone—family member or fiduciary—may access the content of a digital asset.

So what can you do now to start organizing your digital assets?

- **Decide how you want your online life handled after your death.** Facebook, for example, allows a personal administrator or immediate family member to close the account or “memorialize” it. This may help ease your loved ones’ pain during a time of grief. Consider creating instructions for a family member to do this, or something similar, on your social media accounts. You may assign different roles to different people. For example, you may decide to appoint one person as your executor and another to have access to certain social media accounts.
- **Create a comprehensive inventory of your digital assets.** Be sure to store this inventory somewhere other than an e-mail account. Some e-mail providers, like Yahoo!, will close an account that has been inactive for several months and delete the e-mail history. Even if an executor promptly contacts the e-mail provider, he or she may not be able to copy important e-mails or contact lists before the account is deactivated. Back up important information elsewhere and update it regularly.
- **Don’t assume your digital estate has no value.** Some frequent flyer points are transferable after your death. Credit cards with cash-back feature stores are generally redeemable after your death, but only if they are claimed. Internet domain names are potentially sellable, and blogs are a form of intellectual property.
- **Consider investing in a password manager.** Sites such as LastPass and Dashlane maintain a record of your online accounts and passwords in a digital safe. You can set them up to transfer the passwords to your representative at a specific event, such as your death or incapacity.

How can you ensure that fiduciaries and family members have access to your assets?

- Ask your attorney about inserting provisions into your will that grant your executor the authority to access your non-financial digital assets and accounts.
- Talk to your attorney about adding language to grant your power-of-attorney agent authority to act on your behalf with your digital accounts and assets.
- If you have assets in a trust, ask your attorney about the possibility of amending the trust agreement with language that will allow the trustee access to digital assets and accounts.
- Check online service providers’ policies on death or disability. Each provider has its own access-authorization tools, and the terms vary, so be sure you understand who can and can’t access information. If the provider allows access to your executor, trustee, or power-of-attorney agent, inform these individuals where important information is stored.

One final note: Be careful if you include provisions covering digital assets in your estate planning documents *and* complete a provider’s access-authorization tool. The provisions in the documents



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should match the information you give in the provider's access-authorization tool. If they don't, the provider likely will follow the instructions you gave in its access tool and not your estate plan.

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