



Planning Pointers

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Planning for Your Digital Assets upon Your Incapacity and Death

In addition to your “traditional” assets, such as real estate, tangible personal property, cash, stocks, and bonds, you likely have “digital assets.” Such assets exist solely in an electronic format, accessible only through computers, mobile devices, and cell phones. Bills and statements may never arrive by mail, and paper copies of documents may not be retained in your records. For privacy and security purposes, these electronic assets are protected from access by third parties. Only you know the specific usernames, identities, codes, and passwords to access your accounts. If you become incapacitated or die, it is probable that no one will know of or be able to retrieve these assets, either for your benefit while you are alive or for the benefit of your heirs upon your death.

TYPES OF DIGITAL ASSETS

Personal digital assets include investment and bank accounts, social media accounts, e-mail accounts, stored photographs and videos, and play lists, as well as electronically stored personal information and documentation, such as medical records and tax returns. Professional and business information (customer lists, client files, merchandise orders, etc.) also may be electronically stored and managed.

Social media accounts, financial accounts, publication subscriptions, blogs, games, and other accounts are maintained on Internet websites, with restricted access based on codes for user logins and passwords, and the answers to selected security questions, all of which the account owner establishes when opening or updating an account. These precautions are in place to provide privacy and security protection to the account owner (and the provider) and to deter identity theft. Electronically stored personal records, such as tax returns and medical records, may also be password protected.

ACCESS TO AND TRANSFERABILITY OF DIGITAL ASSETS

Such restrictions, however, can impede and even prevent access by (1) your designated agent if you are incapacitated or (2) your estate’s executor or trustee if you are deceased. Traditionally, family members could obtain a fairly complete picture of your situation by reviewing your mail; but without hard copies of statements or correspondence evidencing accounts, your agent or executor may not even be aware that they exist. In the extreme case, unknown digital financial accounts eventually could be forfeited to the state. Ironically,

the convenience associated with the digital world can lead to delays in managing investments, paying bills, or terminating recurring charges. It is similar to being unable to sell stock because the key to the safe deposit box where the paper certificates are stored is missing.

Social media accounts could stay in effect, contrary to the wishes of family members, your agent, and/or your executor. Information stored on your personal computer, such as photos, could be unavailable to your family, and important documents, such as your tax returns, may not be accessible to your agent or executor.

Website accounts are subject to the terms of service as set forth by the providers. Some have established policies concerning accessibility and/or transferability, which are usually presented to the user when opening an account but are seldom read or understood. Some websites may allow access to personal representatives or to parents if the user is under the age of eighteen. Some prohibit transfer. Many websites are silent on these issues.

State and federal law is not clear as to who can legally access a user’s digital assets. Some states have enacted legislation concerning access,



but such laws do not necessarily address all the issues. For example, Connecticut General Statutes § 45a-334a authorizes an executor or administrator of a decedent's estate to access the decedent's e-mail but does not authorize such access by a user's designated agent nor does it authorize access to a user's financial web-based accounts. In addition, it is not clear how such state laws can be applied on an interstate basis. For example, does the Connecticut law apply to a California-based e-mail provider?

PROTECTING YOUR DIGITAL ASSETS

To protect your digital assets in the event you become incapacitated and unable to manage your digital assets, you may want to give a trusted individual (spouse, child, agent under a power of attorney, or court-appointed conservator) attending to your affairs access to your digital assets. One person may be better suited to deal with your financial digital assets (web-based financial accounts, tax returns stored on your personal computer, etc.) and another better to deal with your personal digital assets (social media accounts, family photographs, etc.).

Some issues you may want to consider when selecting someone to have access to each of your web-based digital assets include the following:

- Are you comfortable giving that person access to your personal computer, including your login information?
- Are you willing to give that person the domain/account name for all your digital assets, together with your user or login name, your password or identity, your chosen security questions, *and* the answers to those questions for each asset?

You may also want to consider if you want to give your executor, trustee, and/or surviving joint owner this information so that upon your death your digital assets can be accessed and the related accounts eventually closed.

It may be prudent to create a list of all of your digital assets, with required access information for each asset, and to keep that list up-to-date. You then would need to decide how and where to store this information. A home safe or home file cabinet can be simple and convenient.

The traditional safe deposit box, however, may be inappropriate, depending on who has access to that box. Commercial online services provide a sort of digital safe deposit box, but commenters question (1) how secure such providers are from hackers and (2) what happens to your information if the provider ceases to exist. In addition, you may want to advise a trusted third party of the location of the list, or simply give the access information to that trusted person. Finally, you may want to determine what you want done with each asset upon your death (for example, transfer the photos to certain family members, destroy/delete your social media accounts, transfer financial accounts to your executor, etc.).

CONCLUSION

Securing the privacy of digital assets is paramount in today's technical world, especially given the threat of identity theft. In order to avoid the loss of your digital assets upon your incapacity and/or death, you may want to take steps to protect them.

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