

A PIECE OF MIND

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YOUR DIGITAL ESTATE: PLANNING FOR YOUR DIGITAL ASSETS

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Home phones and public payphones are dead. Smart phones are everywhere. These devices record our home movies and capture our photos. Movies, video games, and music are primarily sold digitally too. Paperless statements and bills swept the nation when email replaced snail-mail.

Digital trends vastly changed where and how we access and store information. And this digitization has only complicated estate issues.

What happens to your digital assets and accounts after you die?

WHAT IS A DIGITAL ASSET?

Digital assets are your online accounts. This includes files, email, social media, and networking accounts.

Technology is constantly evolving. The specifics of what a digital asset is will continue to change. Digital assets fall into seven broad categories.

Federal privacy laws can hinder access for your loved ones. Many companies can't give access unless you made advanced arrangements. These privacy laws, designed to protect and combat hacking, make this difficult. The law considers violations criminal acts.



DIGITAL ASSET CATEGORIES

1. Hardware such as: computers, tablets, smart phones, e-readers, hard drives, flash drives, and other digital devices.
2. Electronic Communications such as: emails, social networking sites, and blogs.
3. Online Reward Programs such as: credit card rewards, hotels, and airlines.
4. Financial Accounts such as: PayPal, online banking, investments, and brokerage accounts.
5. Digital Collections such as: digital music files, photos, and videos.
6. Business Accounts such as customer databases which include personal and potentially confidential information.
7. Cryptocurrencies such as Bitcoin.

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TERMS-OF-SERVICE



When you sign up for a service, rewards card, or credit card, you acknowledge a term of service agreement. This is sometimes called Terms and Conditions. These documents are almost universally long, boring, and seldom-if-ever read legalese.

Many people do not understand what the agreement says or does before clicking “I agree.”

Often, these agreements may prohibit third-party access by anyone, including a fiduciary. Even in death. iTunes, for example, states that your purchased content cannot be transferred to anyone. Some states, like New York, have passed laws that override these terms-of-service limitations. But they are in the minority.

THE ACT

Over a decade ago, states started introducing laws to handle digital assets. The latest Act is the “Revised Uniform Fiduciary Access to Digital Assets Act” (RUFADAA).

RUFADAA allows access to online accounts when the owner dies. The act also kicks in if the owner loses the ability to manage the account.

HOW IT WORKS

You appoint a person as a fiduciary, to manage the digital assets and act in your best interest. This fiduciary might be a trustee or your power of attorney (POA). It does not have to be your financial or healthcare POA, or the executor of your will.

The act allows the appointed manager to access digital files, computers, web domains, and virtual currency. **Email, text, and social media are still blocked unless you specifically consent to access in a will, trust, POA, or other record.**

If you live in a state that passed RUFADAA, **consider updating your estate plan to provide a clear set of instructions for your digital assets.**

You may not see the harm in leaving email and social media accounts open and unused, but these accounts can become targets for identity theft.

DIGITAL ASSET CHEAT SHEET

Here are six steps to help you create your own Digital Estate Plan.

Remember, this is an ongoing process and should be revisited as you add, change, and close digital accounts.

STEP ONE: Take Inventory and Make a Master List

Consider your digital and online “life.” What do you want to happen with this “life” after your death? What devices do you use? How many bills do you pay online? What about your social media accounts? These are just a few questions you should think about when planning your digital estate.

This is not a quick process and should be revisited regularly. Think about:

Hardware like:

- Computers, tablets, e-readers, and smartphones
- External hard drives, flash drives, digital music players, and digital cameras

Data and information such as:

- Email, social media, video gaming, and messaging accounts
- Shopping, banking, and investment accounts
- Photo and video sharing/storage accounts
- Websites, domain names, and blogs

Intellectual property like:

- Copyrighted materials & Trademarks
- If you own a business, the business website

Make a list of everything your digital executor or fiduciary would need to access.

STEP TWO:

How Can Your Agent Access These Digital Assets?

Once you have your inventory, you need to give your agent access to these accounts. This may be through a tool. For instance:

- Facebook allows a "legacy contact." A personal administrator or immediate family member who can close or memorialize your account.
- Google has an inactive account manager. This allows you to name specific people whom Google and Gmail can share certain data with.
- Dropbox requires a court order to access the account. But you can share the files in your account with family and friends prior to death as part of your planning.

For those sites without tools, keep a list. You'll need to record your login, account information, passwords, and security keys. If you use a password manager like LastPass or 1Password, even better! Just share the login for that.

Remember to record passwords to your devices too, and where to find all your electronic goodies.

STEP THREE:

What Happens to These Digital Assets?

Do you want your online picture horde to go to your sister? Your Facebook account memorialized? If any of your digital assets have a monetary value, how should those be handled?

Decide what you want to happen with every item in your inventory.

Depending on the property, you may want things managed in different ways. You may want some things kept, some transferred (if allowed), and others erased. What you want done with your accounts and digital assets is your business, but Terms-of-Service (TOS) and state laws may not always agree.

Not all email providers handle this the same way. Google and Microsoft have very clear policies. Apple, not so much. According to Apple's TOS, your account is non-transferable and rights to stored and even purchased content expire with your death. Check with your providers for details.

STEP FOUR:

Name a Digital Executor or Fiduciary of Your Digital Assets

Who will you allow access to your digital assets? Choose someone to settle your digital estate.

This does not have to be the same person who is the executor of your will, or your POA. Your digital executor is not a legally binding designation in most states. You must talk to your estate planning attorney to decide what's best for you and your state's laws.

Beyond accessing your files, photos, and devices, this person is also responsible for:

- Closing accounts & terminating subscriptions
- Transferring digital assets to your heirs
- Paying digital maintenance fees (such as ongoing photo archiving)
- Settling any digital debts

Due to the nature of what this person will handle, choosing someone trusted who is familiar and comfortable with technology is a wise choice. As with a POA, talk to this person beforehand, and name a backup just in case they are unwilling or unable to serve when the time comes.

STEP FIVE: Store Your Inventory

Like any sensitive, important information, securely store your Digital Estate Plan. Some suggestions are to store it with your attorney, in an online vault like our eMoney, or in a safe or locked file cabinet. Do not email this document or store online unless your executor can access it any time they need it. Wherever you store your Digital Estate Plan, it is important your digital executor knows where to find it and how to access it.

Another consideration... You should not make the digital asset inventory and password list part of your will. Upon death, wills become public record. Your login and password information would also become public record then.

Sources: The Tax Adviser, Everplans, Fidelity, NCSL, and Uniform Law Commission.

RUFADAA has been passed everywhere except Delaware, District of Columbia, Kentucky, Louisiana, Massachusetts, Oklahoma, and Pennsylvania.

You can check the current status of your state here: http://bit.ly/RUFADAA_check

STEP SIX: Make it Legal if You Can

If you live in a state that allows you to formalize your digital estate plan you should. Do so in a legally binding document, such as your will, or an amendment or codicil to an existing will.

The easiest way to do this is to name your digital executor or fiduciary in the document and list where to find the inventory and wishes.

COMPLICATED BUT ACHIEVABLE

With a little planning, managing your digital assets after death is possible. With this article as your guide, you can take the process step by step, over time.

This makes the task of preparing your digital assets for the next generation more manageable and less overwhelming.

Then you can ensure that your digital life is left orderly and easily managed by your heirs.

We recommend speaking to your loved ones about your wishes. You should also consult an estate planning attorney for guidance.

If you are looking for an estate planning attorney, give us a call and we can help you in your search.