



Estate Planning for Your “Digital Assets”

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In this digital age, it is important to consider how your “digital assets” will be managed upon your death or disability. “Digital assets” include all digitally stored information, including digital photographs, electronic bank and investment account and statement information; emails; website, blog and domain names; and social media accounts such as Facebook and LinkedIn. In the aggregate, your digital assets can have tremendous aesthetic, emotional and financial value. Planning for your digital assets implicates a number of complicated issues related to security, privacy, and ownership.

In order to ensure that your family and fiduciaries (your executor and your agent under a power of attorney) can identify, access and manage your digital assets, we recommend that all clients create an inventory of their digital assets, often known as a Digital Asset Instruction Letter, that includes current access information and your wishes for management, distribution or destruction of such assets. In addition, you will need to decide how best to protect your personal information now, while ensuring that your family and fiduciaries can retrieve it when needed. Although no single option is best, one approach is to save a password-protected version of your Letter on your computer, smart phone or a web-based service, and then store the Letter’s “master” password in a secure location that your family or fiduciary can access if necessary.

Several commercial providers, including Estatemap.com, Everplans.com, Securesafe.com, and TheTorch.com offer online storage for important estate planning documents, including your Digital Asset Instruction Letter. While we do not recommend or discourage the use of these services, it is important to know that these services raise serious privacy and identity theft issues, and that the enforcement of instructions created on such sites has yet to be tested in courts.

Finally, although you may have left clear instructions regarding access to and administration of your digital assets upon your death or disability, you should be aware that these may not be followed if they violate the terms of service of a particular provider or account. For instance, many online accounts, services and digital files (i.e. iTunes music and video files) are licenses that expire upon death. Other providers, such as Facebook, Twitter and online email account providers, have developed specific guidelines governing what happens to a user’s account when he or she passes away. You can mitigate some of these concerns by regularly backing up digital assets stored in online accounts to local or cloud-based storage media.

We recommend that you create a Digital Asset Instruction Letter and provide some means for your family and fiduciaries to access it when necessary. Without such a document, it will be extremely difficult to administer your digital assets after your disability or death.