

Client Alert!



Don't Forget Digital Assets in Estate Planning

May 11, 2018

Due to federal privacy laws, most internet companies such as Facebook, Google, Instagram, etc., strictly limit access to their customer's accounts. Your accounts with these internet companies might include "digital assets" such as photos, email and social media postings. When you die, your heirs or executor will generally not be able to access these accounts unless you have made arrangements in advance to give them access.

Taking Precautions

The best course of action is to clearly state in your estate planning documents how you want your digital assets treated, and to provide a clear set of instructions for the disposition of your digital assets.

Many states, including California, New York, Florida and Illinois have recently adopted versions of the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA). Under RUFADAA, an owner of digital assets can give fiduciaries or heirs access and authorization to manage your digital assets. You should consider updating your estate plan to reflect this new law and incorporating language giving lawful consent for internet companies to divulge the contents of your electronic communications to your fiduciary or heirs upon your passing.

Do not list usernames or passwords in a will because this document becomes public upon your death. Keep your account user IDs and passwords in a secure location (in written, printed form in your safe with your estate planning documents and on a computer file that should be encrypted or even better within a password vault) and let your fiduciary or heirs (spouse, children, successor trustee, etc.) know where this list is kept. That person will then be able to access your online accounts and close them, if necessary.

Closing accounts that are no longer needed will help you protect your family from identity theft after you have passed away. You may want to first save and make a copy of the contents of the account before closing an account.

You should back-up any digital assets in the cloud to a local computer or storage device on a frequent basis so that family members and fiduciaries can easily access them. Also, remember to properly dispose of obsolete or old storage devices.

Legacy Contacts

Many internet companies permit you to name a “legacy contact” with whom to share specific data. For example, Facebook permits a personal administrator or immediate family member to close the account or “memorialize” by posting an obituary on the deceased’s timeline and archiving their photos. Google also has an “inactive account manager” feature, which allows you to name “trusted contacts” with whom to share specific data available from your Google and Gmail accounts.

Valuing Digital Estate Assets

It is important to understand what you really own. Information and contact numbers can be found on monthly statements, emails and newsletters.

- Some frequent flyer and frequent hotel guest programs are transferable after death.
- Credit cards points may be redeemable after death, but only if they are claimed.
- PayPal accounts with money have financial value in them.
- Internet domain names are possibly sellable, and blogs are a form of intellectual property.
- Unfortunately, some digital music (such as music bought on iTunes) was purchased as a nontransferable license to use the asset according to terms of the purchase.

Source: Journal of Financial Planning, “Don’t Forget Digital Assets in Estate Planning”, April 2018

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