

What Happens to Your Online Assets After Your Demise?

Digital Estate Planning

by Alexandra Armstrong, CFP, and Christopher Rivers, CFP

Over the past year, bitcoin has grabbed an increasing share of financial headlines as a new method to store value and transact business online. Although bitcoin itself remains a relatively small niche in the financial world, the increasing popularity of cryptocurrencies, social media and our digital footprint in general raises some important questions for our legacies. How these assets, whether of monetary or sentimental value, will be managed when you're no longer alive is a critical issue. Fortunately, there has been considerable work done to adopt a framework you can use for creating a digital estate plan.

What Is Digital Estate Planning?

Digital estate planning is the process of organizing your digital property and assets and making arrangements for what should happen to that property after your death. In 2015, the Uniform Law Commission created guidelines known as the Revised Uniform Fiduciary Access to Digital Assets Act. Quite a mouthful! Since that time, 41 U.S. jurisdictions have adopted some version of these guidelines and four more and the District of Columbia are working on them. This leaves just California, Delaware, Kentucky, Louisiana and Massachusetts without a path to guidelines for handling digital assets at death.

Why Should I Create a Digital Estate Plan?

A person's estate plan typically consists of some combination of a will, trusts, power-of-attorney appointment and beneficiary designations that indicate how your assets should be distributed at your death. In the past, these items were often stored in a folder or binder in a safe or desk drawer, where the executor, trustee or personal representative would be able to easily find them after an individual's death.

It's increasingly common, however, to have many of the records documenting an estate scanned and stored electronically. Although paper versions of formal legal documents may still be saved in a person's home or with an attorney, many financial, business, personal and administrative documents may exist solely in a digital form. Many people manage their finances, business and personal lives online, but very few have organized those records. This can make accessing accounts and managing these assets difficult after death.

In addition, the question has arisen of how to shut down, transfer or otherwise manage online property including social media profiles, photo accounts, websites, streaming music or video accounts such as Netflix or



iTunes, data stored in the cloud, reward programs such as frequent flyer miles and subscriptions such as Amazon Prime.

The terms of service of each account, that lengthy legalese you accepted without reading when you created the account, govern what happens to your account in the event of your death. The vast majority prohibits access by a third party after your death. Before 2015, there was no way for your executor to manage or access these assets upon your death.

Fortunately, digital property and digital assets are addressed by the new regulations, which allow you to control how they're handled after your death.

RUFADAA says that if your estate-planning documents explicitly grant access to a fiduciary — such as your executor — that person can access and manage your accounts regardless of the terms of service for the account. The process for obtaining access to digital assets is similar to the process for other assets, since you must provide supporting documents such as a death certificate and letter of testamentary.

How Can a Digital Estate Plan Help My Family After I'm Gone?

By creating a digital estate plan, you can help your family more easily:

- **Locate any accounts** you have online.
- **Access those accounts** or the information in those accounts.
- **Determine whether your digital property** has any financial value that needs to be reported and perhaps submitted to probate.
- **Distribute or transfer any digital assets** to the appropriate parties.
- **Manage or shutdown any accounts.**
- **Avoid online identity theft.**

How to Create a Digital Estate Plan

- **First**, identify your digital assets, starting with a list of your existing devices — cellphones, tablets, PCs, etc. — as well as any online storage plans where you backup the data for those devices.
- **Second**, make a list of any online accounts: email, social media, online stores, photo-sharing accounts, subscriptions and rewards programs, as well as any websites or blogs you may own. Often we allow our computers at home to store this information to make logging on easier.
- **Third**, decide what you want to happen to your vari-



ous assets and accounts at your incapacity or death. You may want some assets to be archived and saved, others to be deleted or erased and still others to be transferred to family, friends or colleagues. For each account or asset, you need to specify how you'd like your executor to handle that asset. What should happen to the years of photos and documents stored on your hard drive or in the cloud? Do you want revenue-generating assets to be transferred to people who will continue to manage the accounts? Should credits or points or cash values be redeemed? If assets will continue to generate revenue, it's worth thinking about where that money is going and who'll be able to access it after you're gone.

■ **Fourth**, appoint a digital executor. We suggest you make this appointment even if your state is not one of the 41 with current legislation specifically allowing this.

■ **Fifth**, choose a method for storing this information. In the past, this was often a master password list in a spreadsheet or notebook. Although a good starting point, these lists are often updated inconsistently and are hard to keep current. In addition, they can be hard to locate when you pass away.

An online password manager, such as LastPass, Dashlane or LogMeOnce, is much easier to keep current because it prompts you to

update the list each time a password is changed. Most offer a "notes" section for each account, in which you can leave details for the person handling your estate. In addition, a manager can be used to generate passwords to help minimize some of your risk of hacking. Of course, in theory the password sites themselves could be hacked. But this does give your executor one portal through which to manage and access all your accounts.

Also, there are digital estate-planning services that have sprung up recently, which work in similar fashion to password managers but make the information available to your attorney and executor upon your death. The benefits and risks are similar to the online password managers above.

One note of caution: Don't include your passwords and other digital asset access information in your will, as it becomes a public document at your death. **B**

Conclusion

With the spread of RUFADAA, we now have a legal framework that allows us to decide what happens to our digital assets at death. Ten years ago, this would have seemed of minor importance. As more and more of our daily lives have moved online, digital estate-planning in the event of incapacity and/or death has become

a critical piece of a well-crafted estate plan.

Alexandra Armstrong is a CERTIFIED FINANCIAL PLANNER and chairman and founder of Armstrong, Fleming & Moore, Inc., a registered investment advisory firm located at 1800 M St. NW, Suite 1010-S, Washington, D.C. 20036-5813, 202/887-8135.

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