



If You Have Digits, You Probably Have Digital Assets

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What is a digital asset? Even if you can't define them, digital assets are part of our lives now. Yet many wills or trusts do not mention them, especially if the document is more than a few years old. Even a relatively recent document may be vague about digital assets. A good definition differentiates between Digital Accounts and Digital Devices as well as "all content of electronic communication, associated with or used in connection with your business," which can range from emails to contracts or blueprints. If you own your own business, access to online accounts may be vital to making sure that business can continue to operate smoothly if something happens to you.

Even after you're gone, your zombie data lives on. A recent study by Oxford researchers found that if Facebook continues to grow at its current rate, the site could have 4.9 billion deceased members by 2100. Before the end of the century, Facebook "ghost" users could outnumber the living ones. Facebook allows you to designate a "legacy contact," but not all sites have that feature and not everyone takes advantage of it.

Digital Accounts

Most people today have online accounts like email, shopping, online bank or brokerage accounts. Do you store documents on “the Cloud”? About 45 days after your death, your bank will freeze your account—but first pay themselves what you owe on one of the bank’s credit cards. Many people think they can avoid probate by owning accounts as joint tenants, which is good to do with your spouse, but be careful whom you name as a joint tenant because his or her creditors can attach your account or the other person’s heirs could inherit your assets.

Federal laws try to protect your online privacy, which is a good thing, but if you were to die or become incapacitated, those accounts might be frozen. Rhode Island passed the Access to Electronic Mail Accounts Act in 2007; however, it addresses only email and requires your personal representative to open a probate and ironically, write a letter to the email provider along with a certified copy of a death certificate, a certified copy of a certificate of appointment as executor and administrator and a court order. That will take at least a month, probably close to two. And that’s just for email.

Digital Devices

Do you own or use a computer, camera, telephone, or thumb drive to store data? Who owns your devices, you or your company or your employer? Did you expense your device through your company, but use it as your main digital device? Because digital devices are so easy to use, many of us use our mobile phones as if they were an extension of our personalities. The courts have even had to consider wills left on digital devices.

No matter your relationship with Siri, your devices are property owned by someone. Some of these devices cost hundreds of dollars, or thousands if you add in specialized software, but what good are they if no one can access them after you’re gone? It is best to name someone to be in charge of them if you die or become incapacitated, especially if the data on the device is vital to continuing your business.

Another consideration is whether you, your employer or your company owns the data on your employer’s device. Even though you consider it your work, your employer may consider it company property, so avoid using it for personal matters and don’t do outside work on it. You may consider your architectural drawings or software program as yours, but your employer may consider the data as company property if it was done on a company device. “Work-for-hire” is a concept in copyright law that means if someone pays you to create something, that person or entity owns the creation. If you lose your job or your life, that data goes with it.

That brings us to passwords.

Passwords

Passwords are the gateway to digital assets and are becoming more complex with capital letters, numbers and symbols. If you died suddenly, your Will executor or Revocable Trust successor trustee would have to prove to each separate online account that you are dead and that he or she is allowed to access your account. A *master password manager* such as Dashlane or LastPass can be helpful...even if you can’t remember the password. Dashlane allows you to name a legacy contact; however, most websites or online companies do not offer that function. Having

the appropriate language in estate planning documents is the easiest and most cost-effective way for your representative to take care of your digital assets.

When you sign or update your will or trust, don't forget to take care of your digital assets as part of your estate. You can even do a separate Authorization and Consent for Release of Digital Assets form if you would prefer that someone other than your Executor or Successor Trustee take care of the for you.

Call us and we will review your current will or trust for free and if needed, design a plan that fits your wishes.

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