

Your Heirs Will Follow Your Online Trail; Make Sure They Don't Get 'Lost'

Digital Estate Planning

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One of the consequences of the pandemic has been a marked increase in partial or full-time work from home. In conjunction with that, we shifted more of our lives online and formerly niche services like grocery delivery are becoming mainstream. At the same time the increasing popularity of cryptocurrencies, social media and the increasing size of our digital footprint has complicated how we plan for our legacies at death.

How these accounts and assets, whether of monetary or sentimental value, will be managed when you're no longer alive is a critical issue. There are a number of tools and techniques you can use to ensure your wishes are met. While this may seem like a relatively mundane task, the time to plan is now, before the unexpected happens.

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 (RUFADAA). Quite a mouthful! Since that time, 48 U.S. jurisdictions have adopted some version of these guidelines. Massachusetts had legislation in process as of the end of 2021, leaving just Louisiana and Oklahoma without firm guidelines for handling digital assets at death.

Why Should I Create a Digital Estate Plan?

An estate plan typically consists of some combination of a will, trusts, power of attorney appointment, advance medical directives and beneficiary designations. 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 a death. It is increasingly common, however, to have the records documenting an estate scanned and stored electronically. While 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 solely exist in a digital form.

While many people manage their finances, business and personal lives online, very few have organized those records. This can make accessing accounts and managing these assets difficult after someone's death. In addition, the question has arisen of how to shut down, transfer or otherwise manage online property, including social media

profiles, cryptocurrencies, photo accounts, websites, streaming accounts like Netflix or iTunes, data stored in the cloud, reward programs like frequent flyer miles and subscriptions such as Amazon Prime.

The terms of service of each account (that lengthy legalese that you accepted without reading when you created the account) governs what happens to your account in the event of your death. The vast majority prohibit access by a third party after your death. Prior to 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 a fiduciary (such as your executor) access, then 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;
- **Locate documents stored electronically** on hard drives or in the cloud;
- **Access those accounts or the information** in them;
- **Determine if 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;
- **And avoid online identity theft.**

Create a Digital Account Inventory

First, create a list of both the hardware and software you use to store documents. This is simply a list of your existing devices (cellphones, tablets, PCs, etc.), as well as any online storage plans where you back up the data for those devices. Next, create an inventory of online accounts — email, social media, online stores, photo-sharing accounts, subscriptions, rewards programs, as well as any websites or blogs you may own. In the past, this was often a master password list in a spreadsheet



or notebook. While a good starting point, these lists are often updated inconsistently and are not always securely stored. In addition, they can be hard to locate when you pass away.

An online password manager (such as LastPass, Dashlane, 1Password or Bitwarden) is 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, where you can leave details for the person handling your estate. In addition, a manager can be used to generate unique passwords to help minimize some of your risk of hacking.

Of course, the password sites themselves could be hacked. But the most reputable password managers use military-grade encryption that is a deterrent to typical brute-force hacking methods. While all systems have weaknesses, it is likely that the password manager, with its encryption, multifactor authentication and advanced security measures is more secure than alternative methods like spreadsheets. But this does give your executor one portal through which to manage and access all of your accounts.

In addition, 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. There are also digital legacy services that offer the ability to organize and maintain a digital estate plan and inventory. But it is not clear yet which of these services will be around long term, and the security may not be of the same caliber as a highly regarded password manager.

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

Consider What Happens to Accounts When You're Gone

What do you want to happen to your various 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 transferred to people who will continue to manage the accounts? Should credits, points or cash values be redeemed? Should social media profiles be shut down or left up as virtual memorials? If any assets or accounts have value or 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.

Appoint an Executor and Use the Legacy Contact Feature

Once you have clearly laid out your intentions for your digital life, you should appoint a digital executor. While this can be the executor of your financial estate, it can be anyone you trust to fulfill the wishes laid out above. We suggest you make this appointment in your will even if your state is not one of those with current legislation specifically allowing this.

Some of the largest online platforms offer the ability to designate a legacy contact. Google (Inactive Account Manager) and Facebook (Legacy Contact) have offered this feature for several years now. More recently, the latest version of Apple's iOS 15.2 released in December 2021 added a new setting for Legacy Contact. Most password managers also offer the ability to designate an emergency contact. You can add both an emergency contact and a waiting period. If you set the waiting period to 20 days, then if your emer-

gency contact requests access to your password manager, and you don't deny the request in 20 days' time, they will be granted access to the account. You also have the ability to grant access to only specific accounts or categories within the password manager, if you want to manage which accounts they can access. Even if you have appointed a digital executor and use a password manager, we recommend you use these legacy contact features as well. They can help your executor avoid hiccups and provide quicker access to your most active accounts.

Conclusion

With the spread of RUFADAA, we now have a legal framework that allows us to decide what happens to our digital lives at death. Ten years ago, this would have seemed of minor importance. But with the rise of virtual work, online commerce and digital financial assets, digital estate-planning in the event of incapacity or death has become a critical piece of a well-crafted estate plan. **B**

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