

Don't Forget Digital Assets in Estate Planning

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AS A PLANNER, how can you ensure that your clients' digital property is appropriately managed and dispersed upon incapacity or death? Digital assets are the online accounts in your clients' name that may include files such as photos, images, and videos; email accounts; and social media and networking accounts including Facebook, LinkedIn, and YouTube.

Even though the "digitizing" of personal and financial information online makes data easier to store and recall, your clients' family members might not be able to account for every online asset that may have sentimental, practical, or monetary value. Due to federal privacy laws, most internet

companies won't be able to assure that access unless your clients have made arrangements in advance.

Fortunately, you can help your clients and their family members avoid obstacles by addressing digital property and information in their estate plans. You can arrange for full access to their digital property, minimize administration costs, and ensure that no valuable or significant digital property is overlooked. These proactive planning insights can preserve your client's legacy in its digital form.

Fiduciary Access to Digital Assets Act

Many states, including Florida, New York, California, and Illinois, have recently adopted versions of the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA). Under RUFADAA, an owner of digital property can give fiduciaries access to and disposition to manage digital assets. Without such consent, fiduciaries may not have access to electronic communications and other digital assets. Fiduciaries designated in their estate planning documents will now have the ability to access digital assets to the full extent permitted under law, so that they can collect and manage digital property to the same extent as financial property. [See the cover story beginning on page 20 for more information on RUFADAA and its implications for a client's estate plan.]

Clients should consider updating their estate plans to reflect this new law and provide a clear set of instructions

for their digital property. Will named fiduciaries be adequately equipped to access their digital assets? Inform your clients to coordinate this broad access with their estate planning attorney if it is not suitable for their circumstances or there are any other concerns relating to accessing their digital assets.

Online Life Legacy

Some states will allow your clients to name a trustworthy and technically competent "digital executor" in their will. This digital executor will have the responsibility of following your clients' wishes and specifying what happens to the nonfinancial assets based on their written instructions. If their state does not recognize a digital executor, you should have your clients consult with their estate attorney so that a similar function can be carried out in accordance with state law.

Proactive planning can preserve your client's legacy in its digital form.

Talk to your clients about how they want their online life handled after their death. Advise them to create instructions for assigned people to access features on their computer, email, and online accounts in their absence.

For example, Facebook permits a personal administrator or immediate family member to close the account or "memorialize" it. Guide your clients

to identify a “legacy contact,” someone who can post their obituary on their Facebook timeline, respond to new friend requests, and archive 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.

Do not list usernames or passwords in a will, because this document becomes public upon death.

Closing down accounts that are no longer needed will help your clients protect family from identity theft after they have passed away. If your clients want an account to be closed, they may want to first save and make a copy, especially if the account contains pictures or writings.

Listing Digital Assets

Advise your clients to list all financial, purchasing, and social accounts, including login IDs and passwords to access them. Do not list usernames or passwords in a will, because this document becomes public upon their death.

Be certain they store this inventory in a secure location, somewhere other than an email account. Some email providers, like Yahoo!, will close an account that has been inactive for many months and delete the email history. Your clients’ executor may not be able to copy important emails or contact lists before the account is deactivated, even if an executor promptly contacts the email provider. Speak with your clients about backing 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.

Valuing Digital Estate Assets

Are your clients’ digital assets valuable? It is important to understand what your clients really own. There are instances where clients may have thought they purchased a digital asset, but in fact they bought a nontransferable license to use the asset according to terms of the purchase (buying music on iTunes, for example).

Some frequent flyer points are transferable after death. Credit cards with cash-back feature stores may be redeemable after their 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. For many clients, their blog or website even drives their small business income. Your clients might want to assign their small business website to their heirs, so that the business can continue uninterrupted after their death.

Providing Legal Document Consent

Encourage your clients to talk to their estate planning attorney about updating their wills, powers of attorney, and any revocable living trusts. They should incorporate language giving lawful consent for providers to divulge the contents of your clients’ electronic communications to the appropriate people.

Your clients should be careful if they include provisions covering digital assets in their estate planning documents and they complete a provider’s access-authorization tool. The provisions in your clients’ documents should match the information they gave in the access-authorization tool. If they don’t, the provider probably will follow the instructions given in its access tool and not in the estate plan.

These are important things to bring up with your clients—especially if they haven’t updated their legal documents in some time. Ensure your clients update those documents to cover all their digital bases. ■

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