

Estate Planning for Your Digital Assets

Twitter. Gmail. Netflix. Pandora. Shutterfly. Amazon.

These online accounts may be a part of your daily life, but have you thought about how you'd like the closure of your social media profiles, email addresses, and blogs—your digital assets—handled after you die?



Facebook recently announced that it will allow a user to designate a friend or family member to be your “Facebook estate executor” once you pass away. The person you designate can respond to new friend requests, update your photos and profile and generally use your page on your behalf. Your status on the page will add the word “remembering” above your name.

This is an important step in the estate planning world as “digital assets” is a gray area of the law. Digital assets are so new and evolve so quickly that the law has been unable to keep up. While there is a Uniform Laws Commission working to create a proposed code, to date, the vast majority of states have no or very little law on the issue. In the meantime, there are some steps you can do now to better manage your digital assets.

1. **Understand the Terms of Service.** Digital assets are generally controlled by the Terms of Service (“TOS”) agreements that we all diligently read, word for word, before pushing the “I Agree” button on any given website (yeah right). While every agreement is different, many are rather strict in that they do not allow you to assign or transfer your content, and most agreements immediately terminate the relationship upon your death.
2. **Identify and Take Inventory.** Make a list of your online accounts, memberships and subscriptions as well as relevant passwords. It’s important to store this information in a safe and secure place. You may want to create a password-protected Excel spreadsheet. Or, it may seem ironic, but a lockbox or safety deposit box may be necessary for such items.

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- 3. Designate a “Digital Executor.”** If not in your current estate planning documents, consider specifically identifying your ownership of digital assets and your desire that your executor/trustee have the right to access and control those assets. Remember that your executor doesn’t have to be the person in charge. If you have another loved one more tech savvy, you could appoint them specifically to this task. While the TOS may block access by your digital successor, at least you’ve identified your intent for someone to try and manage your digital assets. This is a much better start than having nothing at all in your planning.
- 4. Be Specific.** If you want particular digital assets to pass to certain people, assuming such a transfer is allowable, specifically address and designate such bequests in your estate planning documents just as you would your grandmother’s ring or your grandfather’s watch. If you have digital assets of significant value like an online store, active domain names, etc., work with your estate planning attorney to make explicit your intent with such assets.
- 5. Create Tangible Hard Copies.** Backing up cloud pictures and music to a hard drive, CD, etc., may leave your family another way to get access to your digital assets. It may seem like you’re moving backwards in technology, but it is another way to control your digital assets. ■

The law in this area is uncertain at best. The rules are changing swiftly, and the way we use the internet and digital assets is moving at an even greater rate of speed. Consider reviewing your current estate plan and whether you should update your documents to cover your digital assets.

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