

Estate Planning for Your Digital Assets

TicTok. Netflix. Instagram. 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?



“Digital assets” is a broad term hoping to define any electronic record where an individual has a right or interest. This can mean anything from Instagram photos to airline miles. Think of the vast amount of information or data you may have out in the digital world.

This is very much a gray area of the law. That said, legal world is trying to catch up. The Uniform Laws Commission has created the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) to allow an account owner to designate who may have access to those accounts at death or disability. To date, some version of the RUFADAA has been passed in 46 states and has been introduced in three more.

While the RUFADAA may vary in every state, 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

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ironic, but a lockbox or safety deposit box may be necessary for such items.

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. Be sure to review and incorporate the RUFADAA provisions in your state, if any. Also, your digital executor and your traditional executor don’t have to be the same person. If you have another loved one more tech savvy, you could appoint them specifically to this task. While the TOS may try 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.

This area of the law is constantly changing. If digital assets are an important aspect of your life or have financial value, be sure to review and update your planning accordingly. As quickly as technology evolves, the law will continue to try and catch up. ■

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