



Estate Planning in the Digital Age
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Like many people, I store a large list of contacts in my phone. And emails. And photos. For better or worse, how many of us even recall more than a few phone numbers or email addresses any longer? Why bother, when all that information is organized in our phones, right? Now consider how accessible that important information is if our phones are password protected, and we become incapacitated or worse, and *nobody knows the password*.

In years past, we stored our vital personal and financial information in desk drawers, boxes and filing cabinets. Mail was delivered to mailboxes and photos were maintained in albums. While some of that still is true today, we are trending toward using the Internet to communicate and store more of our information.

Consider the wealth of information we have in our computers, or in multiple computers and tablets. We may also have important information stored in CDs, flash drives and backup tapes. There may be dozens of user names/logins and passwords associated with these digital accounts.

Many of us have gone “paperless.” We pay our bills online, receive financial statements and investment summaries via email and have PayPal accounts. And while that may simplify our lives and make our homes and offices tidier, it may also make it difficult for Attorneys-in-Fact, Executors, Trustees and other fiduciaries to locate our important financial documents and competently manage our finances.

An essential part of modern estate planning involves understanding that our online presence may outlive our physical presence. Executors aren’t merely sorting through physical items (mail, contents of filing cabinets, safe deposit boxes) to determine the extent of our estates, but rather much of the most valuable information concerning our estates is found online. As we expand our digital reach to encompass a broad range of financial transactions, social activities, creative endeavors and more, the management of digital assets and online accounts following death or incapacity becomes crucial.

What are Digital Assets? Consider the following examples:

Digital Assets
Content stored on tablets, phones and computers
Email accounts, online accounts
Social Media accounts

Electronic medical records
Electronic financial records
Documents stored in the cloud
Web sites, domains or blogs
Digital intellectual property

At present, there is no uniform federal law that governs access to digital assets when a person becomes incapacitated or dies. Only a handful of states—*not* including North Carolina—have enacted statutes governing digital assets, though many states are presently considering such legislation.

The following are some steps to take to manage your Digital Estate:

(1) Create a detailed inventory of all devices on which digital information may be stored, along with all passwords, logins, user names and security codes. Consider computers, cellular phones, tablets, CDs, DVDs, digital cameras, flash drives and other backup devices. For each device, detail what is contained on it, such as accounts—whether business or personal—along with associated logins and passwords. As this information changes over time, be sure to keep the list updated. If you have not yet begun this process, it may be daunting, but consider the frustrating alternative if someone has no idea where you store important information, that person cannot access financial accounts and has no idea of logins or passwords.

Some may opt to maintain an actual notebook or folder containing this information. However, if you are uncomfortable that this vital list could be stolen, misplaced or destroyed, then consider using an online password manager such as LastPass (www.lastpass.com), 1Password (www.agilebits.com/onepassword) or PasswordBox (www.passwordbox.com). Many of these sites are relatively new and privacy concerns certainly exist, as these storage providers may be a prime target of identity thieves.

Whether you choose a physical file for your digital information or use an online password management program, be sure that someone you trust (partner/spouse, close friend, family member) knows that you have this information listed and where to locate it.

(2) Consider the best person to retrieve and manage your online information and assets. In making decisions about Executors, Guardians, Trustees, Attorneys-in-Fact and other fiduciaries, especially those who will be tasked with financial management, it may be wise to consider whether the person you designate is computer savvy enough to manage and close online accounts. You may even consider whether you wish to create certain online accounts with multiple users or designate a specific agent under your Durable Power of Attorney or Last Will and Testament or Trust (a “digital executor” or “digital trustee”).

(3) Consider your “Digital Assets” such as social media accounts, blogs, websites and photos stored online. These are considered “digital assets” and you need to consider a plan to delete, maintain or memorialize these sites. For instance, if you have a Facebook account, you can set up your account to be permanently deleted when you die and you can also memorialize your account. You should consider leaving specific instructions for your Executor or other fiduciary about what you want done with these accounts following incapacity or death.

Nowadays, a smart estate plan necessarily involves instructions about your online presence. You may want to discuss with your estate planning attorney your range of digital assets, as well as your wishes regarding management of and access to this important information. Many attorneys now include specific provisions in estate planning documents which address the management of digital assets in the event of incapacity or death.

Planning ahead will provide family members and fiduciaries full access to your accounts and digital property, help minimize estate costs, promote a smooth estate administration and ensure that all assets are located, so that they can be distributed according to your wishes.