

Estate Planning for Digital Assets

There seem to be more questions than answers when it comes to estate planning for digital assets. Who can access your social media accounts upon your death? Who is entitled to your family photos saved on the Cloud? Who can access your online checking or brokerage accounts? Can you bequeath your digital music from your iTunes account or your digital books from Amazon?

Unfortunately, the law in this area is not evolving anywhere near as fast as the technology itself. There are federal laws that may be applicable. There are state laws that also may apply. In addition, each website has its own terms of service that govern these assets at the time of your death. For example, Facebook now permits you to "memorialize" your account and designate a legacy contact to administer your account after your death.

Upon your death, your family members or designated fiduciaries will need to identify and distribute your digital assets just like all of your other assets. Therefore, the first thing to do is create a list of all of the various online accounts you have as well as the passwords for each. This list should not be kept online, but should be created as a hard copy and kept in your home where your family members and/or fiduciaries will be able to find it when needed. Since many of these websites require periodic password revisions, it is critical to continually update this list. There are also Internet-based password services available if you are comfortable with their use.

You should also periodically "backup" your financial information, family photos and any other important information that you have saved online. Even if you save this information with a website that currently allows your family access to them when you are gone, the terms of service contracts for each website are constantly being revised.

We have recently added language in our estate planning documents authorizing designated fiduciaries to control and transfer digital assets. These designated fiduciaries include your agent under a financial power of attorney to act upon your incapacity and your personal representative and/or trustee to act upon your death.

Your family and designated fiduciaries should proceed with caution before directly accessing any of your online accounts. Even if you provide passwords to your designated fiduciaries and update your estate planning documents to permit

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them access and control of those accounts upon your death or incapacity, it is important that those named fiduciaries consider the terms of service contracts of each of those online accounts before accessing them. For example, some of those contracts may prohibit you from granting access to anyone else. Therefore, your fiduciaries may be exceeding their authority by accessing those accounts. In those circumstances, the fiduciary will need to contact each online provider to request the contents instead of directly accessing them.

Please contact your Reinhart attorney or a Reinhart [Trusts and Estates attorney](#) to discuss this topic in more detail.

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