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Ensuring Your Successors Can Obtain the Information They Need to Manage Your Digital Assets

Digital assets are any type of personal property which are stored in digital form, such as photographs, word or pdf documents, financial information, email accounts, business accounts, banking accounts, domain names, blogs, webpages, social media accounts, loyalty program benefits, online storage accounts, online purchasing accounts, online sales accounts, virtual currency, etc. Such information can only be accessed through computer, smartphone, tablet, etc., and is, at minimum, password protected.

So, what happens to this information if you become disabled or when you die? Some accounts are eventually closed for inactivity, but others stay open until directed to be closed by someone having the appropriate authority. It is this question of authority that causes problems for family members and fiduciaries. Many online organizations have put rules into place for accessing the digital information of a decedent. This article explains some of the established processes and suggests that every estate plan contain a strategy for dealing with digital assets, including the appointment of a digital executor to handle these assets.

Virginia defines a digital asset as an electronic record in which an individual has a right or interest. Article 3.1 of the Virginia Code is the Uniform Fiduciary Access to Digital Assets Act, which describes how to protect your digital accounts after you pass away. This Article was established in July 2017 and provides that your trustee, personal representative, or agent under a power of attorney is allowed to manage your digital assets and can restrict the fiduciary from accessing your electronic communications, including emails and texts, unless otherwise specified in your estate planning documents. The prior governing act, The Privacy Expectation Afterlife and Choices

Act, brought the issue of different state's laws into play since every company is tied to a particular state. The new act now applies to the owner of a digital asset if the individual resides in the commonwealth of Virginia, or did when he/she died.

The paragraphs that follow detail several popular digital account holdings and websites that you may have yourself. As you will see, each of these organizations have certain criteria for accessing a decedent's account. This list does not set forth every online digital asset account that currently exists, but it does serve as a good starting point for you to think about in terms of your digital footprint.

Virtual Currency (Bitcoin, Ethereum, Litecoin+)

Virtual currencies are a rule unto themselves. Unfortunately, the aspects most people find appealing about this form of currency are the same characteristics that make it a difficult asset for fiduciaries to administer. Your personal information is not tied to the purchase or exchange of virtual currency. Further, fiduciaries have no means to access information on whether an estate holds this type of asset because virtual currency, unlike its traditional counterparts, is untraceable. Unless you have informed your fiduciary that you own virtual currency and the means by which to access your "wallet," your virtual assets will remain unclaimed.

Google (Gmail, YouTube, Google+)

Google has what is called an Inactive Account Manager, which is a way to either share or delete your account after a set period of inactivity. You set a timeout period, after which time of inactivity on your account, any trusted contacts will be notified, given an option to share data, and your account will be permanently deleted. If you fail to set up your Inactive Account Manager before your passing, members of your family can request the contents of your account, but there is no guarantee that they will actually get them. By providing proof of kinship, a death certificate, and possibly a court order (i.e. certificate of qualification on the decedent's estate), Google will review whether or not to release the contents of your account.

Yahoo

Similar to Google, Yahoo will not give anyone access to the account. It does provide an option for closing a decedent's account. A letter containing the request and the account name (email address), a death certificate, and a copy of a document appointing the requesting party as the personal representative or executor of the estate of the deceased are required to close the account.

Microsoft (Hotmail.com, Live.com, Windowslive.com, MSN.com)

Microsoft will release contents of emails, attachments, address book and messenger contact list to the next of kin of a deceased or incapacitated account holder following a short authentication process, but it will not provide any passwords or access to the account. A death certificate or certified document stating the user is incapacitated, a certified document proving kinship and a photocopy of a government issued photo ID of a family member are required. Microsoft will not provide this support for SkyDrive, MSN Dial0up or Xbox Live.

America Online

AOL will not release the contents of any account to anyone, but it is possible to transfer ownership to another AOL Username already listed on the account. The next of kin can change the payment information online through My Account Settings, using the deceased person's Username and Password. AOL Customer Service will provide this information if needed.

Apple iCloud (Mac.com, Me.com)

Apple has no right of survivorship, which means that rights to Apple ID or content within an account are non-transferable. Next of kin may provide a death certificate, in which case the account will be terminated and all content will be deleted.

Facebook

Your Facebook account can be handled one of two ways, either the account can be memorialized or it can be deleted. Either option can be chosen by the user before death. For either option, after death a family member needs to fill out an online form with a link to either an obituary or news report confirming death. When an account is memorialized, all sensitive information including contact information and addresses are removed, as well as status updates. The profile settings are changed so that only friends can find the profile and post information to the user's wall. Login information will be deactivated, preventing anyone from accessing the account.

Twitter

Twitter will not release any passwords or information about an account, but the account can be deactivated with proper documentation. The Username of the deceased user's Twitter account, a copy of the death certificate, and a copy of a government issued ID, and a signed statement including contact information and relationship to the deceased user is required to request deactivation.

Instagram

Like Facebook, an Instagram account can either be memorialized or deleted. A family member must provide death certificate and proof of authority as a representative of the estate. Memorialized accounts cannot be changed in any way, but followers may share memories on the profile. Instagram does not allow anyone to log into a memorialized account.

Cell-Phone Carriers

Cell phone providers make the process of closing accounts of their deceased account holders a bit easier. Most including AT&T, Verizon, T-Mobile and Sprint require Account holders' names, in some cases social security numbers, phone number and death certificates to terminate the decedent's account. Most will also waive the account termination fees for deceased account holders. Check with your individual carrier for specific guidelines.

Take a moment to think about all of your online accounts. You probably have numerous usernames and passwords for different accounts that probably change with some regularity. You may be apprehensive about keeping a list of all of these account and passwords in one place for fear of a security threat. Beginning in May, 2012, the U.S. Government started encouraging people to create social media wills in which a person would name an Online Executor to close online accounts, social media profiles, email accounts, etc. after death.

This information should not be contained in your actual will because when your will undergoes probate after your death, the information contained within it becomes public record. It is recommended that you make a list of all of your personal accounts, user names, and passwords and state how you would like each handled upon your passing. This list should be kept with your original will or trust so it can be found upon your incapacity or death. For your security, this list should not be given to anyone prior to your incapacity or death, but it is important to advise the person you have named as your Online Executor as to where this list can be found. When you're thinking about who to give this title to, keep in mind it may be easier for your trustee, personal representative, etc., to take on this role. Finally, this list should be reviewed and updated at least every six months because, as we all know, accounts and passwords change regularly. The list is only beneficial to the extent it contains the most relevant and up to date information.

In lieu of making the list discussed previously, there are a few websites which can store account information and passwords for you securely. Some of these include everplans.com and planneddeparture.com. These sites are set up to store all passwords to any of your online accounts. You then select a Digital Estate Executor, who should be a trusted person, to receive access to your accounts upon passing. Once your Digital Estate Executor has contacted the site and provided proof of your passing, all of your passwords will be released to that person, with details on how you want each account handled. Some digital companies, such as PSN, Snapchat, and Tinder, do not have options for account management after passing, so it would be a good idea to leave instructions on how you want those accounts managed. Keep in mind, though, that it could be a violation of the Terms of Service agreement for someone else to access your account, even with written consent. So read the various Terms of Service agreement for each company and stay up to date on their policies.

What happens to your social media and other online accounts after you die is something that is usually overlooked. Like with anything else, having a plan in place is the key to making things easier on your agent, executor, personal representative, trustee, and/or family members by providing the information that person will need to access and/or close your digital accounts upon incapacity or death. If we can provide any additional information on this issue or assist you in appointing your Online Executor, please contact us.

This publication is intended for general information purposes only and is not to be construed as providing legal advice. You must consult an attorney to discuss how the laws apply to your specific situation and how to best implement a plan that will meet your individual goals and objectives. If we can be of assistance in that regard, please call us at (757) 969-1900 to schedule a consultation appointment.