

Planning Ahead



Lisa C. Alexander, Esq.
Jakle & Alexander, LLP

Digital Estate Planning

I don't know anyone who owns Bitcoins, but everyone I know has at least a computer, if not also a Kindle, does online banking and buys things through Amazon. We all have Digital Assets, even if we don't fully appreciate the extent to which we are all part of the digital revolution.

Protecting your "Digital Assets" has become an important part of estate planning. What are Digital Assets? They come in two categories. The first category is such things as your computer, laptop, tablet, iPad, e-reader such as Kindle or Nook, digital camera, iPod or other digital music player, internal or external hard drives, USB drives, memory cards, CDs or DVDs. Think of this category as items you can physically touch.

The second category is things you cannot physically touch, such as email and text messages, documents stored on your computer or other device, digital photos or videos stored on your device or on a social media account such as Facebook or Snapchat, family history stored in a genealogy account such as Ancestry.com, personal websites and blogs, online financial, credit card, bank and investment accounts, commerce accounts such as Amazon, social media accounts and virtual game accounts.

The explosion of Digital Assets has real world consequences when someone loses capacity or dies. It used to be that when someone passed away, the Executor would go to the home and search through the person's papers and watch the mail for a few weeks to collect bank statements and other evidence of the person's assets. But that's not true anymore. Without a password to get into a person's computer, it is extremely difficult to get account and other asset information. Hard copies of statements may never come to the house and bank accounts have become difficult to uncover. The same is true with online bills. There may be debts owed for which interest and penalties accrue that the Executor has no way to discover.

When trying to access online accounts, an Agent under a power of attorney for an incapacitated person or Executor for a decedent's estate is hostage to the "Terms of Service" we all click through but never read. It took a Court Order for the family of a Marine soldier killed in Iraq to gain access to their son's Yahoo email. And a spouse whose husband was incapacitated had difficulty accessing her husband's online bank account, even with a Power of Attorney. Most Terms of Service prohibit a third party from accessing an account, even when authorized, and most certainly if the account holder is deceased. And to complicate matters, the Terms of Service are different for every online account.

The law has not caught up with the digital world. Until it does, each of us should create a list of our Digital Assets and online accounts, including passwords, keep the list updated and hold it in a safe place, not online. Facebook's "Legacy Contact" service and Google's "Inactive Account Manager" give you the ability to provide limited ability to share access to your account in case of death or incapacity. Finally, talk to your estate planning attorney about updating your estate plan to appoint a trusted person as your "Digital Executor" and authorizing your Agent and Executor to access your Digital Assets.

Lisa C. Alexander is an attorney at Jakle & Alexander, LLP. She can be reached by calling 310-656-4310 or by emailing her at alexander@jaklelaw.com.