



An Estate Strategy for Your Digital Assets

What should you know? What should your executor know?

When you think about your estate, you may think about your personal property, real estate, or investments. You also have other, less-tangible assets – and they deserve your attention as well.

Your digital assets should not disappear into a void when you die. Nor should they be stolen by thieves. You can direct that they be transferred, preserved, or destroyed per your instructions. Your digital assets may include information on your phone and computer, content that you uploaded to Facebook, Instagram, or other websites, your intellectual/creative stake in certain digital property, and records stemming from online communications. (That last category includes your emails and text messages.)¹

Think of it this way: each password-protected account that you have signifies a digital asset. You may feel that some of these accounts have little value. A cybercriminal might disagree with you. Security software provider McAfee estimates that the average American has \$55,000 worth of digital assets.¹

Estate strategies for digital assets require an awareness of new laws. Almost all states have now passed some version of the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA), which defines a path for the future of digital assets after their owner(s) pass away.²

RUFADAA sets a hierarchical structure for digital asset transfer. First, if the service provider has the equivalent of a beneficiary form permitting the expedient transfer of the asset to a designated party of the original asset owner's choice, that takes priority. If no such arrangement exists, then the instructions for asset transfer denoted in traditional estate documents must be followed (assuming those documents are properly written). Is none of that in place? Then the service provider's terms-of-service agreement (TOSA) takes priority.²

By the way, if your service provider's TOSA defines your online account in terms of a nontransferable lifetime lease, its ownership cannot be transferred to another person. As a result of RUFADAA, however, you have the capability to appoint a fiduciary to access, manage, or close out an online account defined as a nontransferable lifetime lease. This power may be potentially exercised if you are dead, or alternately, if you are disabled or incapacitated to the point where you cannot manage your account. You must legally name this fiduciary and grant this individual such legal power in a will, power of attorney, or trust agreement, though – if you fail to do that, no such authority can be given.²

What other steps should you take? Leave a digital access map for your executor – your accounts, your passwords. It need not be seen by others until you pass away or are unable to maintain your digital profiles and accounts. It can be a file stored on a flash drive or similar backup media – and it can also exist on paper.

Check with social media and merchant websites today to see what their policies are for transferring or maintaining digital assets when a user passes away. See how reward points and credits are transferred, and ask how any pending financial transactions will be handled.

Lastly, is the executor of your estate something of a technophobe? If so, then think about appointing a second executor just to handle your digital assets. It may be worthwhile.

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Citations:

1 - kiplinger.com/article/retirement/T021-C032-S014-how-to-protect-your-digital-assets.html [4/25/19]

2 - forbes.com/sites/jamiehopkins/2019/02/01/is-your-estate-plan-out-of-date-probably-and-facebook-is-likely-to-blame [2/1/19]