

Welcome to the future

Digital Assets

Estate Planning for Digital Assets

 **Yourefolio**

A Yourefolio Whitepaper

Estate Planning for Digital Assets... *the Elephant in Estate Planning*

Digital assets are a trending topic and becoming an ever-important aspect of estate planning with today's digital age. As individuals become digitally savvy and more and more aspects of our everyday life are consumed by technology, planning for clients' digital afterlife will become standard in estate planning. What this really means is that planning for digital assets is becoming the elephant in estate planning and at the same time a golden opportunity for estate planners. This white paper will provide some basic understanding for planning for digital assets.

What is a digital asset?

Wikipedia's definitions of a digital asset are anything that exists in a binary format and comes with the right to use. Wikipedia has a definition of asset too, but for digital assets that may not necessarily mean monetary value. Digital assets include those that carry sentimental value. For this reason, the list of digital assets may be long because of sentimental and monetary value.

Digital assets include those that carry sentimental value

Social media accounts are typically the most popular digital asset and often the least understood. Many adults over the age of 35 use social media accounts like Facebook and Twitter. While it may not appear to clients that these accounts have value, most have sentimental value to beneficiaries. While your clients may not see the value, they need to consider the value it has to their loved ones.

Loyalty rewards are also popular amongst Americans today. Everywhere you go, someone has a loyalty reward program. Some are extremely valuable. Take for instance airline miles or hotel rewards.



Those could be worth thousands of dollars. Most business owners or business travelers will have some type of travel rewards. Those rewards, depending on the grantor, may have options for transfer upon the passing of the grantee.

Other digital assets may come in the form of blogging accounts, YouTube videos, domain names and other income-producing accounts. You never know, but your next-door neighbor may be a blogger or a YouTube star. Even those who blog, podcast or write as a hobby may have thousands of followers. That reach is valuable, even if clients aren't cashing in.

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Digital storage devices and cloud storage sites possess some of clients' most valuable items. Storing documents, videos and photos via disks and USB drives is quite common today. Amazon Cloud, Dropbox and other web services are other popular methods of storing our most valuable items. While clients may believe password sharing is enough, it may violate the law. Those devices must also be properly accounted for when estate planning with clients.

How to Account for Digital Assets

Certainly, the best place to start is with proper inventory. However, before taking inventory, take the time to understand who custodies the digital asset. While we will touch on passwords later in this white paper, making sure that beneficiaries, executors, trustees and agents can access the digital asset is as equally important to knowing where it is.

Making sure that beneficiaries, executors, trustees and agents can access the digital asset

Utilize an inventory system. Imploring a good inventory system is imperative for monitoring digital assets over the course of a client's lifetime. While there are many options for keeping track of them, basic information like what the asset is and where it exists are a good place to start. While sharing passwords may violate the law, passcodes to enter devices such as phones, computers and tablets is not illegal if it is owned by the client. Those devices are considered tangible assets and differ from digital assets. The digital asset lies within the device.

Professionals can certainly become more thorough and go a few steps further. Detailing the type, brand or model, serial numbers or carrier should be done at a minimum. Other details like who should be given access, if the deceased wants to hide the account or have it privately disposed of, or defaulting all access and disposal to the trustee/executor of the estate could be of assistance in managing the digital asset after the client passes.

How digital assets transfer

This is certainly a challenge when accounting for digital assets. The good news is that most digital assets are transferred similarly to other assets.

The challenge is understanding what principles apply to the digital assets. While we will touch on the Revised Uniform Fiduciary Access to Digital Access Act, it is impossible to possess the knowledge of each digital assets. What is important is having a basic understanding of how digital assets transfer or even if they can be transferred.

Digital assets can be transferred in similar ways to normal assets. Some will allow the account holder to appoint a legacy person and some need specific language in wills or trusts to transfer the digital asset. The only caveat is that some assets (unlike liquid and tangible assets) are not considered property and simply cannot be transferred. Typically, loyalty reward programs are the most difficult to transfer. The good news is that some do have loop holes that allow transfer.

Airline miles and hotel rewards are some of the most valuable digital assets. The problem is that most are not transfer-friendly. The key is to look in the fine print or to look at the terms in conditions. If the client has plenty of points that are worth thousands of dollars, it is certainly worth looking into.

For example, American Airlines has some language in its AAdvantage program terms and conditions which does not specifically allow transfer after death, but the airline gives itself a "loophole" to transfer the miles after approved legal documents have been submitted. The terms state "American Airlines, in its sole discretion, may credit accrued mileage to persons specifically identified in court approved divorce decrees and wills upon receipt of documentation satisfactory to American Airlines and upon payment of any applicable fees." While most professionals wouldn't know this exists, a quick look at the terms and conditions can go a long way.

How digital assets transfer *(continued)*

Once someone dies and Facebook becomes aware, they memorialize the account

Facebook has a generous policy for allowing legacy accounts. A user can appoint a legacy sponsor to handle the account once someone has passed. The user can also choose to delete the account. The challenge here is like that of a beneficiary designated account - someone must be chosen prior to death. Once someone dies and Facebook becomes aware, they memorialize the account. This basically freezes the account and provides no access. Just like setting beneficiary designations (and revisiting them), digital assets that have legacy access should have those designations set and revisited periodically.

Laws Governing Digital Assets

Digital assets, and particularly the way they are transferred upon the ownership of the deceased, are relatively new. In order to provide executors and agents with guidance and access, the Uniform Law Commission created the Uniform Fiduciary Access to Digital Assets Act (UFADAA) in 2014. It was written to imitate access like traditional property. Basically, it was thought that digital assets should be treated like traditional assets.

The first version of the law met strong opposition from several advocacy groups and technology companies. The argument against UFADAA was in respect to terms of service agreements (TOSAs) that applied to digital assets accounts. Most TOSAs make digital assets non-transferable and put strong restrictions on who can access accounts. The first version of UFADAA would have given fiduciaries unlimited access even if they contradicted the TOSA.



In 2015, state law makers proposed UFADAA in more than half of the U.S. states, but under pressure and concerns of the opposition, only one state enacted a version of the law (Delaware). The ULC went back to the drawing board to construct a revision.

The Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) was introduced with drastic differences from its original version. While it still gives fiduciaries certain powers to manage digital assets, it also provides some privacy protections and legal protections. Managing all interests was a challenge, but they eventually drafted a law that satisfied most parties.

It appears that RUFADAA will be enacted by most, if not all, states. To make sure the executor or attorney has access to the digital assets, professionals need to make sure the documents reflect this in the will or power of attorney. In addition, make sure the executor or agent has updated information and instructions about how to access the accounts and files.

Passwords Impact with Digital Assets

While transferring digital assets comes with its challenges, the improper use of passwords when administering an estate could come with the risk of liability and possible criminal consequences.

Passwords Impact with Digital Assets

(continued)

While professionals normally act with good intentions, it is often ill-advised when advising clients to share their passwords with their spouses or likely heirs.

This is an ineffective method of transferring digital assets. Professionals run several risks when advising clients to share passwords to digital assets. There are laws created to protect from password sharing such as The Computer Fraud and Abuse Act (CFAA). CFAA is a law that makes it criminal to access computer hardware and devices to access data when not authorized to do so.

While providing a passcode to enter a device could be prudent in some circumstances, accessing the digital asset without proper permission may violate the terms of service agreement. All online services prohibit users from sharing their passwords. Prosecutors have even used the CFAA law to prosecute defendants based solely on violations of a website's TOSA.

Password sharing may violate other laws such as The Electronic Communications Privacy Act (ECPA) and The Stored Communications Act (SCA) which is a component of the ECPA. Aside from the legality, password sharing is an ineffective and insecure method of transferring digital assets.

Clients change their passwords regularly, voluntarily or involuntarily because the online service requires it. It is difficult to manage digital assets passwords on a consistent basis. Password sharing also does not protect against human error or accidentally deleting an important account. Once data is deleted, it could be lost permanently. Verification processes can be challenging, and with unsuccessful verification attempts some providers will permanently deny or block access making it difficult for executors, trustees, agents and beneficiaries.

For the period of time that a decedent's unmonitored or inaccessible online accounts are still open online, criminals may seek to hack these accounts, open credit cards, and even apply for credit. Clients should never write down their passwords because it is an unsecure method of storage. Bottom line - don't advise clients to share passwords to digital assets.

Cryptocurrency Assets

You cannot ignore cryptocurrency and the subject of digital assets. Millions of dollars of wealth might disappear from beneficiaries unless clients include crypto assets in their estate planning. It starts with documenting what they own, how it was purchased and who is in custody of it.

Since crypto currency is housed digitally, clients don't typically receive paper statements. There would be no transaction, so IRS reporting wouldn't be apparent either. Therefore, letting someone at least know is extremely important. There is something that makes estate planning for crypto currency a little more challenging and that is the "key." Most crypto currency use a key (passcode) system to access it. Therefore, if someone wants to transfer the digital asset, they need to know where the key (passcode) is.

Since sharing passcodes does not entitle someone to the currency, specific estate language must be placed in the documents, so the crypto currency can transfer to heirs. Crypto currency can be transferred when accounted for as long as someone knows where it is and how to access it. Although there are no beneficiary designations associated with Crypto currency, it would transfer like tangible assets and that planning and language would appear in either Wills or Trust documents.

Opportunity in Estate Planning

The opportunity is to do the right planning by your client. While digital assets create an elephant in estate planning, the real takeaway is that you need to make sure your clients digital estate is properly planned for.

The bonus is that it is an excellent conversation starter. It can also become a differentiator in your practice and a way to provide great value to your clients. By taking the time to gather some basic knowledge of digital assets, it will do wonders for your practice. Take it from us, most professional still overlook digital assets when estate planning with their clients. This is a conversation that opens up a door with prospects, since it is a trending topic and one that most people can relate to.

It is important to remember how much technology is impacting our everyday life. At some point every individual will need digital asset planning. While it appears most individuals are typically underserved in this area of estate planning, you can make sure yours are not. Take the time to understand digital assets. Any way you approach it, taking the time to understand the basics will be well worth it for everyone.

About Yourefolio

Developed in 2016, Yourefolio has become the leader in estate and legacy planning practice management software for estate planning professionals. Created by financial advisors, estate planning attorneys, Certified Financial Planners® and insurance professionals, it is the first platform of its kind to service all aspects of estate and legacy planning for estate planners, their clients and their beneficiaries. Yourefolio has become estate and legacy planning software for the 21st century estate planner.

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