

BEWARE THIS GRAVE ESTATE PLANNING MISTAKE: **FAILING TO SAFEGUARD YOUR DIGITAL ASSETS**

- **Financial documents and assets are increasingly being housed online.**
- **If you don't make the proper arrangements for your digital property, your loved ones will be unable to access crucial data and gifted assets.**

The current COVID-19 pandemic has positioned estate planning front of mind for many people. There are a number of important things to consider as you proactively review and update your documents.

One sometimes overlooked aspect of estate planning is digital assets – including online accounts, email, personal websites, and other types of electronic content – that only live in the digital realm.

Recently, an attorney we work with had a probate where their client needed access to a deceased child's Apple account. Because the parents were not granted permission to the account in writing while the child was alive, these trustees were asked to obtain a court order.

After significant delay and expense, the trustees were eventually able to access the account. Unfortunately, situations like this have become commonplace as we grow ever more dependent on our digital assets.

If affirmative written consent is not in place, fiduciaries run the risk of missing payments, being locked out of accounts, losing personal items such as photos, and even committing a federal crime by using a password without permission.

To avoid these roadblocks, follow this checklist to create an estate plan for your digital property:

1. Make a list of your digital assets.

- Include online banking, home utilities, email accounts, social media, photo and video sharing sites, and online storage platforms.
- Detail how each asset can be accessed.
- Authorize access to a secondary account manager who has permissions to make changes to the account in the event of the account owner's absence.
- Use a password manager to store your account information in one place for the person who will be responsible for your digital asset management. Alternatively, leave a list of account information with your lawyer or in a safe deposit box to be opened upon death.

2. Back up your digital assets.

- Store your electronic data with an attorney or on an online storage device such as a shared drive or cloud-based service.
- Ensure whoever might need this information knows where it is stored and how to access it.
- Do not put passwords or digital access information in the will itself because the will becomes a public document when it goes to probate. Instead, refer to an outside document that contains all your digital information.

3. Decide what should be done with your electronic data.

- Think carefully about what you want done with your assets. Consider saving some items for family members and requesting others be permanently deleted.
- Document those wishes accordingly.

4. Designate a safekeeper.

- Your digital executor might be different than the executor of your will.
- If the state in which you reside allows it, make this authorization legal by naming a digital executor in your will.
- Choose someone who is trustworthy and technology-savvy.

Managing a person's digital property will become more and more prevalent as our lives increasingly exist online. Although we expect more state laws providing digital guidance to executors will be enacted, the law typically lags social behavior, and right now it hasn't quite caught up to the 21st century.

In the meantime, reviewing and organizing your digital assets now – and designating who can access them when you are no longer able to -- can make all the difference when your family members or estate have the need.