

Estate Planning in a Digital Age

FEATURED ATTORNEY



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As the use of technology takes over our daily lives, it becomes more and more important to plan for what happens with our digital assets after we become incapacitated or die. Who will have access to our online accounts? Who will have the authority to manage those accounts? How will our digital assets be distributed to our heirs? These are very important questions that we must each address. If our estate plan does not give our “fiduciary,” agent under power of attorney, executor or trustee, the authority to access, manage and distribute digital assets, these assets may be lost forever.

What are Digital Assets?

Digital assets can be any asset that exists online. Some digital assets have monetary value while others are purely sentimental. In addition to traditional email, photos, videos, and social media accounts, digital assets also include:

- Cryptocurrency keys for Bitcoin or Ethereum
- Metaverse property
- Non-fungible tokens (NFTs)
- You-tube channels, blogs or other monetized content platforms
- Website domain names
- Digital accounts such as Venmo and PayPal
- Online betting accounts
- Text, graphic and audio files
- Online marketplace stores

Who Controls Access to Our Digital Assets?

The short answer is: We control access to our own digital assets, but to grant or transfer that authority to another requires very specific activity on our part. Federal privacy laws regarding digital property, and restrictive terms-of-service agreements for online services, generally prohibit access to digital assets and encrypted information from anyone other than the original owner. So how can your executor, trustee or agent under a power of attorney gain access to our digital assets?

In 2016, New York adopted digital asset legislation which gives our named fiduciary limited access to only the “catalog” of our electronic communications (such as the “to” and “from” lines of an email). For the “content” of digital assets to be fully disclosed, even to the fiduciary, requires our express consent. Without our express consent, disclosure of our digital assets is subject to the terms and conditions of the agreement our service provider required when opening the account.

If the custodian of an online account provides a tool which allows access to digital assets through the account itself (such as Facebook’s “Legacy Contact” or Google’s “Inactive Account Manager”), directions given via the tool will govern our fiduciary’s access. However, if no such tool is provided, or if we don’t choose to use the tool, the only other mechanism for allowing or prohibiting disclosure of digital assets is through our Will, Trust, or Power of Attorney.

Adding Digital Assets to Your Estate Plan

By planning ahead and addressing digital assets in your estate plan, you can decide how your digital assets will be handled by your fiduciary. If you become disabled or die, giving your fiduciary full access to your digital assets will make administration of your estate easier, keep costs down and ensure valuable or significant digital property is not lost. In addition to ensuring that your estate planning documents give your fiduciary the power access your digital assets, you should inventory all of your online accounts, compile usernames, passwords, record estimated values, and provide instructions to your fiduciary on how to handle each account.

[Contact us](#) to update your Will, Trust, and Power of Attorney so that your digital accounts are protected and preserved.