

Estate Planning for Digital Assets: Social Media, Cryptocurrency, and NFTs, Oh My...

When most people think about estate planning, they think about the physical assets that their beneficiaries inherit. While that certainly is a significant aspect of estate planning, there's another critical element that often gets overlooked: digital assets. Properly planning for your digital assets can mean the difference between your heirs obtaining vital information, access to online accounts and profiles, family heirlooms, and even pecuniary interest. Estate planning for digital assets is of paramount importance in today's digital age; these assets require special attention due to a myriad of circumstances. The key to successful digital asset management lies in a keen understanding of what a digital asset actually is and the obstacles your beneficiaries may encounter, as well as the solid guidance of an estate planning attorney and the cognizance to stay on top of updating your plan as your digital assets change. Now that you've got the keys, let's take a closer look.

What exactly is a digital asset?

To put it plainly, a digital asset is any content that is stored digitally, accessed, and owned by a sole individual. Some examples of these include:

- Photos, documents, music, e-books and videos stored in the cloud
- Domain names
- Online accounts (social media, blogs, shopping, dating, bills, email, gaming, etc.)
- Cryptocurrency and other electronic currencies
- Cell phone apps
- Electronic medical records and financial information
- Intellectual property; including patents, copyrights and trade secrets
- Family records
- Loyalty program benefits
- Electronic lottery and casino winnings
- Non-fungible tokens (NFTs)

Being able to identify what is and what isn't considered a digital asset is the first step in creating a thorough digital estate plan. For example, electronic bank statements and your online bank portal are considered digital assets; however, the monetary assets in your bank account are not.

What problems could I face if I don't include digital assets in my estate plan?

Omitting your digital assets from your estate plan could lead to many unpleasant situations. Estate planning for digital assets safeguards your digital valuables from risks and vulnerabilities,

like hacking, fraud, and identity theft. It also protects your assets from ending up in the hands of someone who you'd never wish to benefit from them.

In the event you become incapacitated or suddenly die without an estate plan that accounts for your digital assets, your family will be unable to access your many online accounts. How will your beneficiaries obtain cryptocurrencies and digital finances meant to be passed down to them? Without a digital estate plan, the grim answer is likely that they won't.

Additionally, having access to your digital assets—especially photos and social media profiles—will provide family members with heartwarming memories to comfort them while grieving. These digital assets will be timeless reminders of the legacy you left behind.

Where do I start? What do I need to include in my digital estate planning?

Estate planning for digital assets requires keen organizational skills. Digital estate planning may sound complicated, but it can be accomplished in just five basic steps:

1. Take a detailed inventory of all your digital assets, with instructions for accessing each one: passwords, answers to security questions, and two-factor authentication accessibility:
 - Use a password manager like 1Password or Lastpass to store your passwords in one, secure place. Include the login to this site in your digital estate plan.
 - Another option is to use a cloud-based digital asset management tool, like CLOCR, which acts as a heavily encrypted “safety deposit box” for your digital assets.
2. Decide how you want each individual asset to be distributed or discarded:
 - Be specific in your instructions; particularly if your asset contains sensitive information.
 - Google, Facebook, and a small handful of other platforms allow you to appoint someone to manage your account when you pass away.
3. Choose the person you'd like to elect as your digital executor:
 - This should be someone you trust to protect your digital assets and execute your wishes to your exact specifications.
4. Turn your digital estate plan into a legally binding document:
 - Many (but not all) states will allow you to make your digital estate plan a formalized and legally binding document by noting it in your Will, or adding it as a Codicil to your Will

5. Take your digital estate plan to a secure but accessible location for safekeeping:

- A safe or file cabinet with a lock. Be certain there are spare keys and that your digital executor has at least two copies.
- With your estate planning attorney
- In the care of an online storage service that specializes in digital estate plans

What questions should I be asking my estate planning attorney?

As you begin to navigate the maze of digital asset management, it's important to note that there may be some bumps along the road. Laws governing digital assets continue to evolve, and can present some challenges. For example, there are a handful of digital assets, like NFTs, that are so new there aren't yet any standardized inheritance processes in place to legally facilitate the process of passing on the tokens to these digital masterpieces. Your estate planning attorney should be experienced in estate planning for digital assets, and your best resource to guarantee you are compliant with current laws—and that your estate plans stays up to date as your digital assets grow and change.

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