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Digital Assets and Estate Planning in a Digital World

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We live in a digital age where so many aspects of our lives are handled in a digital space and are accessible through the touch of a screen or the click of a mouse. Yet, it is not commonplace for a person's digital assets to be considered when creating an estate plan. Luckily, there are steps that can be taken to ensure your digital assets are accounted for during life and after death.

What is a digital asset? In a broad sense, anything you keep a digital record of is considered a digital asset. Breaking this definition down into categories, a digital asset can be:

- Email accounts
- Social media accounts
- Photos and videos on smartphones, computers or flash drives
- E-commerce platforms (i.e. Amazon, Etsy, eBay, etc.)
- Loyalty programs
- Online subscriptions
- Bill pay, utilities, and online banking accounts
- Digital rights to theatrical works, music, literary work
- Non-fungible tokens (NFTs)
- Domain names
- Cryptocurrency wallets

As the above list shows, more things than you probably realize are digital assets, many of which have value or possess vital records needed to handle one's affairs. Additionally, some of these digital assets provide access to underlying funds held in financial institutions; this includes online banking account information or cryptocurrency "wallets." Without such information, a family member/fiduciary would not be able to access the underlying funds in a bank account or the cryptocurrency held in a wallet.

The most important first step that anyone can take in handling their digital assets in an estate plan is to make a list or inventory of your digital assets. It can be hard to keep track of all the online accounts, subscriptions, and auto-pay accounts. Creating a list of all digital assets with password and account information will create a catalog of assets that will inform your estate plan fiduciaries. For example, you can create a password manager that stores your account and password information in one place and provides an encrypted key for added protection. This will also give you a better idea of what you own, digitally, when making decisions on how digital assets are handled or distributed to your beneficiaries. It will be very important to store this digital list/inventory in a safe and secure location such as with your attorney.



The next important step you will want to make is appointing a fiduciary of your digital assets. This will tie in with all your estate plan documents where you can name the personal representative of a will, trustee of a trust, or your attorney-in-fact in a power of attorney form, as a fiduciary to handle digital assets. Providing express authority in your estate plan documents will provide your selected fiduciary the access and power to handle these assets that otherwise would not be accessible absent a court order. Providing express authority in your estate plan documents will also qualify as “lawful consent” to service providers under the Stored Communications Act.

As our world becomes ever more digitized, do not miss out on the opportunity to address your digital assets in your estate plan. Taking these extra steps could mean a world of difference for your family and friends as they navigate handling your affairs and carrying out your wishes.