



## Are You Prepared for Digital Death?

“Digital Death” refers to how we manage our digital assets after death. In today’s digital world, designating the fate of your physical assets after death is not enough. For example, the average household in the US has 6 or more Internet connected devices, and approximately 60% of Americans do their banking online, often by smartphone. What happens to all that digital data when someone dies? For clients, families and trusted advisors, the ability to manage a post-mortem digital presence over both personal and business assets is becoming a significant concern as we move more of our lives into the Internet.

This topic of Digital Death encompasses the myriad of issues presented when our digital lives continue after our mortal life has ended. It includes issues of access to digital data, in all its forms, as well as the problems associated with collecting, valuing, or transferring digital assets. Digital assets include obvious items such as smartphones, tablets and thumb drives, but it also includes the apps on your device and the content – such as photos, videos, emails and messages and social network accounts – stored through the app in the “cloud.”

In the US, the law has not kept pace with the evolution of our digital lives. State laws regarding digital assets are evolving, but they are all over the place in terms of who has a right to access what. Plus, many online companies and sites have terms of service contracts that limit access, and deny users the ability to transfer digital assets after death.

### What Can You Do Now To Ensure Your Digital Assets Are Protected?

#### Step 1: Get Authorization Added to All Relevant Documents

*Work with your estate planning attorneys, advisors and family members to add digital authorization to all estate documents, including wills, revocable trusts, powers of attorney and even health care proxies that addresses digital assets and the ability to access and manage these assets. You may also consider providing a Trustee, executor or personal representative with the power to delete or destroy data, and the ability to do so without repercussion.*

#### Step 2: Organize Your Digital Assets and Accounts

*This doesn’t mean just writing authorization for one person to access the accounts. This means doing a thorough inventory of every digital account you have, along with the necessary information needed to access them.*

*In the old days, we received statement in the mail. With electronic delivery being the preferred method of distribution, these statements are going to various email accounts. Some of these email addresses may be legacy and inactive (e.g. AOL, Yahoo!, Hotmail) or are going to an email address to which you no longer have access, such as a prior employer. For one client, she was unable to access her family’s personal financial information as it was affiliated with her late husband’s work email address. Within our client base, we have encountered many situations in*

*which an account statement was going to an email address of which the widow was not aware. In one situation, a fund company eventually contacted the widow 18 months following her husband's passing regarding an unknown investment account.*

*To avoid these situations, we recommend investing in a password keeper and providing a list of accounts and respective passwords to a trusted advisor or a designated individual. This list should be reviewed on a regular basis to make sure it is kept current. Don't forget about the security questions and answers! Also consider having a look at the email address or home addresses attached to personal accounts.*

Outside the US, there is also an increasing focus on digital asset management in a fiduciary or estate context. Globally, most digital asset laws relate to preserving confidentiality or protecting intellectual property rights of a provider (e.g., Facebook, Instagram, Gmail, etc.) and take significant steps to limit access to information, while this access is exactly what the fiduciary or personal representative needs! At the same time, information is now stored globally and those ubiquitous "terms of service" contracts that pop up when you access an application often set jurisdiction for disputes in foreign jurisdictions.

Many companies are taking digital access after death issues into their own hands. Recently, Facebook announced that it will allow users to select an executor, or Legacy Contact, to manage their Facebook page after death. Yahoo! has implemented Yahoo! Ending (but only in certain countries, such as Japan) and Google allows users to designate a trusted contact to access their account data after three months of inactivity.

While this is definitely a step in the right direction, the fractured changes create a confusing system where each digital account is managed differently. Without uniform laws in place, it can be nearly impossible for estate practitioners to keep track of applicable terms of service for various platforms as well as constantly changing laws and practices globally.

The US Uniform Fiduciary Access to Digital Assets Act (UFADAA) is model legislation that would ensure a consistent approach across state jurisdictions, allowing for the access to digital assets by fiduciaries or personal representatives, but limiting their rights to those of the decedent. As of June 2016, this legislation has been enacted in 4 states and has been introduced in 22 other states, although timing of enactment will vary by state legislature as will the scope of the legislation. Currently some of the existing laws provide only for access to email accounts of a minor, while Delaware's law goes the farthest, presuming authorization of fiduciary access unless otherwise stated in the estate documentation. As such, it's important for clients and their advisors to know the laws of the applicable jurisdiction and encourage families and individuals to take pre-emptive action by adding authorization (or de-authorizing access) in their estate documents.

The more information you can provide to your family and trusted advisors, the better chance that they'll be able to access the digital information they need, even in a legal environment that hasn't quite caught up with our digital lives.

If you'd like more information on what Digital Death is, or further tips on how to organize your clients' assets, please visit [www.digitaldeath.com](http://www.digitaldeath.com). This is a website founded by Holly Isdale and dedicated to providing information and tools to ensure you can control your digital legacy.

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