

PERSPECTIVE



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PLANS THAT PERFORM

Digital asset planning in your will

Estate planning: A new millennium

The information era has introduced a wide variety of new devices and digital applications. Along with these technological innovations, come new types of assets. As individuals increasingly spend more time on the internet, they create a financial footprint. A recent report done by Deloitte found that the average Canadian has digital assets worth \$1,000-\$2,000. By 2020, the average Canadian at death will have digital assets valued at over \$10,000. Digital assets are becoming increasingly more important to Canadians, yet they are rarely addressed in their wills. The BMO Retirement Institute states that 57% of Canadians do not have any provisions for digital assets in their estate plan.

What are digital assets and digital accounts?

In Kimberly Whaley's article: *Digital Life After Death: The Next Level of Estate Planning and Estate Litigation*, she states that a digital asset is a file over which a person claims ownership. It can take on many forms, including a photo, a spreadsheet, a Word document, a tweet, or a blog post.

A digital account is used to access a digital asset. Essentially, a digital account is to a digital asset what an e-mail account is to an e-mail. Whaley notes that there are three types of digital accounts: actual currency information, accounts containing information of personal or commercial interest, and accounts containing virtual property. An actual currency information account contains virtual currency that translates to real money, such as a PayPal account. Loyalty programs such as air miles or cash back on credit cards are also examples of an account containing virtual currency. Accounts containing information of personal or commercial interest include e-mail accounts and social media accounts. Accounts containing virtual property include Kindle and iTunes

accounts where the virtual property would be an iTunes song or an eBook. Customers may own a license to use these digital assets, but they do not own them.

Why is addressing digital assets in an estate plan important?

If digital assets are not addressed as part of an estate plan, assets with sentimental and monetary value may be lost. In addition, the legal representative may experience unnecessary legal headaches in administering the deceased's digital assets and accounts.

A) Sentimental value

Digital assets such as e-mails, photos and messages often hold sentimental value. The tweets of a deceased loved one are the 21st century's version of a personal journal or diary. An iTunes library is the modern-day record collection and Facebook pictures are virtual photo albums. With digital property replacing physical property, it is vital that such property is accounted for in an estate plan.

B) Monetary and commercial value

In addition, digital assets often hold monetary value. Personal blogs and websites can generate income. Many online games create rewards that can be traded in for real money. Bitcoin is a perfect example of a digital asset that contains monetary value. Bitcoin is an application used to electronically generate and transfer money. According to Whaley's report, Bitcoin's monetary base in 2017 was US

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\$40 billion. Without explicit instructions in a will, digital money may be left unclaimed and vulnerable to hacking. Often a small business owner's personal e-mail account is used for commercial transactions or to communicate with suppliers. The passing of the owner can affect the day-to-day operation of that business and it is imperative their will addresses ownership of that e-mail account.

C) Legal obstacles

Due to a lack of legislation, an estate representative may be constrained by the terms of service outlined by the digital account providers of a digital asset. A terms of service agreement is a contract between an account holder and an account provider. Without explicit instructions in a will, companies assume that the deceased had no intention of transferring or sharing their digital information. A legal representative will find different rules apply to different providers. Gmail, for example, provides user content if the legal representative sends a copy of the death certificate, a copy of the e-mail that authorizes the legal representative, and a court order. Facebook, however, will not transfer accounts to a legal representative. A Facebook account can be deleted with a written request from the deceased's next of kin. Often, digital accounts reserve the right to restrict access from non-account holders out of fear of breaching Canadian privacy laws. These laws are designed to protect a person's right to privacy both before and after their death.

Stassen v. Facebook, a case from Wisconsin is a perfect example:

In 2012, the Stassen's 21-year-old son committed suicide. The devastated parents wanted access to their child's Facebook and Gmail accounts to try to understand why he killed himself. Facebook, concerned with breaching their client's ownership rights, refused to release any information. Even after the parents obtained a court order claiming that they were heirs to their son's estate, Facebook refused to disclose their son's personal account information.

Conclusion

To conclude, digital assets are rarely accounted for in a will despite the immense sentimental and monetary value they may hold. It is important to distinguish between a digital asset and a digital account because a digital account may prevent access to a digital asset as per its provider's terms of service. Therefore, the most strategic way to dodge legal barriers is to write digital assets into a will.

How to plan for digital assets in a will

Currently, there is little legislation to assist a personal representative when dealing with digital assets. The best way to protect your client's digital assets is to provide instructions in the estate plan. They can:

- 1. Identify:** Create an inventory of all digital assets and update it on a regular basis.
- 2. Appoint:** Appoint a trustee who is specifically authorized to manage the client's digital accounts. This can be the executor/liquidator or a separate trustee who is solely responsible for managing the digital assets. Remember, a good estate plan does not only consist of a will, but also includes powers of attorney for personal and financial care, or a protection mandate in Quebec.
- 3. Access:** Ensure a password-protected list of digital assets is accessible to the trustee.
- 4. Instruct:** Include detailed instructions in their estate plan. These instructions notify trustees as to how the client would like their assets to be distributed amongst heirs.

Although the federal government has pushed for provinces to enact laws pertaining to digital assets, no provinces have enacted such legislation. In the future, a client must consider jurisdiction when drafting digital assets into their will as legislation may differ from province to province.

Article sourced from CI Investments Inc.

ARCA FAMILY ANNOUNCEMENTS

We are welcoming 2 new staff members to the Arca family. Adriana Costa has joined the Lunz team as an associate on the investment team and Klarisa McDonald has joined Arca as our receptionist. We know you will give both of them a warm welcome.

If you would like to receive the newsletter by email rather than paper, please let us know by emailing inquiries@arcafinancial.com and stating 'newsletter by email' in the subject line. We can all do our part for the environment.

Avoid a legacy of taxes

American inventor and politician Benjamin Franklin wrote, "In this world nothing can be said to be certain, except death and taxes." And while the thought of death can be unpleasant, so can the prospect of leaving your family a large tax bill. With a little planning, you can help minimize the taxes on your estate once you've passed on. Here are a few tax-saving strategies to consider.

Leave assets to your spouse

Assets left to a spouse or spousal trust (a trust that entitles income to a spouse) are considered disposed of at the deceased's adjusted cost base (the ACB is the amount of your investment that has already been taxed). The tax is deferred until the surviving spouse (or trust) sells the assets, or until your spouse's death.

Give assets away

If you know that you won't need certain assets in your lifetime and have already designated heirs, you may want to consider making those gifts while you're still living. Giving assets away when you're alive can help your estate avoid a potential tax bill. Not to mention you get the joy of seeing your loved ones put your gift to use.

For tax purposes, however, giving assets away is generally considered a disposition. This means that if the fair market value at the time of the gift is greater than its ACB, the result is a tax bill. For example, if the fair market value is \$1,000 and the ACB is \$700, you would pay tax on a \$300 capital gain. This strategy work best if the assets you're giving away are likely to appreciate in the future.

Choose beneficiaries with a tax strategy in mind

If tax deferral is the priority, consider leaving assets that have appreciated in value to your spouse first. If you're planning to leave assets to others, it may be more strategic to pass on tax-friendly assets, such as cash, guaranteed interest contracts (GICs), money market funds or assets that have not greatly appreciated in value since you acquired them.

Make the most of exemptions

When it comes to tax, it can pay to take advantage of exemptions. The two most common are:

The principal residence exemption: This can be used to offset capital gains on one property you own. This could be your home, but it could also be a cottage or other second property that you ordinarily inhabit (rental properties do not qualify).

The enhanced capital gains exemption: This can be used to offset up to \$800,000 (indexed for inflation after 2014) of capital gains on your shares in certain private companies, a qualifying farm or fishing property.

Donate to charity

You can leave part of your estate to charity (usually via your will). Your estate will be able to claim a donation tax credit for the fair market value of the gift.

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File multiple tax returns

In the year of death, up to four tax returns can be filed. A claim can be made for some personal tax credits, such as the basic personal amount, on each of the returns filed, effectively multiplying the number of credits claimed. In addition, your estate would benefit from the lower graduated tax rates more than once in the year of death.

Buy life insurance

Life insurance can assist in funding your estate's eventual tax liability. This helps ensure that your heirs will be left with as much of the estate proceeds as possible, and protects your assets from being liquidated in order to pay your estate's tax bill.

Talk to your advisor to see if any of these tax-saving strategies can help you achieve your financial goals.

Albert Henry Smyth, *The Writings of Benjamin Franklin*, Vol. X (1789-1790) (New York: Macmillan, 1907), p. 69.

The fresh-air brain cure

How going outside can change the way we think.

In the first half of the twentieth century, the “fresh-air cure” was the hot wellness trend. In fact, an entire branch of medicine was dedicated to studying how different climates influence health. During the tuberculosis epidemic, patients were shipped to sanatoria tucked deep in the Laurentians.¹ Doctors believed clean, country air and walks through pine forests would heal infected lungs.

With the advent of penicillin, the fresh-air cure fell out of favour, but now it is once again on the cutting edge of health care. Instead of studying the impact of nature on the lungs, however, scientists have shifted their focus to another organ: the brain.

According to the studies described below, being in nature offers rewards beyond decreasing stress and replenishing mental energy. Being in nature can actually change the way we think.

Three ways going outside affects our brains

1. Discourages rumination

We know that a walk outside clears the head, but why?² Stanford University researchers found that it reduces activity in the part of “the brain responsible for obsessive negative thought – or rumination.”²

And it's not just the exercise. In the Stanford experiment, two groups of participants went on walks. One walked along a highway, the other through a grassland. The brain scans of the grassland group were noticeably different than those of the highway group.

Being in nature makes us less likely to dwell on what's going wrong with our day, our fears and anxieties. In fact, seeing greenery prevents our brain from doing that on a physical level. If our negative thoughts are getting out of hand, “walk it off” is good advice – but “walk it off in a garden” is even better advice.

2. Boosts concentration

Being in nature restores our capacity to concentrate. Gazing at a lake or mountain range is like detox for our brains. A study by Uppsala University in Sweden revealed that participants who spent a short time in a nature preserve performed better on detail-oriented tasks than participants who walked through the city or relaxed indoors.³

Think of the great outdoors as an attention span enhancer. In fact, spending time outside can mirror the effects of meditation. And we don't have to plan a hike or a trip to the beach to reap the rewards. Any natural space can do the trick.

3. Sharpens memory

A University of Michigan study revealed that participants who walked around an arboretum performed 20 per cent better on a memory test than participants who walked down a city street. Simply looking at photos of landscapes can also help. When our minds start to wander, a picture of a forest might be as effective as the real thing.⁴

In all the studies, a walk surrounded by grass or trees was enough to positively affect the brain. Whether it's to decrease rumination or to improve concentration and memory, experiencing the mental health benefits of being outdoors is usually a matter of just getting out the door. Hiking for miles or spending hours in the wilderness – or in a sanatorium in the mountains – is unnecessary. Even a small amount of green space can be restorative. The fresh air cure for the brain is as easy as a walk in the park. Literally.

This content is provided courtesy of Solutions from Manulife.

¹ commons.lib.jmu.edu/cgi/viewcontent.cgi?article=1281&context=master201019

² news.stanford.edu/2015/06/30/hiking-mental-health-063015

³ www.businessinsider.com/boost-concentration-and-memory-by-going-outside-2014-8

⁴ www.spring.org.uk/2009/01/memory-improved-20-by-nature-walk.php



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