

Do You Have a Plan for Your Digital 'Estate'?

By [Christine Benz](#) | 10-03-13 |

When a close family member of mine passed away back in the spring, no one was surprised that this meticulous planner had left his financial affairs in good shape. The family's longtime financial advisor coached his wife about how to open an inherited IRA to stretch out the tax-saving benefits of the vehicle, and the family attorney got to work on tying up all of the other loose ends, both financial and legal.

But not every aspect of his estate has been attended to, almost six months later. His LinkedIn profile is still up, as is his old Facebook page. In the scheme of things, the fact that those accounts are still live may not seem like a big deal. But that may not have been what he had wanted, either. Because he never specified his wishes for those accounts, his family doesn't really know.

My relative's situation illustrates that even people who think they've ticked off all of the usual boxes on their estate-planning to-do lists may have overlooked an increasingly important component of the process: ensuring the proper management and orderly transfer of their digital assets after they die or become disabled. Just as traditional estate-planning relates to the management and transfer of financial accounts and hard assets, digital estate-planning encompasses your digital possessions, including the tangible digital devices (computers and smartphones), stored data (either on your devices or in the cloud), and online user accounts such as Facebook and LinkedIn.

The basic idea is to knit these digital assets in with the rest of your estate plan. "We need to do the next step in planning," says James Lamm, an attorney who coaches other attorneys on the importance and specifics of digital estate planning. "Who should get the data? And more importantly, are there things we don't want others to have?"

'The New Reality'

As we're all spending more and more time pecking at our phone screens and transacting online, digital assets are taking up an increasingly important role in all of our lives. "The new reality is that our lives are largely digital, and the artifacts of our digital lives have value, from both sentimental and financial standpoints," notes Evan Carroll, co-founder of [TheDigitalBeyond.com](#) and co-author of *Your Digital Afterlife*, a book about digital estate planning.

At first blush, making plans to allow your loved ones to gain access to your digital property may not seem like a pressing concern--certainly not on par with issues like who should inherit your financial accounts or look after your minor children. Lamm concedes that many digital assets have little or no financial value. But he also notes that "there can be significant value if you know what to look for."

An obvious example of a valuable digital asset would be a manuscript on the PC of a best-selling author. But domain names and advertising from Web pages and blogs may also have financial value. Downloaded assets such as digital music and book libraries may be worth something, too.

And even if they don't have monetary value, digital assets may have sentimental worth. If you don't specifically outline what should happen to such assets when you craft the rest of your estate plan, Carroll notes that "The implications could be that your wishes are

unknown to your heirs and they won't have access to precious family mementoes or important documents."

Logistical Hurdles Abound

Digital estate planning is, in many respects, more complicated than traditional estate planning. Whereas finding and managing financial and hard assets after a loved one has died or become incapacitated isn't always straightforward, identifying and gaining access to the digital assets of a loved one is apt to be an even more cumbersome process. Lamm says that unless the owner of those assets has left specific guidance about the existence and whereabouts of the digital assets, the deceased or disabled individual's fiduciaries may not even be aware of their existence. Additionally, those digital assets may not only be password-protected or encrypted, but they may also be covered by data-privacy laws or criminal laws regarding unauthorized access to computer systems and private data. Fiduciaries may be able to unearth passwords and gain access to their loved ones' online accounts, but they may not be doing so legally.

The field of digital estate planning is also evolving rapidly, as are digital providers' policies on what should happen to digital assets that are left behind. For example, [Google](#) has created an Inactive Account Manager, which allows you to name a trusted person who can gain access to your data once your accounts have been inactive for a certain period of time. Facebook, meanwhile, does not currently allow others to gain access to data stored on the social media firm's site. Digital assets are also governed by a complex web of rapidly evolving laws, both at the state and federal levels.

The fact that state and federal laws and digital providers' rules are so piecemeal, notes Carroll, should serve as an impetus for individuals to "take a few minutes and get their plans in order." Here are several key steps to take.

1) Conduct a Digital 'Fire Drill'

Lamm thinks a good first step in the digital estate-planning process is to conduct a digital fire drill, which tends to jog clients' memories about what digital assets they deem important. He urges his clients to consider the following questions:

- What valuable items would you lose if your computer was lost or stolen today?
- If you were in an accident, would your loved ones be able to gain access to your valuable or significant digital information while you were incapacitated?
- If you were to die today, to what valuable or significant digital property would you like your loved ones to have access?

2) Take an Inventory of Your Assets

The next must-do is to create an inventory of the digital assets you named during the fire drill. Document the item/account name as well as user names and passwords associated with that item.

Among the items to document in your digital inventory are:

- Digital devices such as computers and smartphones
- Data-storage devices or media
- Electronically stored data, including online financial records, whether stored in the cloud or on your device.
- User accounts (Facebook and LinkedIn accounts, for example)
- Domain names
- Intellectual property in electronic format (a book you're working on, for example)

As with the "[master directory](#)" I've discussed in the past, this document is chock-full of sensitive information, so keeping it safe is crucial. A printed document will tend to be the most vulnerable, unless you store it in a safe or safe deposit box. A password-protected electronic list of your digital assets and instructions on how to gain access to them is a step in the right direction, but it, too, will need to be updated on a regular basis as passwords change. Lamm is a fan of software programs such as LastPass and Dashlane, which securely store your online account information and passwords on your computer and smartphone. Web-based services such as LegacyLocker and AssetLock aim to take the extra step of making this information available to your fiduciaries, after a verification procedure.

Lamm recommends a hybrid approach for most individuals. Maintain an electronic list of digital property and passwords, protected with strong encryption and a strong password and backed up in the cloud (as opposed to on your computer and smartphone alone). From there, he advises creating a master password for the electronic list, storing the password in a safe deposit box or home safe, and providing fiduciaries and family members with instructions about how to gain access to it.

3) Back It Up

We've all been schooled on the importance of regularly backing up digital assets, and Lamm points out that estate-planning considerations make it doubly important to do so. Even if a specific device malfunctions, storing digital assets on another storage device or in the cloud helps ensure the longevity of those assets. Moreover, online account service providers may voluntarily disclose the contents of electronic communications, but they're not compelled to do so. If you want to help ensure that your loved ones have access to the information in your online accounts, backing it up on your own device is a best practice.

4) Put Your Plan in Writing

Experts also recommend formalizing your digital estate plan. That means naming a digital executor--someone who can ensure that your digital assets are managed or disposed of in accordance with your wishes after you're gone. If your primary executor is savvy with technology, there's probably no need to name a separate digital executor. But if not, or if you have particularly valuable or special digital property, such as intellectual property, Lamm advises a separate fiduciary/executor for digital assets.

Depending on the type of property, the fiduciary may also need special powers and authorizations to deal with specific assets. "Because of the complexities of criminal laws and data-privacy laws," Lamm says, "you need the right kinds of authorizations in place." He also advises individuals to mention specific digital assets in their wills. "If you don't want to pass it on, that's fine. But if I had something valuable I wanted to pass on, I'd put it in my will."

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