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Digital assets a growing challenge in estate planning

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By Kelly Olson Pedersen

PREV

Estate planning is not just for mapping out the passing of property and physical assets anymore. There's a new type of asset to worry about and almost everyone has them: your digital assets.

One of the most familiar tools commonly used for estate planning is a last will and testament. Typically, a will is drafted to indicate how you would like things to be handled when you pass away. For example, transferring your bank accounts to your heirs, designating who you would like to handle your affairs (including filing a tax return) and perhaps naming a guardian for your minor children. While a will is a tool that addresses physical assets (like your investment account, cash in the bank or your house), it is currently not being widely used to address assets that digital.

[Read: Who gets your digital fortune when you die?](#)

Many of us have multiple online accounts such as email, online storage, online music and book libraries, and social media accounts. These accounts are valuable in that they may contain monetary assets, personal data or stored information. For example, your PayPal account is directly linked to your checking account and may have a cash balance accrued in it. Perhaps you are storing all your family photos and important tax documents in Dropbox. Amazon and other online vendors have saved your credit card and payment information. Amazon or Apple may also hold the licenses to all your digital music and books.

What would happen if you or a family member died, taking the passwords and the ability to access these accounts with them?

It is likely someone will be named as a Personal Representative, or PR for the deceased. This person is responsible for finding all of the assets in the estate so they can pass them to heirs in an organized fashion. While it is not an easy task to track down all of the physical assets, it can be even more difficult to find and access digital assets.

In addition to drafting a will, many people may have also prepared a net worth statement at some point; possibly to apply for a mortgage or for other various reasons. A net worth statement is a way of aggregating and valuing all of the physical things you own; however, it does not typically include any of the digital assets. Without clear instruction on where to look and what to be looking for, the PR may have a tough time finding everything.

If the PR cannot find or is unable to access these accounts, assets could be vulnerable to thieves. If someone hacked into a PayPal account, for example, they could access the linked checking account and cash balance or possibly obtain credit card information from another stale account and rack up large amounts of debt. Also, items such as photos, important documents and emails can be lost forever.

If the PR is lucky enough to have located the assets, under current law, the PR would need to have first been granted the authority to access the digital accounts via a will. Next they need to connect with each of the companies associated with a particular account and comply with their unique terms and conditions to gain access to the assets in the account. Some of the key requirements may be to provide documentation from the will naming you as PR, proof of your identity (usually a driver's license) and a copy of the death certificate of the account owner.

If you happen to be trying to gain access to an Apple account it will be difficult, if not impossible. As it was in the case of Bill and Kristi Anderson of Orono, Minn., whose son died in 2013. He was found dead, but his parents had little explanation of why or how. There may have been answers in his iPhone, but under the current laws, the Andersons could not get access to information on the phone.

Currently, there is no uniform law that governs authority over digital assets. It varies from state to state and many states do not have any governance over this.

James Lamm, an estate planning attorney at Gray Plant Mooty in Minneapolis, and his colleague Gene Hennig, have worked on the Fiduciary Access to Digital Assets Act (FADAA). This Act would give fiduciaries, like a PR, the right to properly administer an estate, inclusive of digital assets. The issue remains that it is impossible to get authority from a deceased person and thus it must be granted within an estate planning

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access to all accounts, not to be determined by the terms and conditions of each particular account, but by the law itself. This provides a uniform process to access all accounts in the same manner and with the same results.

Minnesota is one of only a handful of states that is aggressively acting on this. In the spring of 2016 a bill passed that a person can grant powers to a personal representative through a will or power of attorney document to allow access to their digital assets at death. Many who support this are trying to get this law uniformly passed across the country.

So what can you do? You can have your attorney insert a paragraph (via an amendment) into your will that specifically grants authority to your PR to access (or NOT to access) your digital accounts. In addition, you can sign up for an online account and password aggregator like LastPass. LastPass is one of many aggregators that will store the URL, user ID and password of any online accounts you choose. When requested, it will generate obscure and complex, multiple-digit passwords for your accounts while remembering them all for you. All you need to remember is the one password to get into LastPass. If you started using a system like this, your PR could access your online account aggregator and have a predetermined list of all your online accounts. Keep in mind the PR will need to take the proper steps to be careful not to "pose" as the deceased by impersonating them.

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