

**MarketWatch**

# How to include your digital assets in your estate plan

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Got email? These days, our email accounts are just the tip of the iceberg in terms of our online presence. From bank accounts to Facebook, PayPal and more, a good chunk of our personal and financial lives are online.

If you fail to account for those digital assets in your estate plan, you risk burying your family or friends in red tape as they try to get access to and deal with your online accounts that may have sentimental, practical or monetary value.

One potential problem with failing to plan for these assets is that your executor will have a hard time tracking everything down. That could mean some of your assets are simply lost, says Kelly Pedersen, founder of Caissa Wealth Strategies in Minneapolis.

That also could put your estate at risk for hacking or fraud, Pedersen says. "Typically your PayPal is hooked up to your bank account. Same with your Amazon [AMZN, +1.51%](#) account — that's hooked up to a credit card," she says. If your executor doesn't know about these accounts to close them, the accounts could get hacked without anyone knowing — ultimately your estate could be paying for the losses.

Read [Who gets your iTunes when you die?](#)

## Do you have an estate plan? You need one.

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Nobody likes to think about illness or death, but planning is essential to protect your family and make sure your wishes are followed with regard to your assets and estate. Here are some easy, quick steps to get started.

Complicating matters from an estate-planning perspective: These accounts are governed by the terms-of-service agreement to which you agreed (or, more likely, clicked that box without reading) upon opening the account. Those agreements, plus state and federal privacy laws and laws that criminalize unauthorized access to computers, all tend to limit access to online accounts.

“The practical difficulty is, of course, that family members have to have confidential user IDs and passwords, and even if they do have that, they have to show they have rights to access the account,” says Sharon Klein, the New York Metropolitan Region President of Wilmington Trust, N.A., a wealth advisory firm.

The good news is that a growing number of states are enacting laws that help clarify the rules for how executors and others can access and manage the online accounts of someone who has died. The revised Uniform Fiduciary Access to Digital Assets Act — which has been adopted in 18 states and introduced in at least 12 others — lays out the rules under which an executor can manage a decedent’s digital accounts.

There are some restrictions aimed to protect the privacy of the decedent. For example, in general an executor can manage digital property but he or she won’t necessarily be able to read the contents of email messages and the like. [Read the text of the act here.](#)

But for those who think ahead and include their digital assets in their estate plan, the Act is good news, Klein says.

## Guidance for your digital estate plan

The law adopts a three-tiered approach to determine how access to online accounts is handled after death. The good news is those three tiers offer guidance for people trying to deal with digital assets in their estate plan — whether or not you live in a state that has adopted this law.

The law’s **first tier** says that if a service provider offers an online mechanism for the user to dictate his or her post-death wishes — one example is Google’s “inactive account manager” — then the account owner’s use of that tool determines what happens to his account.

“The online tools are going to be respected by everybody. It’s really important if a provider has an online tool to use that online tool,” Klein says. “Hopefully more and more providers will be giving their users the option where they have an online tool that dictates what happens upon their death.”

The **second tier**: If the service provider doesn’t offer any kind of online tool that dictates what happens to digital assets after the account owner’s death, or if the account owner doesn’t use the tool, then the account owner’s directions in a will or other legal document prevails, Klein says.

“It’s very helpful to put direction in the will, in trust agreements, in powers of attorney,” she says. “At the end of the day, people are focusing on intent and it’s just very helpful to have intent memorialized.”

The **third tier**: Absent either of the first two situations, then the terms of service agreement — that online form you click on when you open your account — determines how your digital assets are dealt with after you die. Generally, those agreements curtail access to anyone who isn’t an account owner.

But as long as you use the online tool offered by your service provider, if one is offered, and as long as you also detail your wishes in your will, your digital assets should be accessible as per your wishes. “It’s very exciting in that the Act gives some mechanism for people to have their wishes respected after death with that three-tiered approach,” Klein says.

Also read: [How death and divorce impact Social Security benefits.](#)

Here are more tips for how to prepare now for the handling of your digital assets after death:

1. Create an inventory. “It behooves you to create inventories of your electronic data with log-on IDs and your passwords,” Klein says. “You need to keep that somewhere safe, and keep it current and secure.”
2. Use a password manager, such as LastPass, and share that information with your executor (but don’t put log-in information or passwords in your will). “If you have the one password, that allows the executor to see all the sites that you log into on a daily basis,” says Kelly Pedersen, founder of Caissa Wealth Strategies in Minneapolis. “It’s almost like having a digital net worth statement.”
3. Consider an online vault, such as Dropbox or Everplans. Pedersen says her firm uses ShareFile. “If one of our clients passed away and the executor who had the power of attorney came to us, I would have all of the digital estate planning documents, insurance planning documents, tax returns, etc., so we could piece together the information that they would need to start to close the estate,” she says. “Between that and LastPass, if they have that password, it lets the executor do their job a lot easier.”
4. Write your digital-asset plan into your estate documents. “You have to be very clear about it, not just rely on the generic powers of an executor or a general definition of assets to assume that includes digital,” Klein says. “The more specific you are about your intent and that you want your executor to have access, the better.” In wills and other estate documents, Klein says, it’s helpful to add language to make it clear that “the executor should have the same access as the account holder had during his lifetime for all of his digital accounts, specifically including access to content. Or some other broad way of saying that you want your executor to step into your shoes,” she says.
5. Consider writing both a broad statement of intent for digital assets as well as specific directions for each account. John O. McManus, founder of McManus & Associates in New York, recommends that “clients create a memorandum addressed to one’s executor and heirs indicating the intentions regarding specific digital accounts.” But to avoid the problem of forgetting to include an account, you need two statements, he says. “Due to the dynamic nature of technology and the fact that an average American could have hundreds of accounts, I also recommend a general statement of intention to encompass all other accounts — past, present, and future — belonging to the decedent.”
6. Think carefully and be specific about what you want your executor to have access to. For example, can he read all of your email messages? If not, be clear about that, McManus says. “When an executor is granted the power to access a decedent’s online accounts, this authority should be limited and specific in nature so that it does not allow an extensive and invasive search of the decedent’s online records,” McManus wrote in an email.
7. Pick your executor carefully. Consider what information they’ll have access to in your online accounts — and also that they’ll need at least some tech savvy to deal with those accounts. “It’s so much more important nowadays to think about who that person is, because they’re going to have access to some very personal information,” Pedersen says. “Plus, they’re going to have to have the know-how to do all of that, otherwise they’re just not going to do it.”

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