

Digital Assets - What you don't know you need to know

Do you:

- Have a computer? Use a thumb drive? Backup your computer?
- Have voicemail? Have a smartphone?
- Use e-mail? Text? Instant Messenger? Skype? Google Talk?
- Pay bills online? Have a digital wallet?
- Have digital music, books, video?
- Store photos electronically?
- Have a social network site?
- Write a blog? Have domain registrations?
- Shop online (including eBay, PayPal, Amazon)?
- Store online (Apple iCloud, Dropbox, Google Drive)?
- Have medical/legal/tax documents and or any other business files stored electronically or prepared electronically?
- Game? Use apps?

Then it is up to YOU to implement a plan for your digital rights because federal and state laws are largely nonexistent on this topic. The law is mostly unwritten at both the federal and state levels, leaving these matters to the service provider's terms of service, or to you. Most likely, your estate planning documents do not address this topic, either.

Complicating matters are whether these sites are deemed property rights that can be distributed to beneficiaries or contractual/licensing rights limited to you that cease at your death (i.e. Apple iTunes and Yahoo e-mail). Many sites do not address death at all (Amazon) and even those sites that do address death (Google, Facebook), most do not address incapacity.

Don't let inaction be how you are remembered by family members. For you run the risk of accounts closing and those assets being lost that you intended to transfer. Alternatively, if accounts do remain open, hackers may steal your identity. Or, consider your face appearing in the "People You May Know" section in social media sites, your e-mail account continuing to receive e-mail, or your blog continuing to be accessible by the public. While the courts belatedly iron out whether a fiduciary has the right to access these digital assets/licenses and for what purpose, and how that translates to terms of service agreements, following are five steps you can take action on now.

Five Steps to Take Now

- 1. Authorize and Inventory.** Assign someone to be your digital executor/agent/fiduciary. Inventory all digital assets and backups of assets and identify the location. Don't forget about assets such as "apps" - applications may store credit card information that you would want removed. Games such as World of Warcraft often have intangible assets that can be transferred for real dollars. You may choose to identify these assets via a memorandum accompanying your will. You may even decide putting these assets in a business entity or in a trust while alive gives you the protection you need to ensure these assets are accessible and/or transferable post mortem or if incapacitated. In any case, you should include language authorizing the digital executor/agent/fiduciary with broad powers (talk to an attorney regarding the specific language). This language should be in many of your legal documents including your will, trust, durable powers of attorney, and in HIPAA documents. Your legacy may be leaving behind valuable medical information that benefits your family as science and technology evolves. Do not store items on the cloud because of lack of control and security (think about activist hackers). We recommend storing on your own devices.
- 2. Disclose.** Disclose your passwords, user IDs, security questions for each account, pins, verification codes, secure key generators (Bitcoin). Knowing how to reset your password (often involves answering security questions) is of utmost importance. If your agent/fiduciary doesn't know your latest password and has to reset it, knowing the answers to your security questions allows that person to move forward without having to wait on the court. Update this document every time you change your password, user ID and/or security questions. If you are uncomfortable listing all of this information together, list all your websites in one document and store it somewhere separate from the document listing all your user IDs, passwords and security questions. Alternatively, consider storing in Frontier's online vault and make sure someone knows it is there and how to access and that person has your authorization to access in your legal documents. Without authorization, this person may be guilty of fraud even if acting as a fiduciary or representative.
- 3. Define.** What are your wishes for each account? Which accounts do you want closed? Do you want some accounts left open as a memorial (Facebook accounts)? What rights do you want your fiduciary to have and for which accounts: access, control, possession, handling, conducting, continuing, distributing, disposing, terminating? Which assets have a determinable value and do you want those assets sold or transferred to beneficiaries?
- 4. Name beneficiaries.** For accounts that you wish to transfer, name beneficiaries.
- 5. Indemnify.** Include indemnification language for the customer/provider to hold these entities harmless to provide the rights you have outlined without liability. Additionally, you may wish to consider indemnification language for your agent/fiduciary as well.

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