



LEGACY CONCIERGE

Protect Your Client's Digital Assets

Introduction

Digital records have a huge impact on law firms, wealth managers, private client advisors, institutional trustees, financial consultants and family offices comprising the trust and estate administration landscape. When digital assets are left scattered in the cloud, the trusts & estate components and their asset value are subject to devaluation and disappearance.

Strictly speaking, digital assets are content that is stored in any electronic format. That could mean images, photos, videos, files containing text, spreadsheets or slide decks. New digital formats are constantly emerging therefore the definition of a digital asset is always expanding as well. Rather than a definitive list of file formats that qualify as a digital asset, digital assets can be any content, in any format, that is stored digitally or electronically and provides value to the company, user or consumer.

Trusts and estates increasingly are comprised of digital assets in the form of computer records that represent assets owned or managed by the individual, their estate managers, fiduciaries and trustees. Given this expanded definition of digital assets (beyond social media, emails, messages and calendars) the scale and scope of an estate plan, management and administrative effort that secures and protects digital assets is an open-ended complex responsibility.¹

Historical Perspective Concerning Digital Assets

Attorneys and others involved in estate administration need a systematic approach to handling these assets during probate. Attorneys have been writing articles in their law journals about this problem since 2013, presenting papers at their local, national and international association meetings, experiencing the devastating effects of identity theft against some estates they are administrating. The Federal Trade Commission in the United States received over 320,000 reports concerning identity theft in 2017 whereby the fraudster assumed the identity of the decedent and systematically reduced the value of the estate. Nationwide in the US, over 13% of deaths each year result in reported theft representing a loss of over \$1B in assets in 2017.² During this same time period, billing policies in professional firms increasingly transitioned from hourly rates to fee-based (percentage of the estate) or fixed fee schedules in private client, trust and estate practices. More and more law firms and legal departments are steering away from hourly charges for trust and estate administration thereby necessitating more efficient ways to administer estates containing digital as well as tangible assets. What else is happening?

Estate planning laws clarify how estate trustees access digital assets of any estate. Data control is removed from the vendor and is restored back to the fiduciary. Having a list of company sites holding records of the person before passing is optimal, but business protocols and regional

legislation provide processes by which fiduciaries can gain access when that is not available. When the user consents or the Court orders, estate administrators can access the content of the electronic accounts.

Ten Ways to Protect Digital Assets for your Clients

Protecting the estate and its digital assets is an ongoing activity. Knowing where to start, what information to collect and keeping on top of the process is a monumental task. If left to the successor and/or the fiduciary, many digital assets and electronic records will remain in cyberspace potentially creating accounting and disposition resolution problems that are costly and embarrassing.

Organize and document digital assets by storing asset descriptions in a secure and private electronic location, and providing a roadmap to access digital asset disposition instructions after death.

Let's get your digital asset protection program started by discussing the following ten items:

1. Everything is digital; electronic records exist for both digital and tangible assets
2. Assets are at stake; tax returns provide one roadmap for creating an inventory.
3. Wealth and estate components are elusive; electronic files can be stored in PDF format.
4. Multi-factor authentication can be added for access to sensitive files and digital assets.
5. Unclaimed assets and escheated property are in government files and business accounts.
6. Subscription and automatic payments from credit cards and bank accounts can stop.
7. Collection inventories - art, jewelry, wine, furniture, coins and the like – can be updated.
8. Intellectual property, website names and patents might be generating royalties.
9. Social networks, community service groups and charities should be notified upon death.
10. Data and media privacy issues may change for individuals and their successors and heirs.

Digital assets represent and are a dynamic road map to major portions of an estate. For this reason, attorneys and wealth managers, trustees and financial planners have a compelling reason to conduct an annual digital asset review with their Client. Although a secure list and library may have been built at the beginning of the Client's trust and estate planning process, content review and updates should be done periodically.

One's legacy should live on forever, their accounts should not.

End Notes

1. "Identity Theft Statistics", [ftc.gov/idtheft](https://www.ftc.gov/idtheft), 2017 data reported in 2018
 2. "Understanding Uniform Fiduciary Access to Digital Assets", Jeff Perkins, June 2017
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