

What are digital assets?

Digital assets are, in essence, any assets that exist in binary form and are classified as images, multimedia and textual content files. Many people today access photographs, videos, music, e-books, blogs, movies, emails, conversations, social media, games, bank accounts, medical records, and even maintain their identity - all online. These digital assets can be just as precious and important as physical assets that your clients can touch. The majority of these digital assets possess monetary and/or sentimental value. Plans regarding digital assets should be part of your advice to your clients to deal with what happens when they die or if at any time they lose mental capacity to manage their own affairs.

Why are digital assets important?

Within just a few years, digital assets have become important to many areas of our clients' lives. General planning needs to include plans for what happens to our clients' digital assets on death or incapacity, for a number of reasons:

Financial Value; such as PayPal accounts, virtual bank accounts, online gaming accounts; bitcoin; photographs; popular domain names or online businesses.

Sentimental Value; personal assets such as photos or emails may be stored on a smartphone, a flash drive, an online photo sharing website, a cloud storage server or a social networking account. When our clients die or if they become incapable and

no one can control or access these treasured memories, the emotional impact on family and friends can be significant.

Privacy & Confidentiality; private information that other people should be restricted or prevented from seeing. For example, email or Facebook accounts may reveal the existence of relationships or interests that were not widely or otherwise known.

Identity Theft; recent statistics estimate that more than 20 people have their identity stolen through online hacking every minute of every day. When our clients are no longer monitoring the use of their digital assets, the risk of identity theft is greatly increased.

How should I advise clients to plan their digital legacy?

Advise your clients to do the following:

- 1. Prepare an inventory** list of their digital assets, to provide their fiduciary (agent, executor, personal representative, guardian, attorney, etc.) with details of these assets and where to find them. Start by listing the hardware (personal computers, laptops, tablets, smart phones, storage devices, backup disks, thumb drives etc.) their fiduciary must locate.
- 2. Provide a summary** of the important information stored on or accessed through these devices.
- 3. Create a list of the computer programs** which their fiduciary will need to operate in order to access their important information, and give directions of how to access it, and what should be done with the information.
- 4. Make a listing of all of their online accounts**, grouping these by category.
- 5. Note which assets must be preserved** and which can be deleted or destroyed at their death or incapacity to help their fiduciary focus on items that are most important (e.g. they might direct their fiduciary to delete most of their financial files once taxes and final bills are settled but may want their digital photos copied and distributed among their children; they may want their Facebook page changed to an “in memorium” page after their death; they may want their PayPal and eBay accounts closed once any open bills are settled, etc.).
- 6. Provide some mechanism for their fiduciary to be able to access their digital assets.** Most digital assets will have an associated login and password. Their fiduciary will need to know this information in order to manage these assets on their behalf. It is more important that their fiduciary know how to reset a password (e.g. the email account where a password reset link would be sent) since their passwords should be changed frequently. Some people keep a physical listing of their passwords, which can be shared with their fiduciary or use a Password Manager as an electronic “master key” which can be shared with their fiduciary under the “terms of service” (TOS) agreement for that provider. Bear in mind that many TOS agreements may not allow for access by anyone other than the account user and, if then, only with clear authorisation.
- 7. Provide authorisation to their fiduciary** to access these assets. Specific language should be included in all of their estate planning documents (and any medical or health care proxies) that clearly and expressly give their fiduciary the ability to access and manage their digital assets.

Where can I get help?

Laws in this area are unsettled and vary between countries and even between states within a country. Legislative reforms are currently underway in various countries which are intended to resolve some of the uncertainty. The TOS agreements your clients have entered into with various service providers may govern how their fiduciary can work with their digital assets. For information and advice refer to the STEP Digital Assets Working Group page on the STEP website at www.step.org/digital-assets where you will find more information and links to other knowledgeable professionals who can help guide you through this process. For more information, or to subscribe to news from the Digital Assets Working Group, please email digitalassets@step.org