

ONE-TO-ONE INSIGHTS

# DO YOU HAVE A DIGITALLY SAVVY ESTATE PLAN?

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When preparing a will, most of us consider who should inherit our physical assets, such as the family vacation property, an investment portfolio or an heirloom watch. But it’s just as important to consider your digital assets when putting your estate plan in order.

## What are digital assets?

Digital assets can be defined as “a record that is created, recorded, transmitted or stored in digital or other intangible form by electronic, magnetic or optical means or by any other similar means.”<sup>1</sup> These can be stored on a personal computer, “on the cloud”, or on a website. Digital assets are separate from the account in which they are held and which permits you to access the assets. Digital assets are often divided into a few categories.

The first category includes property with currency information that can result in actual money. Most people think of these as including online investments, bitcoin and other cryptocurrencies. Included as well, however, are Paypal and Amazon accounts, credit cards that provide cash back, loyalty programs that you may have joined, and even an on-line betting account.

The next category is virtual property such as digital photos and videos, music, books, online subscriptions and blog content. Not to be forgotten are any domain names that you own.

Finally, you likely have social media and email accounts, that you access for personal or business use. So, not only should you consider your personal Facebook and Twitter account, but also think of your business email and business social media accounts. For example, have you set up an Instagram account for your restaurant? Do you have an Etsy account for your jewellery design?

<sup>1</sup> See the Uniform Access to Digital Assets by Fiduciaries Act (2016).

## How should you store digital assets?

Most experts recommend storing digital assets on both a hard drive, and also using cloud storage, which is an off-site location that you can access through either the internet or a dedicated private network.

You should prepare and store a complete list of your digital assets and accounts. This should include a list of all passwords required to access such accounts and assets. Both lists may be stored in an online, password protected medium or in a secure location at home, such as a safe, or even in your safety deposit box—provided your executor or estate representative knows where to find them!

## How to address digital assets in an estate plan

Your will should address who you wish to receive your digital assets on your death, just as it should address your physical assets. But this may not be sufficient to provide your executor with the ability to actually manage your digital assets and accounts, and to transfer the assets.

The service agreement governing a digital account may have specific requirements before control over the account, or the digital assets themselves, may be transferred. Indeed, your different digital accounts may have different requirements in their service agreements. In most provinces and territories, there is no law giving an executor or a someone acting as attorney under a power of attorney (“POA”) the ability to deal with digital assets and accounts without specific language to that effect. Because of the general lack of legislation in this area, and these service agreements, you may need to provide specific consents to have these parties manage your digital assets and accounts.

Note that one notable exception is the province of Saskatchewan which recently enacted legislation regarding this issue.<sup>2</sup> In Saskatchewan, certain persons such as executors, trustees of digital assets, and an attorney under a POA, now have the ability to access digital accounts, so long as the right to do so is not inconsistent with, or limited by, certain other documents such as a will or the POA itself.

Your estate plan should also consider how long you wish social media accounts, email accounts and other digital accounts to be maintained after your death or incapacity, and when they should be shut down.

<sup>2</sup> See The Fiduciaries Access to Digital Information Act, SS 2020, c. 6.