

Digital Assets

“Digital Assets” is not a topic that jumps to mind in discussions of Estate Planning. It certainly didn’t for me, and I spent my entire career dealing with technology. It is, however, something that we all should consider.

Before I go any further, I need to state clearly that I am NOT a Lawyer. I am NOT a Certified Financial Planner. I am not even sure that my IT certifications are current. If you find the following information interesting, please consult your own experts before taking any action.

Anything where you enter a UserID/Passcode should be thought of as a Digital Asset. They can be an asset without monetary value, such storage of photographs, email, social media accounts such as Facebook, or shopping accounts such as Amazon. They can be assets with monetary value, such as e-commerce accounts such as eBay, payment systems accounts such as PayPal, points accumulating accounts such as airline or hotels, online stock market accounts, or online banking accounts. Who should have access to these assets if you are incapacitated or to administer your Estate?

In 2015, Congress passed the Revised Uniform Fiduciary Access to Digital Assets Act. Indiana pass the State version of this Act in 2016 as Indiana Code 32-39. 46 other States have also enacted this Uniform law. While there is good law in this area, it is important that you make your wishes clearly known in your Will and Power of Attorney documents. Without these declarations, there could be a delay accessing these assets or they could be lost all together.

Your Will, for example, should have a clear declaration that says, “My executor shall have power to access, handle, distribute, and dispose of my digital assets.”

A Power of Attorney should likewise say “My attorney-in-fact shall have (i) power to access, use, and control my digital devices, and (ii) power to access modify, delete, control, or transfer my digital assets”.

If your Executor or Power of Attorney is not tech savvy, you can even authorize an assistant. “I authorize my Executor to engage _____ to assist, handle, distribute, and dispose of my digital assets.”

As with all legal documents, a more complete definition of digital assets should be included (“including but not limited to”). Suggested language for your documents can be found at <http://www.thedigitalbeyond.com/sample-language/>

Our Digital Assets are part of our lives and we should plan for how they should be accessed, transferred or disposed of in the event of our incapacity or death. If your estate planner doesn’t discuss this topic with you, be sure to bring it up so that you can make sure your wishes are properly executed.