

Wealth Planning **Update**

Incorporating digital assets in estate planning



How to include both physical and digital assets in your estate plan.

From purchasing goods with a PayPal account to sharing family pictures through a cloud-based photo album, online activities have become increasingly engrained in our daily lives. But have you considered that each of these actions involves a digital asset?

In general, digital assets are defined as any type of electronic data that you have the right to access. As the use of digital assets and technologies continues to grow—along with regulations around who is permitted to access them—the need to intentionally account for digital assets in your estate plan has become crucial.

Digital assets include domain names, online music and photos, blogs, electronic storefronts, cryptocurrencies, social media accounts, and more. They also encompass financial records that you store in your smartphone, computer, and the cloud. Each of these assets has value, whether monetary or sentimental. That's why it's important to consider what will happen to them if you die or become incapacitated. For example:

- Who will have access or rights to your Paypal or Venmo accounts?
- Who should coordinate the distribution of any applicable online credits or digital balances?
- Do you want a loved one to access and preserve your digitized photo library?
- Who should make decisions about deactivating or memorializing your social media accounts?

Below are three steps you can take to plan and account for your digital assets, in order to ensure they're managed as you desire.

Maintain an ongoing inventory

Create a list that includes all digital assets that have high monetary or sentimental value. Even a simple, one-page inventory can make the task of estate administration at death much more manageable for your family or fiduciaries. Store your list in a secure location and make sure your family members know how to access it.

If you prefer to keep records of your digital and nondigital assets together, consider an account aggregation tool with document vault capabilities. BMO WealthConnection lets you track valuable digital and financial assets in one place to help simplify estate settlement. Upon your passing, the tool's aggregation function provides an executor or trustee with an organized, comprehensive listing of assets, while the vault serves as an electronic library for important supplementary documents (e.g. certificates, appraisals, and official forms).

Along with your list of assets, document all of your important passwords. This helps family members or fiduciaries access information stored in your smartphone, computer, online accounts, or the cloud, if necessary. Consider a password management software program or app that lets you store all your passwords in one secure location.

Finally, back up data you've stored in the cloud to your local computer or electronic storage device. This makes it much easier for family members and fiduciaries to access the information.

Create a list that includes all digital assets that have high monetary or sentimental value.

Incorporate the assets in your estate plan

Until recently, if you attempted to access a deceased loved one's digital assets, you could be accused of hacking. However, new regulations adopted by many states recognize the need for agents acting in this capacity and allow people with powers of attorney, executors, and trustees to access digital assets on behalf of another person or estate.

According to the National Conference of State Legislators, "at least 46 states since 2013 have enacted laws addressing access to email, social media accounts, microblogging or other website accounts, or other electronically stored assets, upon a person's incapacity or death."¹ Importantly, these laws don't presume that family members or trustees can access digital assets because of their relationship. Instead, you must provide authorization in your estate documents.

Digital assets are a fairly new class of assets that requires an attorney who not only specializes in estate planning but also understands the constantly developing landscape of digital asset regulations. You'll want the most up-to-date language in your estate planning documents. If you live in a state covered by these laws, it's important that you work with a knowledgeable, competent estate attorney who can help you to:

- Update your wills, powers of attorney, and any revocable living trusts to make sure your fiduciaries have the authorization they need.
- Include language that gives them the right to share your information with appropriate people.
- Spell out specifically which assets are included; you don't have to give blanket authorization to all digital assets.
- Include instructions for managing your passwords.

In addition to updating legal documents, check with your service providers. Generally, unless you've given your consent, companies like Google and Facebook are prohibited by law from turning over

the contents of your electronic communications to anyone. If you don't specify with them otherwise, they may be forced to lock up your account, leaving your heirs unable to access photos, email messages, or other information stored in the cloud. Your iTunes library, however, is subject to different rules, as you don't actually own the digital music and other media. You may need to explore other ways to share that content.

Inform fiduciaries and beneficiaries about your plans

Communicate to each person involved what you intend to do with your assets and what responsibilities they will have. Make sure they're comfortable with their role before you update your estate documents. Create a physical or digital folder that includes all pertinent documents, and share it with them.

If you think there might be conflict among family members, consider a corporate trustee to serve as fiduciary. A professional fiduciary can lend objectivity and experience to the administrative process. A trust company can serve either as sole trustee or as a co-trustee, thereby easing the administrative burden and associated risk that the family fiduciary must carry.

Just as you've provided directions on how to distribute your physical assets after death, it's important to incorporate digital assets in your estate plan as well. Without direction from you, it can be difficult, if not impossible, for family members or other fiduciaries to access these assets. Both money and memories can be lost forever. However, with some advance planning and the help of an experienced estate attorney, you can account for digital assets just as effectively as physical assets. For more information on including digital assets in your estate plan, or on tracking these assets with BMO WealthConnection, consult with your financial professional.

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Common types of digital assets

Make sure your estate plan includes instructions for handling all of your valuable assets, including digital ones like these:

- Online bank and brokerage accounts
- Online bill pay instructions
- Email accounts
- Social media accounts
- Cloud storage
- Digital photos and music
- Electronic documents and spreadsheets
- Medical images and files
- Cryptocurrency files and exchanges
- Subscription accounts (Netflix, Hulu, Prime)
- Travel rewards
- Blogs
- Website domains
- Digital storefronts (eBay, Etsy)





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¹ National Conference of State Legislatures. Access to Digital Assets of Decedents. <http://www.ncsl.org/research/telecommunications-and-information-technology/access-to-digital-assets-of-decedents.aspx>

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