Why Your Estate Plan Should Include Digital Assets

Many of us have digital lives. We use the internet regularly and have come to rely on it. It seems that almost everything is available at a mouse click. But as more of our personal and financial data is stored online, it is important to consider who will have access to all of our digital assets.

What are digital assets? Anything that is in electronic form. Generally speaking, this includes our personal, social media, financial and business digital assets. More particularly, it includes the bank and investment accounts that we access online, the bills we pay online, photographs and videos we store in the cloud or on our cell phones, tablets or computers, emails, word processing documents, Facebook, Twitter and other social media accounts, Linkedin, Paypal, customer databases, client/patient medical records, frequent flyer mileage accounts, apps on our devices, cryptocurrency, domain names, blogs and online gaming accounts. The value of these assets is not limited to their monetary value. They may have a sentimental value, such as our photos and videos that we no longer print. Digital copies of these are irreplaceable. But who has access to all of these accounts if we become incapacitated or die?

Almost all of us have installed programs on our computers or applications ("apps") on our cell phones. With each installation we create a new online account and are asked to acknowledge our consent to the terms of service (TOS) created by the supplier, which virtually no one reads. Yet, until recently, it was the TOS which set the parameters for others to access our digital assets. Most of the TOS are draconian. Not only do they limit access to the accounts to the account holder, but they almost always *prohibit* disclosure of our passwords or account information to others.

As more and more of our lives are stored online and "in the cloud," the access to and protection of our digital assets becomes increasingly important. It is critical that special arrangements for our digital assets be made in advance. In September 2016, New York enacted Section 13-A of the Estates, Powers and Trusts Law to address the excessive limitations contained in the TOS. By law, we can now empower an agent, executor and/or trustee to access our digital information. We can give them passwords to accounts and access to stored documents and information on hard drives. The agent requires our usernames and passwords but this might not be enough as certain vendor service agreements deny access to manage, distribute, copy, delete or close accounts to anyone other than the user. Often, the agent is required to have express authorization from the user before they are granted access the content of digital assets.

Certain password managers maintain records of online accounts and passwords in a digital vault. These accounts can be established in advance in order to provide access to a particular representative or agent at the happening of a specific event, like death or incapacity. We can also make it easier for our agents and our heirs by creating a list of our digital assets. To do this we should review the policies for each account, social media platform and bank-security level financial portal then compile the information and store it in a safe place where our agent can later access it.

Clients who retain Berwitz & DiTata LLP for estate planning receive the benefit of the special provisions we include in our wills, trusts and powers of attorney to address digital assets. We assist our clients in granting authority to the executor, trustee and agent to marshal and protect digital assets during our lives and after our death. This is just one more compelling reason to have us review your documents and ensure they contain these protections. Help us to help you. Contact Berwitz & DiTata LLP as soon as possible.