

What Happens to Online & Social Media Accounts *at Death?*

By Vance Parker, JD, MBA

Estate planning documents are designed to protect clients' wishes both during life and after death. As part of the estate planning process, a client chooses legal representatives (called "fiduciaries") to help him or her both in life (agents in "advance directive" documents) and after death (executors, trustees, and guardians) who help enforce a will

But in the Internet age, it can be difficult to pass critical assets into the hands of the client's chosen legal representatives because the "digital assets," such as bank accounts, are tied up in computer technology that is difficult to transfer, both legally and physically. It can be almost impossible to separate digital assets from the computers, websites and software used to convey information about those assets. Thus, without proper estate planning incorporating the client's digital assets, it is a mistake to assume that the client's chosen legal representatives such as agents, guardians, executors and trustees will have the tools they need to perform their obligations.

North Carolina law does not support the client's legal representatives having access to digital accounts and digital assets. Without clear direction from NC state law, the controlling law is still mostly dictated by two 1986 Federal statutes which predate the commercial Internet. Although these Federal statutes are outdated, they still guide court decisions.

Most computer service providers maintain service agreements that include only one user, and strictly prohibit "unauthorized access." Some service agreements also state that the individual user's rights are "nontransferable." Thus, when a user becomes mentally incompetent or dies, his chosen legal representatives may have difficulty getting access to his online accounts. In addition, many online services will refuse to release the password information from a deceased user, even in the face of a judicial order or civil lawsuit.

In the absence of a modern statute controlling legal representative access to client digital assets, best estate planning practices require both clear authorization from the client in the estate documents authorizing his chosen legal representative to access the digital accounts, and the actual transfer of account information including log-on information and passwords. Some digital providers have revised their rules to permit chosen legal representatives to access online accounts when the proper authorization is included in the primary user's estate planning documents.

Transferring Digital Access

Randy Siller, a registered representative of Lincoln Financial Advisors Corporation, shares the following seven best practices for transferring digital access information to chosen legal representatives as part of an estate plan:

1. **Digital Hardware.** List all digital hardware, including desktops, laptops, smartphones, iPads, USB flash drives, and external hard drives.
2. **Financial Software.** List all financial-related software programs used, such as Quicken, QuickBooks, and Turbo Tax, which may include important tax and business information, as well as passwords.



3. **File Organization/Passwords.** Provide an outline of the file organization on digital devices so fiduciaries will know where to find important files, as well as any passwords they may need to gain file access.
4. **Social Media.** List all social media accounts, such as Facebook, LinkedIn, Twitter, and Cloud websites, as well as the information needed to access each one.
5. **Online Accounts.** Prepare a list of all online accounts including bank accounts, investment accounts, retirement accounts, e-commerce accounts (Amazon, PayPal), credit card accounts, and insurance accounts. It is critical for chosen legal representatives to have access to these providers.
6. **Subscriptions.** Ensure that a list of online subscriptions such as Netflix, Norton Anti-Virus, credit reporting/protection subscriptions, and streaming music subscription services are documented so that chosen legal representatives can access or cancel those services.
7. **Email.** List all personal and business-related email accounts, and how to access them.

A Digital Legacy

To deal with the desire for users to allow their loved ones to memorialize them through their Facebook accounts at death, Facebook recently decided to allow members to designate a “legacy contact” to manage parts of their accounts posthumously. Members may now also choose to have their presence deleted entirely at death.

It is easy for estate planners to focus on protecting monetary assets. But the control of a client’s “digital legacy” on social media is also important. Until new laws are passed, the best strategy for passing down digital assets from clients to their chosen legal representatives requires both including proper authorization language for chosen legal representatives in the estate documents and the physical transfer of digital asset user information to the client’s chosen legal representatives.

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