

SPECIAL REPORT: LAW

A closer look at legal issues facing the Triad.

Who owns your (DIGITAL) life?

More people are working and storing valuable information digitally, but laws to govern how those assets are passed on are lagging.

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Maybe you've gotten around to drafting your will, or determining a business succession plan. Investments and physical assets are covered, but what about your digital property?

In times past the dead left a paper trail. Now your family photos and letters are stored in the cloud or on hard drives. You probably can't remember the last time you looked at a paper bank statement – now all your banking is done online. Work-related projects are locked away behind passwords.

When you die, will anyone be able to access your most important information? Better yet, will anyone know it exists? Unless you're proactive during the estate planning process, your digital assets, from family photos to private bank accounts, are at risk of being inaccessible.

"People take for granted that it will be easy to get access to digital information and matter of fact it's not," said Eric Kaplan, chief technology officer of Armanta, a Cary-based tech company.

The solution is to plan accordingly – which most people fail to do.

"There aren't many people who automatically organize their digital affairs," said Vance Parker of Vance Parker Law in Winston-Salem, a firm specializing in estate planning, wills and trusts. "They often have account numbers in their head or written down on Post-it notes. It's hard enough for people to come in to get a will done, but at the

same time most don't appear to thoroughly transfer digital assets."

The best strategy, Parker said, is a two-pronged approach: make sure your attorney has all digital accounts information and expressly include digital assets in estate documents.

"Documents must specifically transfer digital assets from the principal to the fiduciary," Parker told the Triad Business Journal.

Kaplan recently went through the estate planning process himself and digital assets never came up, even though he's spent his career working with technology.



be lost," Kaplan said.

If you think federal or state laws will have you covered in the event digital assets are left out of a will, you're wrong.

The standing federal statutes related to digital accounts are the 1986 Stored Communications Act and Computer Fraud and Abuse Act, which were designed to protect users' privacy and prevent unauthorized access to computer networks.

Service providers' user agreements are enforceable by the 1986 statutes, which is why they limit user's rights to one person, and frequently label user rights as nontransferable.

The majority of states' laws lag

"If I'm not thinking of it, most people aren't thinking of it," said Kaplan.

His most valuable digital assets are family photos he stores on online platforms.

"It may be a Dropbox account with thousands of family photos. If somebody dies then most likely that stuff will

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behind as well, including North Carolina, which is why it's critical to proactively plan for digital assets when crafting your will and trust.

"If the grantor's prepared properly, they've given the attorney all of the digital account information and all login information so the agent will be able to use it as soon as possible," Parker said. "If not, you may have a situation where it takes weeks before an agent can effectively use the accounts."

Matt Hearn, a wealth planner with Cannon Wealth Management Services in Winston-Salem, encourages clients to take advantage of e-Money Advisor software, which his firm has offered clients since 2012.

The software allows users to upload

▶ WHAT'S A DIGITAL ASSET?

- ▶ Social media accounts, like Facebook, LinkedIn, Twitter and Instagram
- ▶ Online checking and savings accounts
- ▶ Email accounts
- ▶ Online trading accounts, such as E*Trade and Scottrade
- ▶ Photos, videos or writing stored on a hard drive or in the cloud
- ▶ Financial software, like QuickBooks or Turbo Tax
- ▶ Other online accounts related to mortgages, loans, insurance and credit cards

estate documents, such as wills and trusts, along with online account information.

"One of the nice things about using a software like this is you don't have to give your passwords or user names to your family," Hearn said. "You can give them access to this software password and there's no way that person can move money around. It's purely informational and it doesn't give them permission to make changes to accounts."

Hearn said the biggest issue his clients face is follow through. Even if they have tools to manage digital assets, many put off planning for them.

Hank Persia, owner and president of Starboard Wealth Advisors in Greensboro, said that his firm started taking digital assets into considerations as clients aged and people started to keep fewer paper documents around their houses.

Now Persia asks clients to list all accounts on an Excel spreadsheet –

including insurance information, mortgages and loans, annuities and even security questions. He suggests people keep the spreadsheet on hand for a month, adding information for every website they have to sign on to.

And digital assets aren't just the domain of business owners and the financially well-off.

"It's really something that goes across all positions and disciplines," Persia said. "It's more of an individual documentation process."

For estate lawyers and wealth planners, the gap between current law and technology usage means more work ensuring that clients' are covering their digital bases.

"We're trying to equalize digital assets to traditional assets that we're used to including in a will," Parker said. "What's happening right now is chaos."

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