

Digital Assets

Hi, I'm Dan Smith, of DPS Legal Counsel, and welcome to today's video.

Today, we're going to be talking about estate planning, and in particular, we're going to be talking about a topic that didn't really exist as a topic in the estate planning world just a few years ago.

And that is: What to do with your digital assets upon your death?

First of all, what are digital assets?

Well, they are things that are in the nature of online accounts, email. Do you own a website? Do you have a blog? Do you have a PayPal account? Things of that sort.

Most everyone in today's world has digital assets, whether it's a blog, a website, whether they have a PayPal account, whether they have photographs that they have uploaded and are stored in the cloud, whether they have assets of any kind that are digital in nature. Most people these days do have digital assets.

And what's interesting and what you have to take into account in your estate plan is that your digital assets whether it's a Facebook account, a LinkedIn account, whether it's a Twitter account, PayPal, whatever it is, when you die, the company that is the custodian or holds your digital assets, whether it's Facebook, LinkedIn, whatever it is, may not easily give someone else that's not you, access to your digital assets unless there are some specific statement in your will that grants the right to that person, your executor, to handle and deal with your digital assets.

This is an emerging and evolving area of the law. Only within the past two or three years has Tennessee adopted what is called the Revised Uniform Fiduciary Access to Digital Assets Act or RUFADAA... Revised Uniform Fiduciary Access to Digital Assets Act. And what that does is provide a mechanism in Tennessee for your will to provide that your executor has the right to handle and deal with your digital assets. Now, when you're doing your estate plan, you certainly don't want to include all of your passwords and a listing of your digital assets in your will itself because your will is going to be a public record when your estate is probated. But you do want to leave a list of your digital assets for your executor in a place that is safe and secure and will give that person the ability to find where your digital assets are and what the passwords are.

It may be helpful if you have a password management app or some software to provide the password for that, and then have all your other passwords managed by that password management app or software.

But in any event, you do want to provide in your will that your executor or some other person who's your digital executor, has the right to handle and deal with your digital assets.

Now, you may want certain of your accounts to be closed, you may want to give discretion to your digital executor to handle and decide what to do with your digital assets. That's up to you, but you just want to make clear in your will and also in the document that you leave for your executor that lists what your digital assets are and what the passwords are, what you want done.

By giving an executor or a digital executor in your will the right to handle and deal with your digital assets you're going to make things a lot easier for that person and for your estate when it comes to dealing with your an online footprint, your Facebook account, your LinkedIn account, your PayPal account, if you have a website. All those things.

Now, it's the case that when you set up online accounts that you have clicked or agreed in some manner or another to terms of service with the custodian dealing with the digital assets, whether it's Facebook, LinkedIn, PayPal or whatever. And so it may be that the terms of service are going to be different than what you would want to happen with your digital assets. It may be that those accounts are not transferable.

The statute in Tennessee doesn't change terms of service that you may have agreed to with the custodian but it does provide your executor or your digital executor the right to handle things as much as possible, the same powers that you would have if you were still alive, and it's a good idea to have that kind of language in your last will and testament.

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In addition, if you have a power of attorney--typically one has a durable power of attorney that comes into effect upon incapacity--you would probably want to include a specific provision in your power of attorney that gives your agent who is acting under the power of attorney the right and authority to deal with your digital assets.

Alright. That's it for today.

I hope this is helpful.

We'll talk to you next time.

Thanks.