



# FINANCIAL PLANNING CONSIDERATIONS



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## Estate Planning Tips for the Digital Era

As there really is not a market-moving theme to discuss this week (and we don't want to fill your inboxes with useless junk), we want to instead take this week to look at an important financial planning topic. After all, we do consider our work to be "planning-centric."

The following is adapted from materials provided by Fidelity, and it focuses on an emerging area of concern in estate planning. As owning digital property becomes the norm, estate plans should consider employing new strategies. If you have recently updated your documents, you may very well be covered. However, if you are like most, your estate docs may need a refresher, and we encourage you to discuss this topic with your attorney during your next consultation.

**Simply put, if an estate plan doesn't account for digital assets properly, your heirs may not be able to access them.** Family photos and videos could be lost forever, social media accounts could stay up long after a client has passed, and heirs may not receive all the money that they are entitled to receive.

It has become the norm to store financial records in smartphones, computers, or in the

cloud, and to conduct financial transactions electronically. Most people also own a trove of digital assets, which can include anything from domain names to electronically stored photos and videos to email and social media accounts.

From a legal point of view, digital property is like other kinds of property because it can be passed on to designated parties through estate plans. Yet the laws regarding digital property are still evolving, as are the practices of companies like Facebook and Google.

For these and other reasons, gaining access to digital assets, and to digitally encoded financial information, can present challenges for anyone other than the original owner. Fidelity identified four main obstacles faced by family members of someone who has recently died when trying to access the decedent's digital assets and vital personal information:

**Passwords:** If you have not previously shared password information, family members may not be able to access information or property stored in your smartphone, computer, online accounts, or the cloud. Some passwords, such as the one for your desktop computer, may be easy for experts to bypass. But others are more

INDEPENDENT TRUSTED PERSONALIZED

difficult to bypass—and some are practically impossible.

**Data encryption:** Digitally stored data may be encrypted, adding another layer of protection on top of passwords. Encryption can scramble data so thoroughly that it is practically impossible for anyone without the proper passcode to unscramble it. Take cell phones, for example. With older phones, it was at least plausible to find services that could exploit security flaws in the devices to help a family retrieve information after someone passed on, but new phones can be practically impossible to decrypt. So, for example, if you've taken photos on your phone without transferring them elsewhere, family members may not be able to access them unless they know your passcode.

**Criminal laws:** State and federal laws prohibit unauthorized access to computer systems and private personal data. These laws serve to protect consumers against fraud and identity theft, but they also may create virtually insurmountable obstacles for family members trying to gain access to the digital assets and information of a deceased loved one. The law is evolving to keep up with the rapidly changing online world, but much in this area remains unclear. For that reason, it's essential to ensure that your estate plan give your fiduciaries the authorization they need to access any necessary digital data.

**Data privacy laws:** Generally, federal data privacy laws prohibit online account service providers from turning over the contents of electronic communications to anyone other than the owner without the owner's lawful consent. That means companies like Google and Facebook may lock up a client's content unless they have given express permission for others to access it. That might leave your heirs unable to

gain access to photos, email messages, or other information stored in the cloud.

You can avoid these obstacles relatively easily by addressing digital property and information in your estate plans. "By planning ahead, you can arrange for full access to your digital property, keep administration costs down, and ensure that no valuable or significant digital property is overlooked," says James Lamm, a nationally known expert and author of the Digital Passing blog. He recommends taking the following four steps:

**Make a list:** You can start by listing their digital assets so your loved ones know what they have and where they can find it. Include all important passwords, online accounts (including email, social media, PayPal, etc.), and digital property (including domain names and virtual currency). Store the list in a secure location and make sure family members know how to access it.

*Tip: Inexpensive password management apps such as LastPass and Dashlane can help simplify this effort.*

**Understand the terms & conditions:** There are instances where clients may have thought they purchased a digital asset, but in fact they purchased a nontransferable license to use the asset. That's the case when someone buys music on iTunes®, according to the terms agreed to when a purchase is made.

*Tip: Check the terms of agreement for vendors of music or other digital assets to see whether it sells the asset itself or simply a license to it.*

**Back up data stored in the cloud:** If you store any digital assets in the cloud, you may want to back them up to a local computer or storage device on a regular basis so that family members and fiduciaries can access them with

fewer obstacles. “A lot of companies make this extremely easy,” says Lamm. “Facebook, for example, has a One-Click Download option to download all your data to a computer.”

*Tip: Don't just rely on the cloud for backup. Also back up your data to a local computer or personal storage device.*

**Provide consent in legal documents:** Work with an estate planning attorney to update wills, powers of attorney, and any revocable living trusts. You should include language giving lawful consent for providers to divulge the contents of their electronic communications to the appropriate people. You also might consider exactly which information they want to make available, according to Lamm. “A blanket authorization may not be appropriate,” he says. “You might not be comfortable making all digital

assets accessible to your fiduciaries.”

*Tip: Allow fiduciaries named in an estate plan documents to bypass, reset, or recover passwords.*

Note that while you may be able to grant access via your Will, it still serves you and your heirs well to prepare ahead of time by sharing the appropriate amount of information and having the sometimes-difficult conversations around estate planning.

Since digital assets are still a relatively new phenomenon, the laws that deal with them are changing rapidly. You should consult with an attorney about the steps you can take now, and check in regularly to update your estate plan to accommodate any changes in the law or in your digital property.



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