The Weekly Scenario: The Importance of Digital Assets in an Estate Plan

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By Steven E. Shane

When creating an estate plan, it is important to consider how to deal with your digital assets.

Technology is constantly evolving, and so what constitutes a digital asset now may evolve into something completely different in a few years. What are some common examples of digital assets?

- Social media accounts
- Digital copyrights or trademarks
- Online bank accounts or investment accounts
- Digital photos, videos, or written works that produce income
- Email accounts
- Online photos
- Virtual currencies
- Credit card rewards
- Information or documents stored in the cloud

Because digital assets usually do not have a tangible financial value, people often ask why you need to account for digital assets when planning your estate. The answer to this question is that creating a plan for digital accounts, whether they are financially 'valuable' in their nature, will make it easier for your family to retrieve these assets after you pass away.

Estate planning for your digital assets eliminates the need for your loved ones to track down passwords and gives the beneficiaries of your estate the legal right to your passwords. Additionally, specifically for online financial accounts, estate planning for digital assets protects income that your digital assets can generate, such as royalty income or online records from a business.

From a legal perspective, digital property is similar to other kinds of property. However, as digital property laws are still evolving, gaining access to digital assets or digitally encoded financial information can present challenges to those other than the original owner. For example, take passwords. If a family member does not know a password, he or she may not be able to access phone or computer and the digital assets on these devices.

Aside from the password, data encryption is a complicating factor. Encryption can destroy data in a single file, device, or in the cloud, making it impossible for anyone without the proper passcode to unscramble it. Most digital assets exist on new technology, such as smartphones, that have advanced encryption. Thus, it is vital that you leave passwords behind or risk your family losing all of your information.

All this has to be navigated around data privacy laws, which make it so online account service providers are unable to give the contents of electronic communications to anyone without the lawful consent of the data's owner. The upshot is that this could leave your heirs unable to access photos, messages, online accounts, and other data.

In order to address these difficult problems, the first step in the planning process is to inventory your digital assets (e.g., keep track of your online accounts and passwords).

Next, you should determine how you want to manage your assets. You must decide what you want your estate or family to do with each of your digital assets when you pass away.

You will also want to choose who you want to manage your assets –the executor of your estate, a family member, or perhaps a professional advisor.

Finally, it is advisable to put any digital asset plan in writing.

As always, if you have any questions or would like to learn more, please contact Steve Shane at sshane@offitkurman.com or 301.575.0313.