

DIGITAL ASSET PLANNING

Digital assets are more prevalent than ever before, and the volume and types of digital assets will only expand as technology advances. Most people have more digital assets than they realize. Some digital assets have monetary or sentimental value, or may be associated with private information. When discussing a client's estate planning needs, attorneys and other advisors should address digital asset planning in order to help protect, manage, and plan for the client's digital assets and digital identities in the event of death or incapacity.

GENERAL TYPES OF DIGITAL ASSETS

- 1 ELECTRONIC DOCUMENTS:** Data, documents, or records, including electronic communications, like emails and text messages that are stored on a digital device, in the cloud, or in another software sharing platform.
- 2 SOCIAL MEDIA ACCOUNTS:** Personal and professional social media accounts, including LinkedIn, Facebook, Shutterfly, Instagram, etc.
- 3 FINANCIAL ASSETS:** Financial information stored on a digital device, or an account maintained or managed online or associated with a monetary value, such as PayPal, Amazon, and Venmo accounts. Cryptocurrency and digital tokens fall into this category, as well as other rights or interests in a blockchain or smart contract.
- 4 SMALL BUSINESS ASSETS:** Customer information, databases, documents, websites, domain names, trademarks, along with business information, internal emails, and calendars.
- 5 MISCELLANEOUS:** Online gaming accounts, digital collectibles, NFT's, loyalty programs, pictures, videos, music, and books stored on a digital device, in the cloud, or in another software sharing platform.

Proper planning ensures a person's digital assets will be protected, preserved, and transferred to the intended recipients, and can provide instruction for the deletion of some or all digital content. However, not all digital assets are capable of being transferred, as many are subject to Terms of Service Agreements that only give the user a lifetime license in the asset. Navigating this increasingly complex area requires a deep understanding of this type of asset class, as well as analyzing how digital assets can be legally and physically accessed and transferred through estate planning documents and other preplanning measures. In most cases, password sharing is not the answer and is actually a violation of several federal and state laws. Working with an advisor can help streamline the transfer and disposal of digital assets, reduce unnecessary delays, and help safeguard against identity theft and cybercrimes.

HOW WE CAN HELP

Our digital asset planning services include:

- ▶ Locating, inventorying, and evaluating digital assets
- ▶ Drafting provisions authorizing or limiting fiduciary access to digital assets in estate planning documents
- ▶ Establishing digital asset trusts or forming a business to hold digital assets
- ▶ Cryptocurrency planning
- ▶ Advising on the storage and maintenance of digital assets
- ▶ Incorporating digital asset provisions in governance documents for a small business
- ▶ Advising on the tax treatment and gifting strategies of digital assets
- ▶ Safeguarding the decedent's digital identity



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