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How to protect digital assets in your Will

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A recent survey commissioned by the Law Society found that of those asked, 93 percent of respondents who have a will have not included any digital assets in it. Meanwhile, just 26 percent of the 1,000 respondents knew what will happen to their digital assets after they die and only seven percent said they fully understand.

Put simply, a digital asset is content that is stored digitally. Whether that is photos stored online that may have particular sentimental value or assets that have financial value such as a PayPal account or even cryptocurrency like Bitcoin.

With more people working from home and a greater focus on paperless offices and on electronic forms of payment and storage, it is likely that people will have seen their digital presence increase during the global pandemic. Most clients will now have digital assets in some form.

Business owners may well have an extensive digital presence. For example, they might keep business documentation on cloud storage services or maintain an online customer database. It is therefore important that they consider what should happen to any digital assets and how they can be accessed to ensure that their business can continue to run after they die.

Although the personal representatives have the authority to administer the deceased's assets and take control of them, the terms of access to online accounts are generally governed by the terms and conditions of the service provider.

In many cases, they will not recognise the rights that personal representatives have. It can result in unnecessary delay in an administration if executors need to ascertain the extent of a person's digital assets and even more time if they need to contact service providers, which are often located in other jurisdictions, in order to gain access to various accounts. Some service providers may even delete accounts that are dormant or inactive, which could result in assets being lost.

A practical first step to avoid this issue is to ask a client to list their digital assets when discussing their Will. They should consider 'sentimental' assets such as photos and videos, financial and business assets or social media accounts. This list can then form the basis of further enquiries; namely, what should happen to these assets after the testator dies.

Assets with sentimental value might be included as part of a general gift of personal possessions in the Will. Other assets might have valuable IP rights that can be exploited and should be the subject of a separate gift. If there are extensive or complex IP issues then specific powers may be needed under the Will to deal with these assets. The client might also consider appointing separate professional executors to administer these assets.

In some cases, it may also be necessary to review the terms and conditions of the service provider to check whether there are specific terms as to how the assets will be administered after the user dies. For example, an online

music library is likely to be held on the terms of a licence which will terminate on the death of the user and so cannot be passed on.

A second practical step is to ensure that the login details and passwords to access digital assets are stored somewhere securely in hard copy where personal representatives can access these after the testator's death. Given how frequently passwords are changed, this list should be reviewed regularly but it should never be shared.

If the client has cryptocurrency, they should also note the details of the public and private keys held in any digital wallets, again ensuring these details are securely stored. Clients might also want to consider storing key documentation in hard form or backing it up on an external hard drive or USB.

Some providers will already have services in place to deal with the death of a user. For example Google offers the opportunity for an inactive account manager to be nominated during a person's lifetime.

Facebook also offers a legacy manager option which will allow an account to be memorialised. A client should therefore consider who they want to nominate during their lifetime and if necessary, whether they would like particular wording on any memorial page.

There are therefore a number of potential difficulties concerning digital assets, particularly if these come to light after a client dies. Private client practitioners should raise this with clients as part of their estate planning discussions and consider how best to deal with access to digital assets and how these should pass under the terms of their Will.

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