Digital Estate Planning

Introduction

How much of what you do requires a computer, mobile device, or internet connection? Is there an email account with important communications that are as significant to you as printed letters and documents? Do you have digital photos that you cherish as much as you value photographic prints and negatives? Have you considered how all these files and accounts will be settled as part of your estate?

The increasing amount of electronic information and online accounts have caused legislators, estate planners, and others to provide guidance for people as they consider their digital afterlife. The steps below can help in your efforts to include your digital footprint in your estate planning. Following them also may provide some peace of mind.

Step 1: Learn What You Have

A good starting point is to discover what digital assets you have. Similar to how you may approach documenting your tangible assets, this effort initially could be an inventory kept as a computer file or even on paper. Another aspect of this step could include talking with trusted family members or friends who may help you think of other digital resources that you value. Another K-State Research and Extension (KSRE) publication, *Our Valuable Records* (MF685), includes space to list assets, so it may be useful in this process.

Many people have found it helpful to track login credentials and more in a software program for managing passwords. If you choose to use one, an important consideration is if the contents can be encrypted. This step provides an added layer of protection to the information stored in the program. Since these tools are only as effective as the information in them, remember to update login credentials as you make changes (usernames, passwords, encryption passwords, etc.). Also, remember to install updates to the program in order to remedy any issues developers have corrected.

The inventory step can include a wide variety of technology equipment and account information, so what follows are examples to consider in creating your own list:

- Personal computer, laptop, tablet, smartphone, cell phone, etc. Depending on the level of detail you want, consider adding model numbers and the type of operating system they use (i.e., Windows, Mac, Android, iOS).
- External hard drives, DVDs, CDs, USB flash drives, and other media used to store digital files. It may be important to include where they are physically located.
- Locations for where you store digital files, such as a computer, an external drive, a cloud storage space, or a mix of them. Keep in mind various types of files, including documents, photos, videos, music, and more. Also, it may be helpful to distinguish between files you have in your storage locations and those that are part of streaming services (primarily for videos and music).
- Email accounts, which may include those available through Outlook, Gmail, Apple, and Yahoo.
- Social media accounts, such as Facebook, Twitter, Instagram, and LinkedIn.
- Blogs or domain names that you own or to which you contribute content.
- File sharing accounts, such as Dropbox, Box, OneDrive, Send Anywhere,

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SHAREit, and AirDroid. Think about what you use to share photos, videos, and files with family and friends.

- Online accounts for shopping, banking, credit cards, investments, insurance, travel, membership organizations, etc. This item is especially important for those that are paperless and any that have points associated with them. Also, it may be helpful to list bills and how they are paid.
- Applications on tablets or smartphones that require additional login credentials to use.
- Any two-factor authentication (2FA) details required by some accounts and applications.
- Cryptocurrency, such as bitcoin.

Step 2: Determine Significance of Your Digital Estate

After developing your inventory, review it and consider how significant these digital assets are for you and your family. Like tangible assets, the value you place on the digital resources could be sentimental, historical, legal, monetary, and more. In this assessment, you may determine some that could be discarded soon, others that you may need to retain for a few more years, and still more that you want or need to keep for the foreseeable future. Further, you may choose from preservation strategies that include maintaining multiple copies of digital files, creating print copies for long-term preservation, or using cloud backup services for some resources.

For those items that could be disposed of soon or in upcoming years, you could add a date to your inventory of when to get rid of them. This step can be nerve-wracking for some people, especially if they like to keep things just to be safe. One benefit of setting and following disposal dates is it reduces clutter. Another positive aspect, especially in the digital realm, is it can reduce costs and improve your ability to find stored information.

Identifying those files and items that are most valued for long-term preservation can help you see what is most important to you. In establishing the significance of this content, you may consider contacting an appraiser to determine if your digital assets have monetary value. See Other Resources below to learn more about appraisers in the United States.

Step 3: Set Goals

After determining how you value your digital resources, you can set goals regarding what to do with these devices, accounts, files, etc. This decision has at least three options:

1. Include them in your estate planning so your heirs can benefit from them.
2. Continue to keep them outside your estate documentation.
3. Consider offering items with historical value to your local archives, museum, or historical society. Many of these organizations are interested in documenting the lives of everyday people along with those who may be perceived as prominent. The documentation of your experience may enhance their ability to tell the stories of their communities. If this idea interests you, consider contacting your local cultural heritage institution soon and inquire about the possibility of donating your digital content to them.



Step 4: Get Professional Help

For those digital assets you wish to include in your estate planning, it is important to determine how to distribute them to others. Once you have settled on an approach, work with an attorney or financial planner to ensure you have the right information represented in your documentation. This effort matters because it provides legally binding guidance on how to settle all aspects of your estate. As you establish your estate plan, seek to have a single plan that includes tangible and digital assets. Also, consider including a durable power of attorney (DPOA) document. A DPOA allows you to authorize another person to make decisions on your behalf if you can no longer handle your own affairs. This step would be helpful for handling both tangible and digital assets. When you meet with an attorney or financial planner, it would help to bring or have access to the following items:

- Information from your inventory (see Step 1 above) that is relevant to your estate planning.
- Full names and contact information for all heirs of digital assets.
- Full names and contact information for the person you wish to designate in a DPOA document.

Further, you may want to ask them some questions to make sure plans will meet your needs. Some questions may include:

- Are you familiar with the Kansas Revised Uniform Fiduciary Access to Digital Assets Act (K.S.A. 58-4801 et seq.)? This statute outlines the parameters for account access and other digital asset guidance so users, executors, and companies understand their obligations and responsibilities (These laws exist in many states and often include the acronym of RUFADAA, in case you have relatives or friends in other states and would like to share information with them). Further, conforming with this regulation

provides the legal grounding necessary for executors to access digital accounts legally. There is an important distinction between the legal right to access assets versus having the login credentials to access the accounts.

- How do I ensure heirs receive all applicable rights to the designated digital assets? Be aware that rights to some resources — such as software, audio, video, and e-books — may be limited due to terms of use agreements or other restrictions.
- Do I have any digital assets — such as blogs, literary works, digital art, email, etc. — that warrant official copyright registration in order to transfer it more easily to heirs?
- What should I consider in determining who to designate as an executor or fiduciary with regard to my online and digital accounts? This assignment will help the individual access those accounts. It can be the same person who handles the rest of the estate, or it could be a separate person who has a greater understanding of technology.
- You may find other questions by reviewing additional KSRE publications, such as B*egin the Estate Planning Process: What Your Attorney Should Know* (MF3454) or *Decisions after a Death: Practical Suggestions Regarding Financial and Legal Matters* (MF3123).

As you consider the right person to fill the role of executor or fiduciary of digital assets, know that this designee will have access to the electronic content that you specify in the estate planning documentation. Alternatively, you can prohibit access to specified digital assets if that is your desire. It also is possible to designate which digital resources will go to certain heirs. For example, you may want one heir to receive your email correspondence and another to receive your digital images. Clearly articulating this type of information in your estate documentation will ease the work of settling your estate.

Step 5: Share the Plan

Once you have established how to handle your digital estate, share the information with the relevant people who need to know. This may include family (especially partners and children), friends, business associates, or others. Also, communicate consistently with executors, fiduciaries, and/or designees noted in a DPOA or will.

Step 6: Review and Modify

As with other estate planning activities, remember to review this facet of documentation on a cycle that ensures the information remains current. Work with your attorney or estate planner when you recognize updates need to happen.

Conclusion

In summary, the major steps in digital estate planning align with efforts taken during tangible estate planning, such as learning what you have, assessing their significance, setting goals, working with an estate planner, sharing the plan, and reviewing and modifying your estate documentation. Following through with these efforts will ensure all aspects of your estate planning are represented and handled in accordance with your wishes.

Glossary of terms

Blog: A website that may contain individuals' or organizations' reflections, comments, videos, and photographs, often shorter in form and posted with some regularity.

Cloud storage: The method of placing commonly used computer files on multiple servers that users access online.

Cryptocurrency: A digital-only form of money that uses decentralized systems to manage and handle transactions and depends on unique encoding to thwart counterfeiting and fraud.

Cultural heritage institution: An organization that seeks to preserve representations of the past and to promote historical understanding.

Digital assets: An electronic file that has associated legal rights. Similar terms include digital files and digital resources.

Domain name: A string of alphanumeric characters (i.e., Google.com) that connects a group of online resources with a corresponding internet address.

Encryption: The process of scrambling plain text into an unreadable form; it is a security measure to protect sensitive information until it can be unscrambled by an authorized viewer.

Fiduciary: A designated person or organization that has a duty to preserve good faith and trust and is bound legally and ethically to act in the best interest of the person or organization they represent.

File sharing application: A type of software that enables computer users to send and receive digital files via the internet or a local network.

Historical value: The usefulness of something for understanding the past.

Legal value: The significance of records in documenting and protecting the rights and interests of an individual or organization, providing for defense in litigation, or demonstrating compliance with laws and regulations.

Login credentials: A combination of information intended to allow an authorized user access to various types of electronic accounts, often in the form of one or more of the following: username, password, passcode, biometric element, two-factor authentication, etc.

Monetary value: The amount someone will pay for an item or collection.

Operating system: A computer program that manages its hardware, software, and common services; examples include Android, iOS, Linux, macOS, Microsoft Windows, and Unix.

Social media: A variety of internet-based applications or websites in which users share communications and create connections with other users; examples include blogs, Facebook, Instagram, Twitter, etc.

Sentimental value: The importance of an item or group of materials based on emotional significance rather than monetary worth.

Note: Definitions were influenced by the *Dictionary of Archives Terminology*, available at https://dictionary.archivists.org, and the *Merriam-Webster Dictionary*, available at https://www.merriam-webster.com/. Also, see *Begin the Estate Planning Process: Estate Planning Terms* (MF3468).

Other Resources

American Society of Appraisers; available at https://www.appraisers.org/.

Appraisers Association of America; available at https://www.appraisersassociation.org/.

Kansas Revised Uniform Fiduciary Access to Digital Assets Act (K.S.A. 58-4801 et seq.); available at http://www.ksrevisor.org/statutes/chapters/ch58/058_048_0001.html.

Begin the Estate Planning Process: Overview, MF3467; available at https://bookstore.ksre.ksu.edu/pubs/MF3467.pdf.

Begin the Estate Planning Process: Estate Planning Terms, MF3468; available at https://bookstore.ksre.ksu.edu/pubs/MF3468.pdf.

Begin the Estate Planning Process: Goals, MF3453; available at https://bookstore.ksre.ksu.edu/pubs/MF3453.pdf.

Begin the Estate Planning Process: What Your Attorney Should Know, MF3454; available at https://bookstore.ksre.ksu.edu/pubs/MF3454.pdf.

Beginning the Estate Planning Process: Checklist for After a Death, MF3699; available at https://bookstore.ksre.ksu.edu/download/beginning-the-estate-planning-process-checklist-for-after-a-death_MF3699

Decisions after a Death: Practical Suggestions Regarding Financial and Legal Matters, MF3123; available at https://bookstore.ksre.ksu.edu/pubs/MF3123.pdf.

Our Valuable Records, MF685; available at https://bookstore.ksre.ksu.edu/pubs/MF685.pdf.

Rutgers New Jersey Cooperative Extension, *Digital Assets Worksheet*; available at https://njaes.rutgers.edu/money/pdfs/Digital-Assets-Worksheet.pdf.

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