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GETTING YOUR AFFAIRS IN ORDER SESSION #2 – DEALING WITH DIGITAL ASSETS

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AGENDA:

- What are Digital Assets?
- Tips for Managing Your Digital Footprint
- Legal Considerations

DISCLAIMER: The information presented in this PowerPoint and Webinar does not constitute legal advice or the establishment of an attorney-client relationship. Instead, all information, content, and materials are for general informational purposes only.

DIGITAL ASSETS DEFINED – THE NEW ASSET CLASS

- Digital assets are content that is stored in any electronic format. For ex.:
 - Photos
 - Videos
 - Emails (arguably most valuable)
 - Word/Google documents – books/articles/blogs
 - Websites
 - Social Media
 - Cloud Storage Services
 - IP – copyrights, TMs
 - 23andMe/DNA tracing
 - Streaming services/Subscriptions
 - Music Accounts
 - Online video games
 - Reward/Loyalty Points/Miles
 - PayPal, Venmo, ebay
 - Cryptocurrency
 - NFTs
 - Transferrable Software Licenses
 - AND BEYOND....technology is changing rapidly
- Digital Assets are often stored *on* TANGIBLE assets – phone, computer, camera

DO DIGITAL ASSETS HAVE 'VALUE'?

- Financial Value (intangible personal property, not 'cash')
 - Cryptocurrency/NFTs
 - Venmo/PayPal
 - Software Licenses/Music
- Sentimental/Emotional Value
 - Blogs, social media, pictures, storage, email, video
- Legacy/Brand Value (also financial value within this)
 - Websites, publications, 'influencers' content/channels

TIPS FOR MANAGING YOUR DIGITAL FOOTPRINT

- Step 1 – Remove cookies, saved passwords, and other stored information from your computer.
- Step 2 – Over the next 30-60 days, every time you access an account – ask yourself, “What would happen if I (or my loved ones) were locked out of this?”
 - Is there a ‘value’ to the account?
 - Is there a ‘liability’? Is the account a paid subscription?
- Step 3 – Prepare a Digital Asset Inventory
- Step 4 – Accounts of ‘value’ – determine what happens at death or disability?

DIGITAL ASSET INVENTORY

- What to include in your Inventory?
 - Website Address/Username/Password (*no one else may use your password!*); consider password storage like 1Password
 - Note what you would like your fiduciary to do with this asset in the event of your disability or death (e.g., delete the account, notify the custodian, download the contents, gift to a loved one or charity, ensure payment is stopped)
 - Check the Terms of Service for your most valuable accounts...

- READ, AGREED, BOUND
- SUBJECT TO CHANGE

A close-up photograph of a vintage typewriter. The words "Terms of Service" are printed in a dark, serif font on a white sheet of paper that is being typed on. The typewriter is a dark green color with a prominent metal carriage and a black keyboard. The lighting is soft, highlighting the texture of the paper and the metallic components of the machine.

Terms of Service

Twitter



Twitter only allows you to request that a loved one's account be deactivated.

Google



Inactive Account Manager is a way for users to share parts of their account data or notify someone if they've been inactive for a certain period of time (determine what type of data is released and who is notified)



Must follow their process for closing account and funds will be liquidated by check payable to the Estate

Instagram



Instagram only allows you to request to memorialize an account and does not allow you to designate a digital heir (i.e., legacy contact); or you may request the account to be deleted.

Facebook



Facebook allows you to request to memorialize an account; or you may request the account to be deleted.

A Legacy Contact may be assigned and user can preselect whether account is deleted at death or memorialized.

Apple



You can add a Legacy Contact to your apple account; gives access at death to your stored data (photos, notes, messages, etc. – *excludes* purchased media: music, movies, books).

LEGAL CONSIDERATIONS

- **Revised UFADAA (RUFADAA)** - The act allows fiduciaries to manage digital property like computer files, web domains, and virtual currency, *but* restricts a fiduciary's access to electronic communications such as email, text messages, and social media accounts unless the original user consented in a will, trust, power of attorney, or other document. NO MENTION OF PASSWORD USE AS OKAY.
 - 48 of 50 states have passed RUFADAA in some form. (MA has not)
- **Power of Attorney, Will, Trust** – outline digital assets for distribution at death; ensure powers for digital assets are included in each document. (Newer powers, and often missing – so don't 'assume' your documents have the proper provisions); selecting a digital fiduciary