

Managing a Decedent's Digital Accounts by John Rizos

Including instructions to manage digital accounts in estate planning is a novel issue, but it does not have to be challenging.

What Social Media Platforms Offer

Most social media sites have already established certain safeguards addressing management of the decedent's content. For example, Facebook and Instagram allow for accounts to become memorialized. Upon a personal representative providing Facebook with an obituary or news article of the individual's passing, that account will transform into a place where family and friends can "virtually" gather by sharing memories and photographs. On Instagram, the word "Remembering" will be seen on the profile and the account will no longer be able to host new pictures, comments, or followers.

Remove the Account(s)

If an immediate family member is uncomfortable with having a Facebook or Instagram account memorialized, they can request that the account be removed. However, proof would need to be provided of the birth certificate and death certificate, along with documentation of that person being the representative for that deceased person. Regarding account removal, Twitter follows a similar policy and requires a privacy form. Not only will Twitter remove an account if requested, but family members and representatives can also request that specific images or videos of the deceased person be removed.

Access the Account(s)

While social media sites have updated their policies to include protection of deceased members' accounts, what happens when a family member or representative needs to access an email or an electronic financial account? Often, emails are used to pay bills, access accounts, or they might even contain precious family photos and sensitive information. It is crucial that a representative of the decedent is appointed to access such accounts.

Other Digital Accounts

So, how do you go about including protection for your social media and other digital accounts in your Will?

Fortunately, almost every State (44 in total) has addressed this issue by enacting legislation that allows for management of a decedent's digital assets, accounts, etc. There is slight variation among the states' legislation.

Delaware and Maryland Law/Power of Attorney

In 2014, Delaware was the first state to enact the UFADAA, the Uniform Fiduciary Access to Digital Assets Act. Delaware's House Bill 345 gave executors/heirs control over a decedent's digital devices or accounts.

The MFADAA, or Maryland Fiduciary Access to Digital Assets Act, took effect in 2016 and, amongst several other implementations, included changes to the Maryland Statutory Power of Attorney. The revisions allow citizens of Maryland to assign an agent to have authority over:

- 1) "The content of any of my electronic communications;
- 2) Any catalog of electronic communications sent or received by me; and
- 3) Any other digital asset in which I have a right or interest."

Provisions in a Will

Although each social media platform generally has its own policies or settings regarding a decedent's account, it's wise to add that extra assurance and protection a will offers, and best of all, it's relatively simple!

One can choose to include provisions in a will with detailed clauses explicitly outlining the duties and powers of the Personal Representative, or by simply designating an agent to manage their digital content and accounts. For example, a clause for a bank or financial account could give a representative the power *"to access, modify, delete, control, and transfer my digital financial accounts."*

Becoming Common Practice

Such provisions in estate planning have become rather common. It is typical for recently drafted wills to include clauses appointing and granting personal representatives the authorization and instructions to locate and obtain a decedent's book of accounts, in order to manage them accordingly. As a result, financial advisors and estate attorneys now often urge people to keep a secure list of social media accounts, financial accounts, and any other digital accounts, so that it is easier to access, delete, or manage them later.

With so much of our personal information linked to our digital accounts, including such protections in our estate planning is imperative. Although it may seem daunting, their inclusion is relatively simple and paramount in providing safeguards in your estate.