


Estate Planning for Digital Death: What Happens When You've Logged Off for the Final Time

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Overview


- (1) What is Digital Property?
 - (2) What makes the Digital Property issue complex?
 - (3) Estate Planning Strategies for Digital Property
 - (4) RUFADAA
 - (5) Administering the Digital Estate
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What is Digital Property?

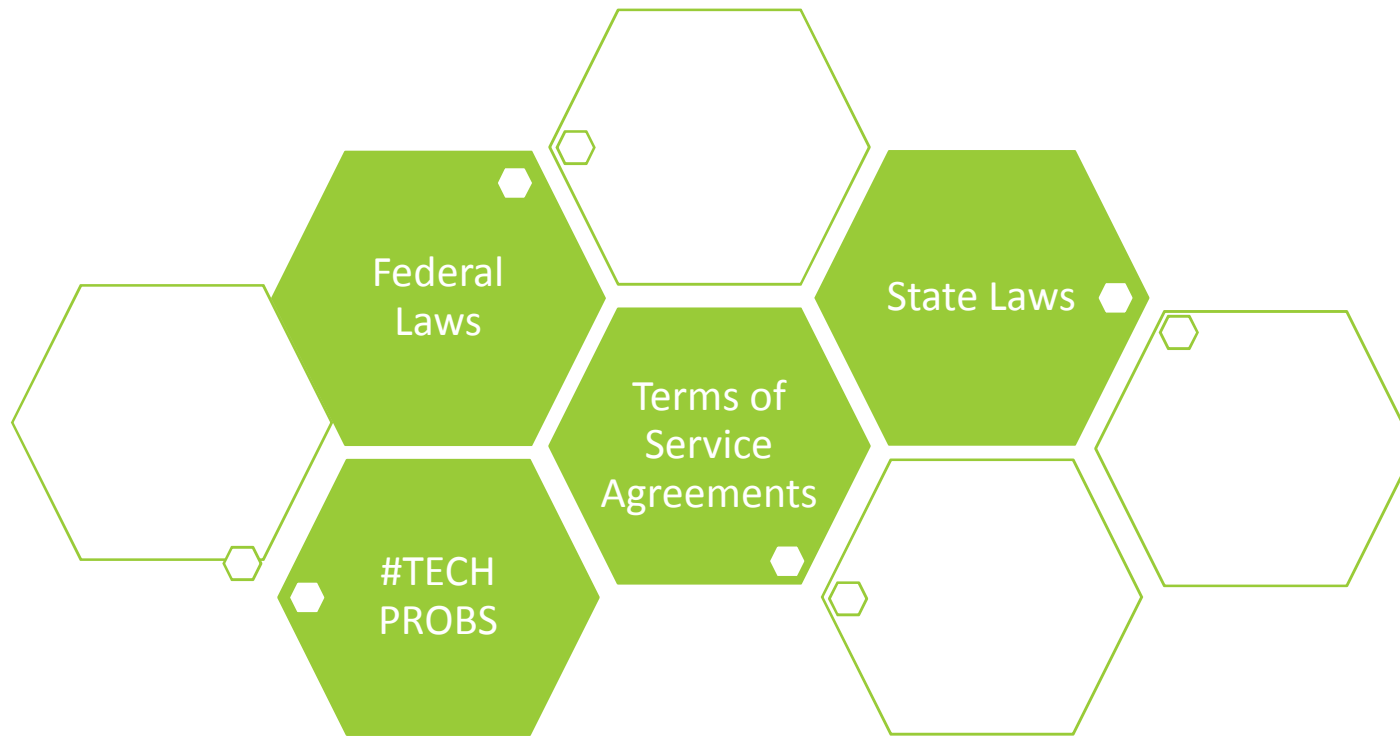
Electronic records in which people have rights or interests:



Why should planners care about Digital Property?

- (1) Clients care.
 - (2) The property has financial value.
 - (3) Securing the property protects against identity theft.
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What makes the Digital Property Issue Complex?



Federal Law

(1) Stored Communications Act (“SCA”)

- Protects against unauthorized disclosure of electronic communications


(2) Computer Fraud and Abuse Act (“CFAA”)

- Protects against unauthorized use of computers
- 

Terms of Service Agreements

- State contract law
- Typically address. . .
 - When users' rights are terminated
 - Whether users' rights can be transferred
- Problems
 - Terms ignored by users
 - Choice of law provisions

State Law

- 2002 – States begin to enact ad hoc statutes
 - 2012 – Uniform Fiduciary Access to Digital Assets Act (“UFADAA”)
 - 2015 – Revised Uniform Fiduciary Access to Digital Assets Act (“RUFADAA”)
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Planning Strategies for Digital Property

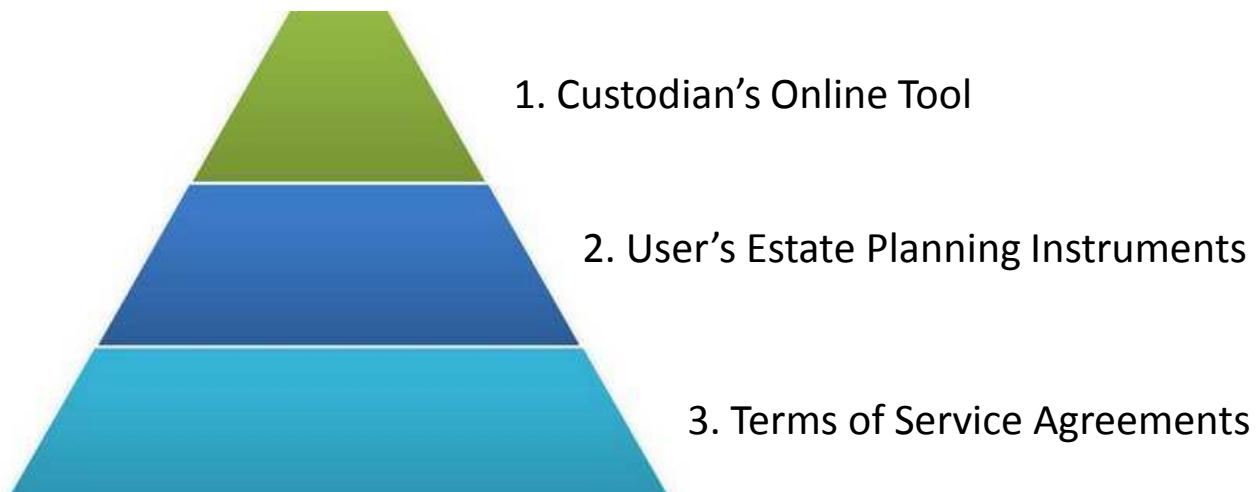
- Create Inventory
- Utilize Provider's Online Tools
- Consider Digital Legacy Services?
- Consent to Fiduciary Access in EP Docs
 - Digital Asset Authorization
- Provide for Distribution in EP Docs

Power of Attorney – Sample Language

“To access and obtain all digital or electronic data that may be stored on my desktop, laptop, tablet, or other computer, peripheral drive, storage device, mobile telephone or any similar device, including without limitation, all internet accounts (including e-mail accounts, iTunes, financial reports and archives of the same), on-line photographs and videos, on-line music, on-line documents, all licenses to on-line items and software, social network accounts, domain registrations, DNS service accounts, web hosting accounts, on-line stores, tax preparation service accounts, file sharing accounts, computer backup processes, and user passwords and other security access to any of the foregoing, and all similar digital items which currently exist or may exist as technology develops”

RUFADAA

Sets forth hierarchy for disposition of digital assets:

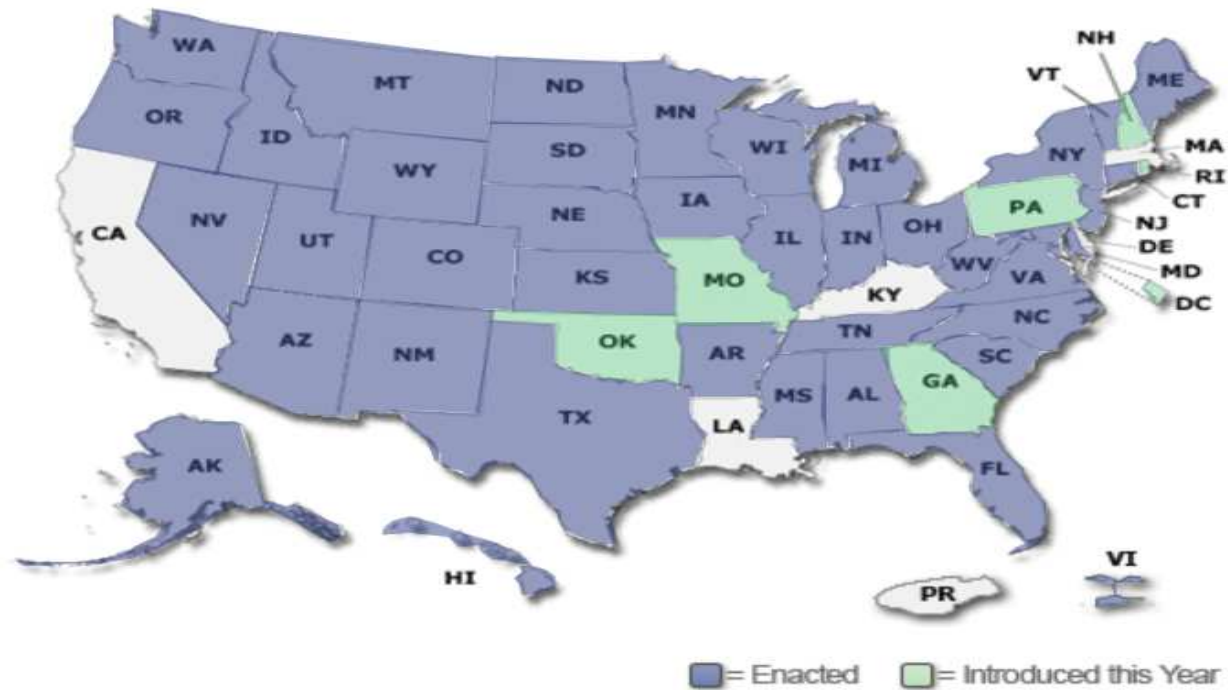


RUFADAA

Draws distinction between content of electronic records and content of electronic communications to balance:



RUFADAA Enactment Map



Administering the Digital Estate


- Locate/Inventory the Digital Property
 - Assign value
 - Safeguard the Digital Property
 - Consolidate Accounts/ Close Accounts
- 

EXHIBIT A
DIGITAL ESTATE INFORMATION

A. HARD COPY FILE LOCATIONS

Financial=

House Materials=

Personal records=

Historical record=

B. DEFAULT INFORMATION

User names=

Passwords=

Secret questions=

Mother's maiden name=

Grade school=

Street where grew up=

C. ELECTRONIC DEVICE ACCESS

<u>Device</u>	<u>Website</u>	<u>Username</u>	<u>PIN</u>	<u>Password</u>
Computer				
Windows				
Cell phone				
Tablet				
GPS				
DVR/TIVO				
Television				

D. INCOME TAXES

<u>Item</u>	<u>Website</u>	<u>User Name</u>	<u>PIN</u>	<u>Password</u>
Federal income tax payment				
State income tax payment				
Prior computerized tax returns				

E. BANKING

<u>Institution</u>	<u>Website</u>	<u>User Name</u>	<u>Password</u>	<u>Other information</u>
Checking				Icon=
Savings				Verbal password=

F. STOCK

<u>Institution</u>	<u>Website</u>	<u>User Name</u>	<u>Password</u>	<u>Other Information</u>

G. RETIREMENT

<u>Institution</u>	<u>Website</u>	<u>User Name</u>	<u>Password</u>	<u>Other Information</u>
				Account #= Security question answer= Balance as of _____: \$

H. INSURANCE

<u>Institution</u>	<u>Website</u>	<u>User Name</u>	<u>Password</u>	<u>Other Information</u>
Health				
Life				

I. CREDIT CARDS

<u>Institution</u>	<u>Website</u>	<u>User Name</u>	<u>Password</u>	<u>Other Information</u>
American Express				
Visa				
Master Card				

J. DEBTS

<u>Institution</u>	<u>Website</u>	<u>User Name</u>	<u>Password</u>	<u>Other Information</u>
Mortgage				
Cars				
Student Loan				

K. BUSINESSES

<u>Institution</u>	<u>Website</u>	<u>User Name</u>	<u>Password</u>	<u>Other Information</u>
Amazon.com				
e-Bay.com				
Airlines				
Netflix				

L. UTILITIES

<u>Institution</u>	<u>Website</u>	<u>User Name</u>	<u>Password</u>	<u>Other Information</u>
Electric				
Gas				
Internet				
Phone (landline)				
Phone (cell)				
TV				

Trash				
Water				

M. SOCIAL MEDIA

<u>Institution</u>	<u>Website</u>	<u>User Name</u>	<u>Password</u>	<u>Other Information</u>
Facebook				
LinkedIn				
YouTube				

EXHIBIT B

DIGITAL PROPERTY PROVISION FOR A WILL

Powers and authorizations regarding digital property. The personal representative may exercise all powers that an absolute owner would have and any other powers appropriate to achieve the proper investment, management, and distribution of: (1) any kind of computing device of mine; (2) any kind of data storage device or medium of mine; (3) any electronically stored information of mine; (4) any user account of mine; and (5) any domain name of mine. The personal representative may obtain copies of any electronically stored information of mine from any person or entity that possesses, custodies, or controls that information. I hereby authorize any person or entity that possesses, custodies, or controls any electronically stored information of mine or that provides to me an electronic communication service or remote computing service, whether public or private, to divulge to the personal representative: (1) any electronically stored information of mine; (2) the contents of any communication that is in electronic storage by that service or that is carried or maintained on that service; and (3) any record or other information pertaining to me with respect to that service. This authorization is to be construed to be my lawful consent under the Electronic Communications Privacy Act of 1986, as amended; the Computer Fraud and Abuse Act of 1986, as amended; and any other applicable federal or state data privacy law or criminal law. The personal representative may employ any consultants or agents to advise or assist the personal representative in decrypting any encrypted electronically stored information of mine or in bypassing, resetting, or recovering any password or other kind of authentication or authorization, and I hereby authorize the personal representative to take any of these actions to access: (1) any kind of computing device of mine; (2) any kind of data storage device or medium of mine; (3) any electronically stored information of mine; and (4) any user account of mine. The terms used in this paragraph are to be construed as broadly as possible, and the term “user account” includes without limitation an established relationship between a user and a computing device or between a user and a provider of Internet or other network access, electronic communication services, or remote computing services, whether public or private.

EXHIBIT C

DIGITAL ASSET AUTHORIZATION

**Authorization and Consent for Release
of Electronically Stored Information**

I hereby authorize any person or entity that possesses, custodies, or controls any electronically stored information of mine or that provides to me an electronic communication service or remote computing service, whether public or private, to divulge to my then-acting fiduciaries at any time: (1) any electronically stored information of mine; (2) the contents of any communication that is in electronic storage by that service or that is carried or maintained on that service; and (3) any record or other information pertaining to me with respect to that service. The terms used in this authorization are to be construed as broadly as possible, and the term “fiduciaries” includes an attorney-in-fact acting under a power of attorney document signed by me, a guardian or conservator appointed for me, a trustee of my revocable trust, and a personal representative (executor) of my estate.

This authorization is to be construed to be my lawful consent under the Electronic Communications Privacy Act of 1986, as amended; the Computer Fraud and Abuse Act of 1986, as amended; and any other applicable federal or state data privacy law or criminal law. This authorization is effective immediately. Unless this authorization is revoked by me in writing while I am competent, this authorization continues to be effective during any period that I am incapacitated and continues to be effective after my death.

Unless a person or entity has received actual notice that this authorization has been validly revoked by me, that person or entity receiving this authorization may act in reliance on the presumption that it is valid and unrevoked, and that person or entity is released and held harmless by me, my heirs, legal representatives, successors, and assigns from any loss suffered or liability incurred for acting according to this authorization. A person or entity may accept a copy or facsimile of this original authorization as though it were an original document.

Signed _____, 2018

[NAME]

STATE OF MISSOURI)
) ss.
COUNTY OF _____)

On _____, 2018, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared _____, to me known to be the person who executed the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

Notary Public

My appointment expires:
