



Why You Need a Digital Estate Plan and How To Create One

THE PASSAGE OF ESTATES HAS BEEN A SOCIAL CUSTOM SINCE PROPERTY RIGHTS HAVE EXISTED.

It's believed that the first written wills came to be used in ancient Rome, as early as the sixth century B.C. under Justinian law. Back then, estates were easy to administer given that they consisted mostly of tangible items like land, tools and maybe some livestock.

More than 25 centuries later, the basic concept of estate planning has remained the same. At its core, estate planning is a means to distribute estates in accordance with the owners' final wishes after they pass. However, the estates that we distribute look completely different than the ones that were distributed in Roman times.

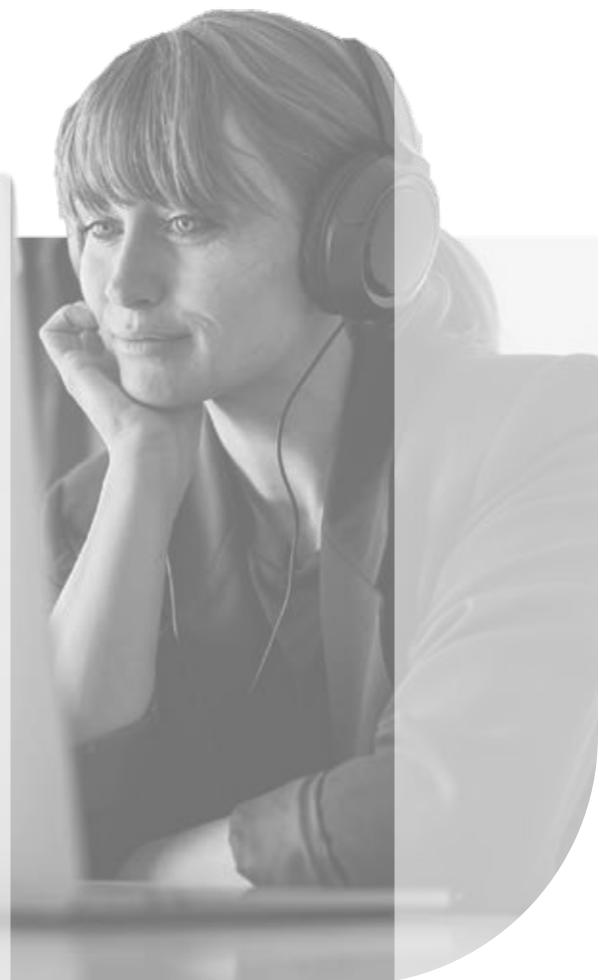
Digital estate planning is a relatively new phenomenon, having only begun to receive attention from legal and financial planning scholars in the past decade or so. And just as technology evolves with breakneck speed, the laws governing control and access to digital estates are also evolving — albeit at a somewhat slower, legislative pace.

For many, most assets with material value will be transferred via instructions left in their estate planning documents. However, if those documents were created 10 or even as little as five years ago, it's very likely the will or trust document won't address assets that are digital in nature, like a Facebook profile or the treasure trove of digital photographs stored in the cloud. While these assets may not have much material value, they can carry immense sentimental value.

According to [Statista](#), as of April 2022 there were more than 5 billion active Internet users worldwide, equivalent to 63% of the global population.

Thus, providing instruction to your fiduciary on how your digital assets should be handled is a vital piece of planning to ensure an orderly transition of assets and to safeguard against identity theft. While any comprehensive digital estate plan should include coordination with an attorney, Parsec Financial can help you understand what you need to consider when creating your digital estate plan.

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A QUICK LEGAL REVIEW ON LAWS GOVERNING THE PRESERVATION OF DIGITAL ASSETS

The Uniform Law Commission (ULC) has spearheaded the effort to standardize the laws governing fiduciaries' access to digital assets left in estates. The nonpartisan 501(c)(3) organization drafted the first Uniform Fiduciary Access to Digital Assets Act (UFADAA) in 2014. The initial version of the law operated under the premise that individuals would want to grant fiduciaries access to their digital assets upon death or incapacitation, and it therefore granted them wide leeway. This version of the law was adopted by Delaware in 2014, but it was swiftly met by opposition from several industry groups. Civil liberties groups cited their concern about protecting the data of deceased individuals. Technology and e-commerce lobbyists argued that the law placed an undue burden on their constituents and that the bill was at odds with the Stored Communications Act, which makes it an offense to "intentionally access without authorization a facility through which an electronic communication service is provided." In plain English, if you were to die and leave your friend your Facebook password with instructions to delete your profile, your friend would be committing a crime that is punishable by fine and/or imprisonment.

As a counter to the original UFADAA, NetChoice, a trade group for e-commerce businesses, proposed the Privacy Expectation Afterlife and Choices Act. This predictably stripped away a lot of the access granted to fiduciaries under the UFADAA and skewed toward the benefit of the companies that cited indemnity as an issue for granting access to accounts.

As a compromise, the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) was drafted. This bill provides a framework for all fiduciaries when addressing matters of digital assets in an estate. It approaches the issue from the view that an individual must expressly give a fiduciary access upon their death/incapacitation. Furthermore, it provides three tiers of how the deceased may provide that consent. They are, in rank order:

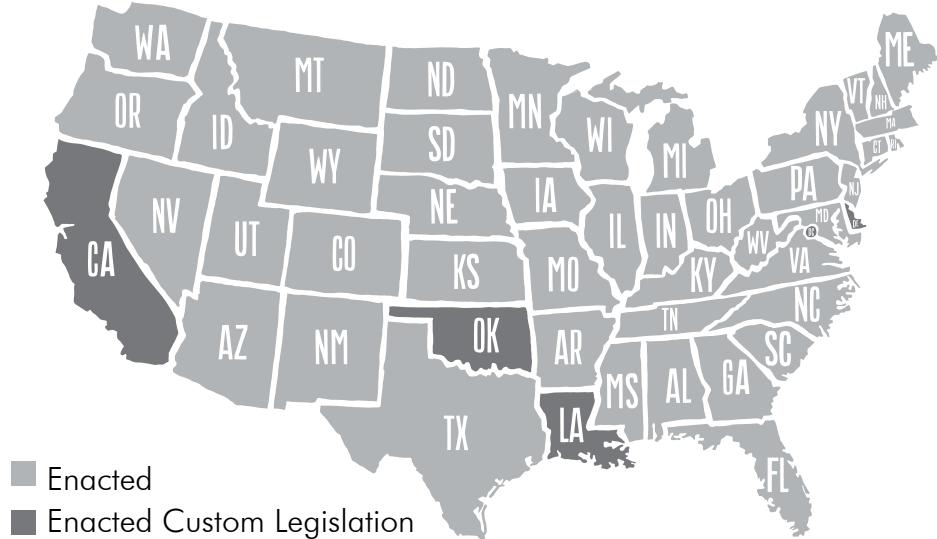
- 1. Online tools provided by the service provider**
- 2. Legal documents**
- 3. Terms of service agreements**

If none of these tiers apply to the specific asset, the RUFADAA default rules will apply. By early 2020, an overwhelming majority of states had adopted the RUFADAA. Among the remaining holdouts, Massachusetts has introduced the bill. Oklahoma, Louisiana, Delaware and California have all drafted and adopted their own legislation on this matter.



A CLOSER LOOK AT THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (RUFADAA)

Enactment Map



To whom does it apply?

- Fiduciaries acting under a will or power of attorney
- Personal representatives acting for a decedent
- Conservators of a protected person
- Trustees

What does it say?

- The user or account holder has the opportunity to provide direction for the disclosure of digital assets, meaning they can choose to have them disclosed or not disclosed.
- If the account holder uses an online tool provided by the custodian — provided it allows the user to modify or delete a direction at any time — directions contained within the online tool will take precedence over a conflicting direction by the user in a will, trust or power of attorney.
- The custodian has the right in their sole discretion to grant a fiduciary access to the user's account, grant partial access to the account or provide a record of any digital asset. The custodian may also assess a reasonable administrative charge. The custodian need not disclose assets that have been deleted.

RUFADAA Legislation Status

Jurisdiction	Year	Status
District of Columbia	2021	Enacted
Kentucky	2020	Enacted
Oklahoma	2020	Enacted
Massachusetts	2020	Enacted
Pennsylvania	2020	Enacted
Rhode Island	2019	Enacted
New Hampshire	2019	Enacted
US Virgin Islands	2018	Enacted
Missouri	2018	Enacted
Maine	2018	Enacted
West Virginia	2018	Enacted
Georgia	2018	Enacted
Nevada	2017	Enacted
New Jersey	2017	Enacted
Alaska	2017	Enacted
South Dakota	2017	Enacted
North Dakota	2017	Enacted
Utah	2017	Enacted
Alabama	2017	Enacted
Vermont	2017	Enacted
Virginia	2017	Enacted
Arkansas	2017	Enacted
Ohio	2017	Enacted
Mississippi	2017	Enacted
Montana	2017	Enacted
Texas	2017	Enacted
New Mexico	2017	Enacted
Kansas	2017	Enacted
Iowa	2017	Enacted
Wisconsin	2016	Enacted
New York	2016	Enacted
Illinois	2016	Enacted
Michigan	2016	Enacted
Connecticut	2016	Enacted
Minnesota	2016	Enacted
Nebraska	2016	Enacted
Idaho	2016	Enacted
Arizona	2016	Enacted
Oregon	2016	Enacted
Hawaii	2016	Enacted
Indiana	2016	Enacted
Tennessee	2016	Enacted
Florida	2016	Enacted
Washington	2016	Enacted
North Carolina	2016	Enacted
Colorado	2016	Enacted
South Carolina	2016	Enacted
Maryland	2016	Enacted
Wyoming	2016	Enacted

PROACTIVE DIGITAL ESTATE PLANNING STEPS TO TAKE NOW

1. Use a password management tool.

Leveraging a service like LastPass, Dashlane or Password Boss can not only provide a convenient means for inventorying all of your online accounts, but it can also help you create more secure passwords. While simply giving a fiduciary access to your online accounts via one of these services seems like a simple digital estate plan fix, it actually runs afoul of the Stored Communications Act. So while leveraging a password management tool can provide a thorough catalog of online accounts for your executor, they won't be able to (legally) access your accounts, and the service provider will not be obligated to take any instruction from your fiduciary, without additional supporting documentation like a will and death certificate.

2. Leverage account-specific tools.

When available, the best option is to use service providers' own account tools. These tools are unique to the individual service provider (Google, Facebook, PayPal, etc.) and provide the user with a variety of options, from naming a legacy contact who will be provided limited access to an account, to the outright deletion of your account and data if your account remains inactive for a certain period of time. In certain cases, you may have the option to allow a user to download the data in your account after you pass.

It's important to thoroughly review your options for each account you are using and understand the outcome of the selections you make. These selections will usurp any direction you leave in your estate planning documents, whether you made the election before or after the documents were drafted.

3. Address digital assets in your estate planning documents.

Not all of the accounts and digital assets you own will provide a legacy planning tool. When this is the case, the next place of instruction, per the RUFADAA, is the individual's estate planning documents, i.e., their will and last testament or trust documents. Here, a broad, catchall statement regarding the distribution of your digital assets — or the inclusion of them in your estate — is your best friend. While this won't allow you to specifically parcel out your music collection to your brother and family photos to your spouse, it will ensure that all of your assets are included and save your executor from potentially having to obtain a court order to secure your assets.

Another option is drafting a virtual asset instruction letter. A VAIL should list all of your online accounts and assets and provide instructions for how you would like the executor of your estate to handle each of them. Should the account be deleted? Should access be provided to another decedent? Given the multitude of online accounts an individual can accumulate today, this can be a very cumbersome task, and you also run the risk of excluding certain accounts or assets that were forgotten or added after the letter was drafted.



HOW TO GROUP YOUR DIGITAL ASSETS

Group your assets into the following three categories:

Assets of material value:

- Website domains
- Cryptocurrency files
- Digital storefronts
- Blogs
- Podcasts
- Music, movies, e-books you have purchased

Assets with sentimental value:

- Digital photos
- Social media accounts
- Cloud storage/digital lockers

Assets that pose a risk of identity theft or continuity:

- Email accounts
- Website gateways (to online banking, brokerage accounts, Venmo, PayPal, SSA.gov, Medicare.gov, etc.)
- Subscription accounts (Amazon Prime, Netflix, YouTube TV, etc.)

DIGITAL ESTATE PLANNING TOOLS VARY BY COMPANY

To show the range of options available, here are four examples of governing rules in place at Facebook, Google, Apple and PayPal. It is important to not only leave a general overview digital estate plan in your will but also to enact specific postmortem requests within each website.



Facebook: Memorialization Settings (account-specific tool, limited access)

Under Memorialization Settings, Facebook provides users with the option to request that their account be deleted or appoint a legacy contact after the user's death. If you elect to name a legacy contact, they will be granted limited access to your account to write a pinned post to your profile that could serve as a final message on your behalf, decide who can see and post tributes on your page, and delete tribute posts, among other things. They will not be able to log in to your account, read your messages, or add or remove any of your friends.



Google: Inactive Account Manager (account-specific tool, user-defined access)

Within Google's Inactive Account Manager, you can designate who should be notified when your account is inactive, what data you would like them to have access to, and the ability to decide if your inactive Google account should be deleted. Google determines if your account is inactive through a number of signals like your last sign-in and usage of Gmail or any other of Google's tools (Search, YouTube, Maps, etc.). Once Google has detected a lack of activity from your account for a specified period, it will begin notifying the parties you indicated as part of your inactive account plan.



iCloud: Terms of Service

Unlike Facebook and Google, Apple does not offer an account-specific tool to plan for a user's death or incapacitation, meaning that without explicit direction in an individual's estate planning documents, the terms of service will take precedence. They are very clear in their terms of service for iCloud that "unless otherwise required by law, You agree that your Account is non-transferable and that any rights to your Apple ID or Content within your Account terminate upon your death." This could pose a serious issue for those who use iCloud to store digital photos. However, the "unless otherwise required by law" phrase is a key piece. Apple was recently compelled by court order in New York County to provide access to the spouse of a deceased user so that he could obtain family photographs. Apple does have a history of being compliant with court orders, but the individual in this case passed away in 2017 and the court did not provide the ruling until January of 2019. The deceased did not address digital assets in their estate plan, which was why the court order was required.



PayPal: Terms of Service

With its potential trove of sensitive financial data, the PayPal account of a deceased individual presents a prime target for identity thieves. In cases like these, time is of the essence. It is imperative that your executor is set up to secure and even shut down the account in an expedient and efficient manner. Because PayPal does not have an account-specific tool for users to grant specific individuals access to their accounts after their passing, PayPal's terms of service become the governing document. In this case, PayPal requires a cover sheet from the executor identifying the account by the primary email address, in addition to other relevant documents (copy of the death certificate, government-issued ID of the requestor, etc.). This underscores the importance of maintaining an accurate catalog of all digital accounts as a part of your digital estate plan. Undocumented accounts are a liability to your estate and make great targets for identity thieves.

WE ARE HERE TO HELP

Every individual has a different list of priorities and wishes when it comes to estate planning. Parsec will work with you to understand your unique set of circumstances and provide personalized guidance to match your wishes. Contact us to learn more about our trust services.



About Parsec Financial:

Parsec Financial is a fee-only registered investment advisor (RIA) with \$4.2 billion in assets under management as of Dec. 31, 2021. Parsec provides investment management, financial planning, tax planning, trust services and business retirement services to more than 1,950 households and businesses in six offices across North Carolina.

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