

Digital Assets and Your Estate Plan

We're truly living in a digital world where, increasingly, routine tasks are conducted online and important information is stored digitally. Digital assets include, but are not limited to, online accounts (e.g., social media, email, eCommerce, banking and investment), loyalty programs, cloud storage, domain names, and website content. Until recently, the idea of leaving a digital inheritance was generally not a consideration for most people, but not anymore. In fact, it's become a necessity when preparing your estate plan.

The following are some considerations when addressing digital assets in your estate plan.

Access or ownership

When developing your estate plan, it's important to provide your executor (referred to as "liquidator" in Quebec) with access details for your digital assets, including email and file sharing sites. However, it's erroneous to assume that you own all such digital assets. The distinction between "access" to something and "ownership" of it makes estate planning regarding digital assets difficult, since the evolution of the law in this area has not yet caught up with digital realities. For example, if you purchase a song from iTunes®, or an e-book from Amazon®, you're not actually purchasing the song or the book, but merely obtaining a "non-transferrable" license to access the digital copy of that song or book as per the contract between you and the vendor. In these situations, you do not "own" anything and, therefore, cannot gift what you do not own. In some cases, where individuals have made gifting provisions of digital assets in their Will, the companies who own the digital assets will disregard the instructions provided in the Will because the deceased individual is not the true owner. Some social networking websites may allow parents and executors unlimited access to a deceased's account once certain requirements are met, while others may close the deceased's account completely, or may allow a memorial page with limited access to the contents of the account.

To assist your executor in identifying your digital assets, review each service provider's contract in order to determine

whether or not transfer of ownership of the digital asset is permitted at the time of death. Where the contract permits such transfer, confirm whether your Will would be sufficient authority to give effect to such a transfer. Where social media accounts are involved, it may be prudent to provide instructions in your Will, directing your executor to either continue, or close, those accounts.

Loyalty programs

Loyalty, or points, programs which carry a monetary value are another form of digital asset. If transfer of ownership is allowed, these points are typically considered "Personal Effects" for estate planning purposes, and can be addressed in your Will, with express directions to your executor regarding the transfer of the points to named beneficiaries.

Online and electronic documents

With the transition of important records from paper to electronic, income tax returns, account statements and receipts are now increasingly saved in a digital format. Consequently, it's imperative that your executor know where to locate these files and be provided with any login and password details needed to access the documents.

Digital photos and videos

The concept of an "heirloom" has also taken on a new meaning in our digital world. The precious family photo album or the shoe box full of snapshots taken over the years is now more likely to be stored on your smartphone, tablet, computer

hard drive or in the cloud than printed in hard copy. Your Will may instruct your executor to transfer the physical asset (e.g., computer, tablet, smartphone or digital camera), which stores the digital assets, to one named beneficiary and the digital assets themselves (i.e., photographs and videos) stored on the device to another beneficiary. In this situation, the onus is on the executor, after transferring the digital assets to the appropriate beneficiaries, to then delete the files from the physical device before delivering it to its intended recipient. Thus, it's important that your Will authorize your executor to deal with all types of digital and physical assets and provide access codes, passwords and deletion directions regarding what steps the executor must take in order to secure, distribute or delete these assets.

Keeping track of your digital property

Now more than ever, it's important to address digital assets in your estate plan. Although keeping a record of credentials (i.e., logins, user names and passwords) may seem daunting, it's necessary to take an inventory of your online presence. To help you capture important information about your digital assets for your executor, ask your BMO financial professional for a copy of the **BMO Wealth Management Estate Information Organizer**. Available in both a hard copy and electronic format, the Estate Information Organizer is a valuable resource for you, your family, and your executor or Power of Attorney for Property (referred to as "mandatory" in Quebec).



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