

what happens to your
SOCIAL MEDIA
and other digital life when you die?



Over the holidays, it's likely that you or a loved one received some type of computer or device that connects to internet websites, email, and applications. Or that pictures were taken and stored on such a device, or that posts were made on Facebook, Twitter, Snapchat, and more. Or that bills were paid electronically. What happens to these digital assets when you die? New York enacted a law in 2016, which may be helpful in dealing with your digital life after your death.

This law allows executors and other representatives to deal with someone's digital assets upon death. Prior to the new law, digital service providers (ex. Facebook, Google) frequently refused to grant access to a decedent's accounts, relying on federal privacy laws. Now, a user may direct by means of an "online tool" (assuming offered by the service provider) the disclosure of some or

all of the user's digital assets, including the content of electronic communications. The directive set forth in the online tool *overrides* any contrary communication in a will or other instrument. If there is no directive set forth in an online tool, then the user may direct disclosure by will or another instrument. The new law makes a distinction between the disclosure of "digital assets" versus the disclosure of the "content of electronic communications."

The provider generally must disclose a decedent's digital assets (that is, the existence of digital accounts) and his or her "inventory" of electronic communications (ex. calendar information connected to a decedent's email account, contacts) sent or received by the deceased user, unless the deceased user made a directive prohibiting disclosure or a court orders otherwise. On the other hand, with respect to the service provider's obligation to disclose the "content" of electronic communications, the determinative factor appears to be whether the deceased user gave an affirmative direction to disclose the content. The law first looks to whether the user used an online tool to direct disclosure of the content. Absent online direction, the law then looks to a deceased user's will or other written instrument directing disclosure of content. Note that a provider can still refuse to disclose content until it receives a court order determining that the electronic content disclosure will not violate any state or federal privacy laws.

Consider addressing the disclosure of your digital assets and the content of your electronic communications using a provider's online tool, in your will or revocable trust, and in your power of attorney. In your estate planning documents, you can provide your executor or another agent the power to access control and/or delete your digital accounts and the contents thereof. Make sure your chosen executor/agent has the skill and knowledge to deal with these assets, or permit her or him to hire a technology specialist.

As new technologies continue to emerge, the legal issues surrounding digital assets continue to grow.



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"I'm so glad we updated our wills. Farrell Fritz helped us understand all the recent changes and the best part is, we minimized our estate taxes. I feel so much more secure about our family's future."



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