



legally speaking

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WILLS, TRUSTS & ESTATES: PLAIN & SIMPLE

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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 web-sites, e-mail and applications. Or that pictures were taken and stored on such a device, or that posts were made on Facebook, Twitter, LinkedIn and more. Or that bills were paid electronically. What happens to these "digital assets" when you die? New York has recently enacted a new law, which may be helpful in dealing with your digital life after your death.

The new New York law allows executors to deal with someone's digital assets upon death. Under the New York law, however, one must still look to the provider's Terms of Service ("TOS") to determine the fate of an account when someone dies. The TOS for some providers address what happens to an account when someone dies and permit executors to access a decedent's accounts IF the decedent's Will specifically grants such access. The TOS for other providers do not provide such access to an executor, despite what the Will says. The TOS controls, regardless of access to digital assets granted under someone's Will.

Google recently updated its TOS with respect to a deceased user's account and permits the executor to (1) close the account, (2) submit a request for funds from a deceased user's account, or (3) obtain data from a deceased user's account. But each provider's TOS is different. Many are not as generous and prevent access to a deceased user's account, regardless of the powers given to an executor under the deceased user's Will. In view of the possibility of limited access to your accounts after your death, consider preparing an inventory of your digital accounts, including the login ID and password for each site. This inventory should be kept in a secure place, such as a safe deposit box, with your lawyer, or on a USB flash drive.

In view of the new law, consider addressing the disposition of your digital assets in your Will. You may want one person to inherit the hardware (ex., Kindle, iPad) and another to inherit the content of the accounts. In your Will, you can provide your executor the power to access control and/or delete your digital accounts. Make sure your chosen executor has the skill and knowledge to deal with these assets, or permit her or him to hire a technology specialist. Some providers may recognize these Will provisions, and future laws may require them to honor such provisions.

As new technologies continue to emerge, the legal issues surrounding digital assets continue to grow. It's something to pay close attention to, and to deal with as best you can in this uncertain legal environment for digital assets.

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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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