



Bergen County Surrogate's Court
Two Bergen County Plaza, Fifth Floor - Suite 5000
Hackensack, NJ 07601 ~ (201) 336-6700
Monday through Friday, 8:30am to 4:30pm

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DIGITAL ASSETS

When you consider managing your digital assets, it is important to remember that the digital world may be an abstract world, but it is not so different from our own when it comes to probate. The “asset-like” online accounts, such as photo sharing sites, online books and music, cloud storage systems and email archives though intangible are, potentially, just as valuable and significant as the antiques or bank accounts we worry over. “Some digital libraries such as Flickr, Instagram and cloud storage services like Dropbox contain files created by the user over which the user retains ownership.” In addition, there are online role-playing games that allow players to buy and sell items within the game, often for actual cash, accumulating extremely valuable inventories.

Further, now that we are using electronic devices to manage our bills and our financial affairs, it is vital that we share our passwords or the location of our access codes with at least one trustworthy person in the event that something unforeseen happens to us. We use our devices to hold electronic tickets bearing admission to concerts, airport terminals or the movies; to buy and sell such commodities as stocks, mp3’s and antiques; to forge worlds in cyberspace by spending actual money (and lots of it) to acquire the building blocks from virtual real estate to virtual clothing and every other type of virtual commodity imaginable.

The Surrogate’s Court has had clients who have come into our office and whose loved ones did all of their banking online through their phones. If a decedent’s financial information is solely accessible via a locked phone and NO ONE else knows the password, it is possible that NO ONE will be able to access that person’s accounts and information. Phone manufacturers have refused to unlock their products to access encrypted data even under pressure from orders issued by federal judges in high profile cases involving deadly terror attacks. If you do not provide a mechanism within your Last Will & Testament for a fiduciary to access certain digital assets such your voicemail, home security system(s), smartphone(s), computer(s), financial accounts and social media sites, that person may encounter some difficulty carrying out your instructions.

This section does not propose a solution to the debate on civil liberties that has resulted from what many have called an invasion of privacy when the government would like to pry into one's encrypted data. Rather, the purpose of this section is to present the needs of the individual looking to transfer one's digital assets upon death to a designated beneficiary.

So, how to manage these digital assets?

On September 13, 2017, the State of New Jersey signed into law **the Uniform Fiduciary Access to Digital Assets Act**, which "authorizes executor, agent, guardian, or trustee, under certain circumstances, to manage electronic records of decedent, principal, incapacitated person, or trust creator." It is important to note that this Act outlines significant definitions and features that are critical to the management of the testator's digital assets, and that it helps to articulate the rights of those involved in the transfer of property. Setting important definitions such as "User," "Digital Asset," "Custodian" and "Terms of Service Agreement" serves ever advancing legal precedents and even more accelerated advancing technologies. It is also important to note that this Act deconstructs the process by which a designated fiduciary is permitted to take possession of full or partial control of the digital assets if the proper provisions are made within a Last Will & Testament. For more information on this Act, Sponsored by Louis D. Greenwald and Patricia Egan Jones, you may visit the New Jersey State Assembly's web site and look it up as Bill # A344 under the 2016-2017 cycle: <http://www.njleg.state.nj.us/default.asp>.

Remember, there are no "cookie-cutter" answers to estate planning. **You must communicate with someone you trust.** Sitting down with an attorney and drawing up a plan to protect your money and property is so important, especially if you have children. That may be right for you may not be right for your sibling, coworker or neighbor. It is vital that you sit down with a live professional who is going to give you feedback. Make a list of all the online accounts you access, your usernames, passwords, or contact personnel with online corporations in order to facilitate transfer of your accounts and digital assets. And, when you do sit down with that live professional, bring that list with you to ensure that you work out a plan for how to manage them as well. Lastly, make sure you **maintain and update your list** in case you change your passwords or you acquire new digital assets!