

BOLSTER YOUR DIGITAL ARMOURY

Shelley Rhoads Perry and Sharon Hartung explore the new (and old) digital asset estate administration tools

A lot of information has been shared about various legal issues surrounding digital assets, along with recommended provisions to add to estate-planning documents. We are also finally seeing more case law deciding access issues.⁴ However there is less practical, technology-centred advice available to assist in the estate administration side.

The international legal community is taking note, and urging practitioners to become more educated on the subject. In the US, state Bar Associations are now requiring their attorney members to take technology-focused continuing legal education and to be able to demonstrate a basic competency in technology as it relates to their practice and clients' personal data.⁵ The time has come for practitioners to become more knowledgeable about not only the planning, but also the administration, of digital assets.

- email: this can provide access to all other digital assets;
- online banking and investment accounts: the value in itemising these accounts isn't about logging in to access per se, rather it is knowing which 'bricks-and-mortar' institutions to contact during administration;
- possible creditors' accounts used for managing one's life and household (e.g. utilities, bill payment, newspaper subscriptions, streaming services);
- digital-device or online storage of items of sentimental value (e.g. photos, social media); and
- other assets with possible online financial value (e.g. web domains, loyalty points, gaming tokens, crypto assets).

The bottom line is that if you can unlock the client's digital devices and access their email account, the odds of finding hidden or unknown digital assets increases exponentially. Knowing how the client managed their daily life and affairs is the key to discovering and inventorying digital assets

➔ KEY POINTS

WHAT IS THE ISSUE?

The QuadrigaCX debacle illustrates the dangers inherent in the world of digital assets.¹ Yet practitioners often don't think that disasters like this will happen to one of their clients.

WHAT DOES IT MEAN FOR ME?

Practitioners should be aware of the importance of efficient digital assets administration, because the risk of losing digital assets is high; it may not be just one digital asset that is lost, but hundreds of unknown assets locked away in a smartphone or email account.

WHAT CAN I TAKE AWAY?

This article will discuss digital asset estate administration issues, and highlight the emerging digital asset administration tools that might make it easier for the practitioner when a client's loved one passes or becomes incapacitated.^{2,3}

DIGITAL DEVICES

The passcodes to digital devices are the keys to the decedent's or incapacitated person's kingdom, and when we discuss digital assets with clients we must emphasise that if they do nothing else, they must make this information available and easy for fiduciaries to find. The challenge is, and will always be, how to do so securely and legally. Below is what we consider to be the access priority when looking at individual digital assets:

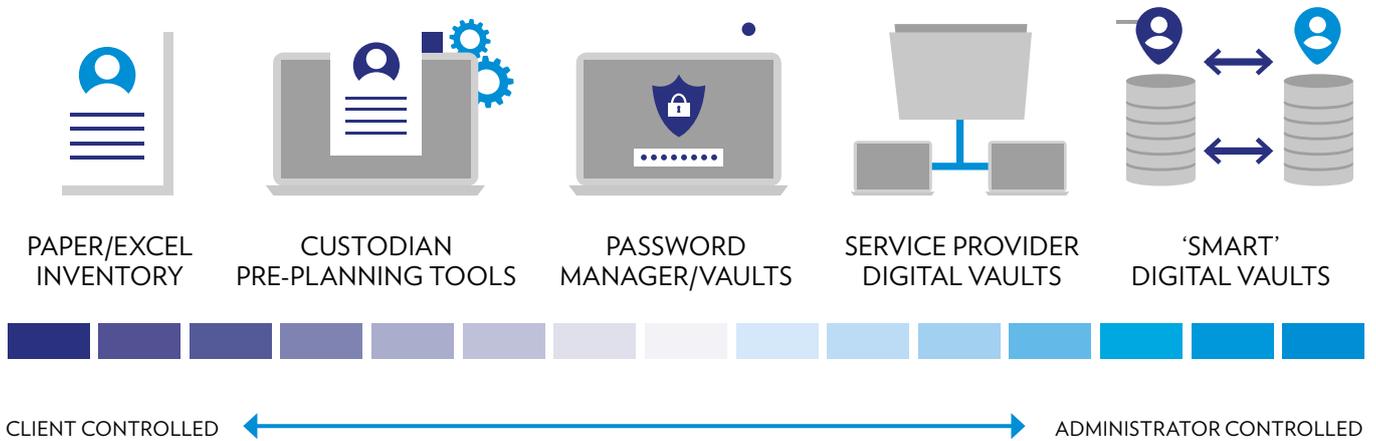
EVOLUTION OF DAATs

There are elements of estate administration of digital assets that leverage many of the traditional approaches. Practitioners have already begun to deal with digital assets by preparing financial statements for the client; but what about the other hundreds of accounts that a client may have either set up for shopping or gaming or subscribed to for information? The client's expanding digital footprint can be unmanageable for fiduciaries when the time comes to settle a client's estate.

A question that is often asked by our STEP colleagues is: what can we do beyond alerting the client to incorporate appropriate language in estate-planning documents and make an inventory? The answer is to make use of the many digital asset administration tools (DAATs) available, both old and new, that can help the practitioner deal with digital assets during estate administration.



EVOLUTION OF DIGITAL ASSET ADMINISTRATION TOOLS



CUSTODIAN PRE-PLANNING TOOLS

The number of usernames and passwords in use by the average citizen has increased rapidly in recent times,⁶ and in our experience, the most common means for clients to track the growing list has been on a piece of paper or Excel spreadsheet. However, a better option, especially for email access, is custodian-provided online tools, such as Google’s Inactive Account Manager.⁷ Google allows a user to designate a trusted contact who will be authorised to download emails and other information if a certain event occurs, e.g. if the user hasn’t accessed the email account for six months. Facebook allows for appointment of a ‘legacy contact’, but, at present, has no tool in place for incapacity cases. In US states that have enacted the *Revised Uniform Fiduciary Access to Digital Assets Act* (RUFADAA),⁸ pre-planning with these types of online tool is the best way to guarantee access to client Google and Facebook accounts.

PASSWORD MANAGERS/VAULTS

For quite some time, there has been a perception that there was a lack of secure options to manage the password boom, but that too may be changing. Password managers (also known as password vaults) have been around for at least ten years, though many practitioners have been slow to adopt one of the ever-growing platforms for fear of exposure to hacking.⁹

Password managers can store the usernames and passwords of all of one’s online accounts. It is also possible to store information needed for security questions. A master password controls the password manager itself, and this, theoretically, would be all that’s needed for access during estate administration. Of course, there are risks in any online platform, and password managers have had security issues.

SERVICE PROVIDER DIGITAL VAULTS

As noted, practitioners have been reluctant to keep clients’ personal data online with the estate-planning documents, but options for what we are calling ‘service provider digital vaults’ are much more widespread than before. Such vaults are essentially platforms provided by financial or other advisors, either through their firm or a third-party provider, that offer business-level encrypted storage for sensitive data and have many more safeguards in place to meet professional and legal requirements.

‘SMART’ DIGITAL VAULTS

New DAATs for practitioners have emerged in the last few years offering ‘smart’ digital vaults (SDVs). These collect and store client accounts and usernames, but do not store passwords. Vendors claim to not only safeguard access to digital assets, but also to ‘activate’ that information to actually close and/or transfer some (but not all) online accounts during estate administration.

The practitioner could either work in conjunction with the SDV company or outsource the digital estate administration process to them, much as you would do with an estate appraiser or real estate agent.

The challenge for both the vendor and the fiduciary is staying in compliance with jurisdictional laws, while acting on the stored information. In theory, the use of these SDVs could reduce the time and effort needed to find and close a decedent’s online accounts, and

significantly reduce the exposure to identity theft and lost assets.

CONCLUSION

The emerging area of DAATs is a welcome addition to assist with the growing volume of online accounts. Practitioners are encouraged to enter into conversations with clients about digital assets in light of new tools that have been developed specifically for the estate administration of such assets.

DIGITAL ASSETS SIG SPOTLIGHT EVENT

The STEP Digital Assets Special Interest Group Spotlight Session will be held at the Hilton London Bankside Hotel in London, UK, on 22 November 2019, and will take a deeper dive into this topic and discuss specific options. For more, visit step.org/events/save-date-digital-assets-sig-spotlight-22-november-2019.

¹ See Sharon Hartung, ‘The Digital Tsunami’, *STEP Journal* (Vol27 Iss4), p.41 ² ‘Estate administration’ in this article refers to the responsibilities of both an executor of a decedent’s estate and an attorney-in-fact of an incapacitated person’s estate; also note that we are purposely not addressing issues of privacy and jurisdictional law, as these will always be an important consideration, regardless of a fiduciary’s administrative approach. ³ The authors would like to thank Peter J M Lown QC for his help in producing this article. ⁴ See p.45 ⁵ bit.ly/2kaRXD3 ⁶ bit.ly/2SaeXn7 ⁷ Microsoft does not offer a similar tool for Outlook or Hotmail at this time. ⁸ A list of states that have introduced/enacted RUFADAA can be found at bit.ly/2wxNGOt ⁹ bit.ly/2HICdBW



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