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## Digital Assets

# Digital asset deep dive: Client management

By Sharon Hartung



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(December 3, 2019, 8:32 AM EST) -- When a client comes to you for estate planning advice with a comprehensive and detailed list of assets, the follow-on steps result in developing a plan; taking client instructions; providing advice; and executing on the actions directed by the client.

Now, what if that comprehensive list of assets the client created included a spreadsheet of every single item in their home, literally several hundred or thousands of household and personal items? You'd probably start by encouraging the client to sort these items in some meaningful way for the estate planning process. Every client situation is different based on their circumstances, but as a starting point you might suggest that the client group items based on one or several criteria; highlight the significant item(s) of financial or sentimental value; or ask the client if they want the entire lot dealt with in the same way.

The client management approach is similar if not the same for digital assets.

Although a password manager offers a convenient starting point, it won't tell you all the things you need to know to properly advise the client. In all likelihood, other than the purely virtual assets like unregulated cryptocurrencies, social media accounts, or data in cloud repositories, you'll likely find the majority of a client's digital asset list is their online access to some underlying asset or contractual relationship. Examples include online access to financial institutions and online access to household expenses, bills and other liabilities. But you'll also want to understand the significant items, and the more complex, intertwined assets such as digital photos, music scores and lyrics, or manuscripts where copyrights are involved.

## Digital asset planning guidance

In addition to reviewing your organization's estate planning processes for digital asset guidance, consider the following:

1. Encourage clients to create a digital assets inventory as part of their estate inventory. Similar to key physical assets, you'll want the client to highlight the significant items of financial and sentimental value.
2. Include a jurisdictional specific digital assets clause in their will.
3. Encourage the client to keep the digital assets inventory up to date and to not include passwords. Their updates should include any technical management handling instructions and appropriate access considerations in light of legal and other constraints. As other pre-planning options become available, any pre-planning selections will need to be examined for conflict in relation to powers given to the fiduciary or instructions provided in other legal documents.
4. Encourage the client to keep a separate estate binder. Minimally it should include a listing of all assets, physical and digital. With everyone moving to online statements and accounts to manage their underlying assets, at minimum it will be important for the fiduciary to know

what holdings the client has and at what institution.

5. Encourage the client to talk with their fiduciary (executor, estate trustee). With no paper trail and the amount and complexity of assets that the average person owns, it will not be obvious where one should start. How to handle digital assets is a new conversation required between the client and their fiduciary.

### **Rely on the basics**

It is perfectly reasonable to rely on your estate planning basics when asking questions about digital assets.

Questions such as: What are the most important digital assets you own? Have you left enough information for the executor to contact companies directly to close down your subscription services? Have you reviewed the Terms of Services? Have you used pre-planning tools, if provided? Have you created detailed instructions for the fiduciary, and have you tested those instructions?

As this area evolves and the law progresses, and as technology providers begin to respond to pressure, we may see more mainstream solutions to address estate planning and estate administration of digital assets. Even so, your core competency remains the same: ferreting out the important; doing the research and providing advice for specific assets in estate planning, but now, add a digital twist.

This is part two of a two-part series. Read part one: Digital assets deep dive: Tech solutions.

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