

Wealth Reflections

Insights on building, preserving and passing wealth
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What happens to your Digital Legacy on incapacity or death?

By Gwen K. Harvey, B. Comm., CFP, CLU, TEP

For years I have been the photographer in the family, trailing my husband and three children, snapping pictures of them and multiple curiosities during our travels. I have managed to build up quite the photo library. While the first decade shot in film produced boxes of physical photos and family photo albums, the last twenty years have built up an enormous digital library that rests on my MAC at home and is backed up to an external drive and the mystical cloud. Occasionally one of our grown up kids will ask to look back through the files, and for a moment I can see myself as a young adult flipping through my parent's photo albums, remembering my youth, my siblings growing up, the family dog, and the travel we shared.

Since many of us grew up as the digital age was formed, we didn't naturally develop an awareness that we were developing a digital estate. It is only as we now lose a parent and watch the confusion of how to save and transfer points to a surviving parent, or how to access and save important personal and financial data, that the penny drops, and we can see a large mass of floating assets that need some consideration. While I think of my digital estate as masses of photo files, upon reflection there are also libraries for music, movies, books and journaling that have grown substantially over the years. Points are building with airlines, hotel chains and merchants, and portals for social interaction and financial holdings are swelling.

Today Canada does not have specific laws providing executors with the authority to access, manage, duplicate, delete or distribute digital assets of a deceased person. How these assets are dealt with often depend on each service provider's terms and conditions and whether or not the family knows the deceased persons' usernames and passwords. Even if a Will indicates that all digital assets, devices and accounts are to be bequeathed to a specific person, some requests may be unenforceable if a particular service provider prohibits transfer (e.g. iTunes forbids transfer of music from one person to another), or restricts transfer (e.g. Air Miles can only move to a family member).

How then to protect your Digital Legacy on incapacity or death? When assessing the risks present with digital items,

the risks seem to fall into three broad categories: financial, privacy and personal. The solution to mitigating these risks appears to be the creation and sharing of a clear, informative path for family and Executors to follow. Like most areas of planning, thinking ahead and following through with some specific steps will help.

1. List all of your digital assets, digital devices and digital accounts.
2. Indicate on this list what items you would like to gift, what items you would like to delete and what items likely need to be accessed and reviewed by your Executor (e.g. financial).
3. Print off this list and keep a hardcopy with your Will. Review it periodically & let your Executor(s) and family know this list exists.
4. List usernames and passwords that will be needed by your family or Executor. Find a safe place to keep a hardcopy of these details and let a trusted family/friend know where to find this list. (Be sure to periodically update this list as you change codes).
5. Discuss with your lawyer how to provide proper authority ahead of time so that family, your Power of Attorney or Executor can use these usernames and passwords. Some service providers deem it a criminal offence for anyone but the original owner to access the account with these usernames and passwords.
6. Discuss with your lawyer how best to include Digital assets within your Will or within a letter of direction.

It only makes sense that the time has come for digital assets to garner the same careful thought and consideration within our estate plan as our other assets. Eventually this will become standard practice, however today some individual pro-activity may be required.

If you have any questions about this, please give us a call.

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