

NEW HAMPSHIRE DIGITAL ASSETS - THE PANDORA'S BOX IN ESTATE PLANNING

"Digital assets are quickly becoming an important and substantial part of estate planning because they're a substantial part of our everyday lives."



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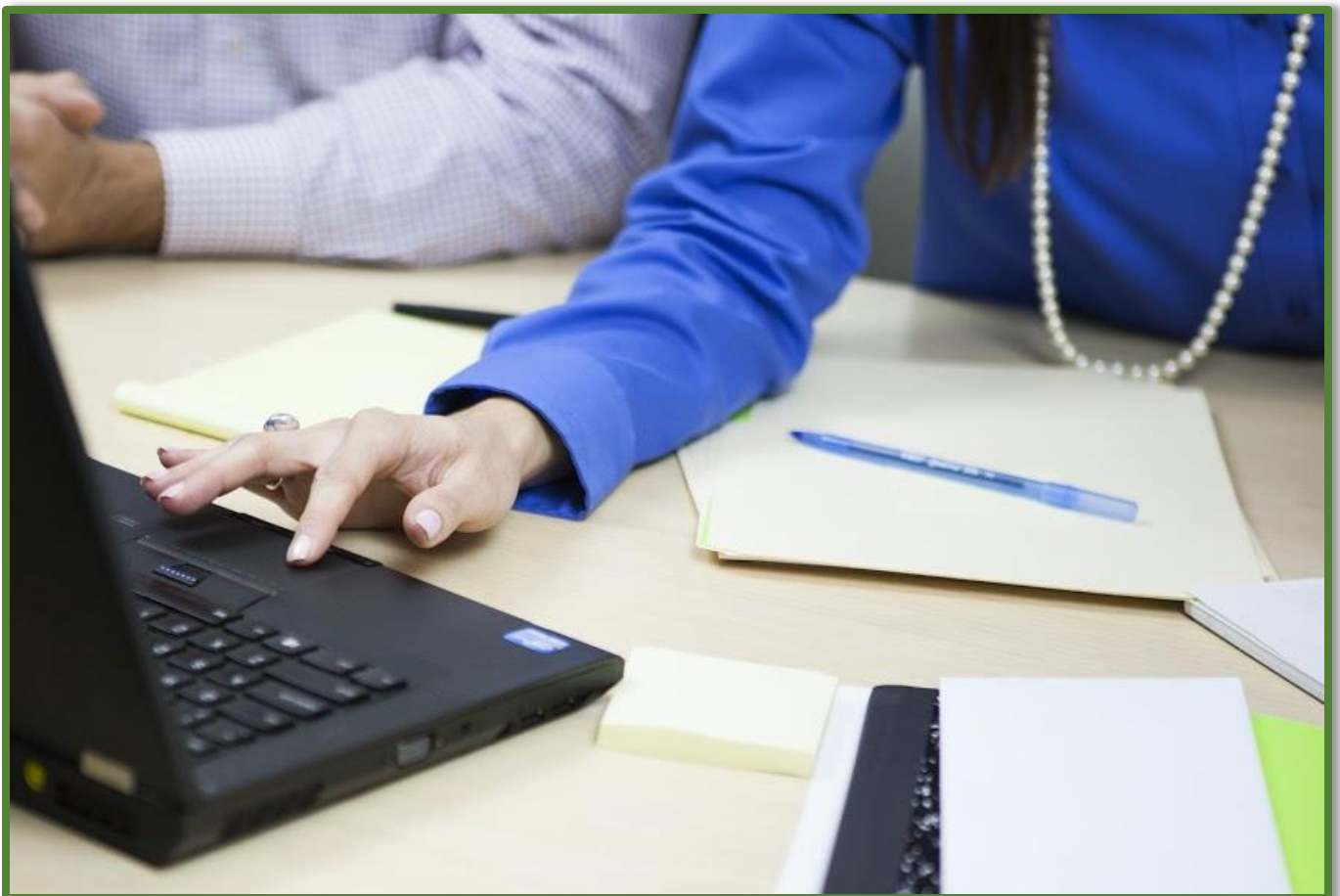


Do you have any idea how many online accounts you have? If you've never sat down and considered just how much of our lives unfold online, odds are, you're in for a huge surprise – and if you're like most, a rather shocking one. Digital assets are quickly becoming an important and substantial part of estate planning because they're a substantial part of our everyday lives.

CONSIDER THESE ACCOUNTS:

- Email accounts
- Facebook
- Twitter
- Instagram
- LinkedIn

- Amazon
- iTunes
- Bank
- Insurance
- Utilities – Cable, Electricity, etc.
- Taxes
- Satellite TV
- Gift card balances



These are just a few of the many ways we're taking care of business online. We've spent a fair amount of time with clients who are always surprised at just how many online accounts they have. See if this scenario rings familiar:

Each morning, I get up and make my way to the coffee pot and then check my phone. I delete all of the emails that serve no purpose and from there, I open the computer to see what kind of news broke while I was sleeping. I get an alert telling me that the electricity bill is due, I go online and check my bank balance to see if there were any payments made from outstanding invoices the day before. I go ahead and pay the satellite and my Visa accounts along with the electricity bill. A few hours later, I realize my sister's birthday is in a couple of



weeks. I log into Amazon to see if it has the patio set she's mentioned. I order it and then realize I need to find an umbrella to go with it.

I couldn't find it on Amazon, so I check several of the department stores. I finally find it and get it ordered too. From there, I

check Facebook and Twitter and I check Instagram because my son has been uploading photos in real time from his diving trip. I check the other two email accounts I use for my photography business and from there, I reply to emails and download the new app that a client has recommended. I input my PayPal information so that the subscription payments are coming out each month automatically.

That's a lot of accounts – a lot of user names and passwords. In that one hour, Bill has logged into 13 different sites, all of which have their own sign in credentials and many that have his financial information stored. Those are digital assets. Before he tracked his online movements, he'd come in to update his will and to set up a trust for his granddaughter and when asked, he said that he has a “few” online accounts, all of which are related to his photography business, “Eh, it'd take me five minutes to get all of the user names and passwords together.” The next week, he called and was surprised at just how many online accounts he has. Odds are, most people would find that same level of disbelief. Yet, it's a part of our daily lives, whether or not we realize just how much it is.



YOUR ONLINE ACCOUNTS OUTLIVE YOU

If you died, would your family know where to find the information for your online accounts? Would they even know about the bank account you keep just for your online shopping? What about the Visa account you have to purchase equipment for your business? These accounts don't die when we do. If you don't have this information memorialized, good luck with trying to get the website owners to allow access.

While there are a host of new online services designed to help family members find online accounts for their deceased loved ones, there's also a new law that's slowly making its way through the legislative process.



THE ISP POSITION

Website owners, such as Google and Facebook, say they're just following the law. That law, however, was put into place in 1986 (yes, 1986). The 1986 Stored Communications Act is all they have to go on, which prohibits anyone from accessing private information online without the owner's permission.

Part of the irony is that if hackers can get past the sign in phase, they can gain access when even family members can't. It's risky and it's one more reason why documenting your online accounts is so important. Surviving family members might never know that their deceased loved one's identity has been stolen. In fact, more than 2 million Americans become the posthumous victims of identity fraud – and that's every year.



All of this might soon change. The Uniform Law Commission—an organization that drafts laws it wishes to pass in every state – has drafted the Fiduciary Access to Digital Assets Act, which would give fiduciaries the same rights over online estates as they now have over physical estates. The bill was reviewed and enacted by the Uniform Law Commission this past July. But it's still up to individual state legislatures to propose it and pass it as law.

For now, we encourage our clients to sit down and make an all-inclusive list of their online accounts, complete with user names and passwords. Don't create it on your computer; instead, write it out and store it in a place that's safe, but one that loved ones would know to look. Otherwise, you may have a host of digital assets that are never claimed.



To learn more about this important new element of estate planning, contact our team of estate planning lawyers today.

About the Author



Daniel A. DeBruyckere

Attorney DeBruyckere approaches each challenge not just with solid expertise, but also with a passion for helping others plan well for the future. As a husband with three children and two grandchildren, it's his own family experience that provides the motivation to ensure all of his clients are well protected. Besides his extensive background in the issues he specializes in, Dan's clients find that he genuinely cares about them, and that he pays attention to the details that matter to each person and their families.

EXPERIENCE

Attorney Daniel A. DeBruyckere has been practicing law in New Hampshire and Massachusetts since 1998, and has helped hundreds of clients with their estate planning and elder care issues. He is very well respected in the area of estate planning, probate, trust administration, elder law issues, and business planning.

Admitted in Massachusetts and New Hampshire, Attorney DeBruyckere is a former adjunct faculty member of the Massachusetts School of Law and is a member and past president of the Greater Salem Bar Association. He is also a member of the Essex County Bar Association, Massachusetts Bar Association, New Hampshire Bar Association, as well as a member of the National Association of Elder Law Attorneys.

EDUCATION

Attorney DeBruyckere is a graduate of Southern New Hampshire University, summa cum laude, and Massachusetts School of Law, cum laude. He served as editor of the Massachusetts School of Law's Law Review and was a regional finalist in the American Trial Lawyers' Association Trial Advocacy Competition.

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