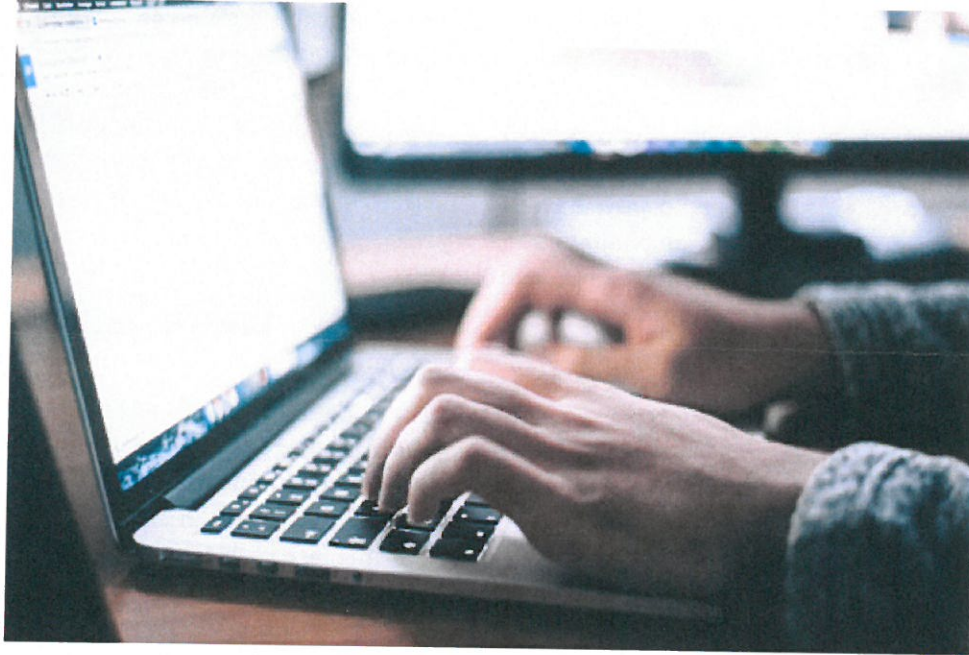


SCS Connection

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Estate Planning in a Digital World

By Eric Nager, CRPS®

What is the value of the digital assets you own? Most of us probably do not consider these assets when valuing our estates but by some estimates, the average family in this country owns thousands of dollars of digital assets. So just what is a digital asset?

Daniel Joye is the CEO of Mindfulware, LLC, a software development company in Montgomery, Alabama. According to him, “Digital assets include files stored on digital devices, including but not limited to desktops, laptops, tablets or peripherals, storage devices, mobile telephones, smartphones, and any similar digital device which currently exists or may exist as technology develops or such comparable items as technology develops.”

He further explains, “The term ‘digital assets’ also includes but is not limited to emails received, email accounts, digital music, digital photographs, digital videos, software licenses, social network accounts, file sharing accounts, financial accounts, domain

registrations, DNS service accounts, web hosting accounts, tax preparation service accounts, online stores, affiliate programs, other online accounts and similar digital items which currently exist or may exist as technology develops or such comparable items as technology develops, regardless of the ownership of the physical device upon which the digital item is stored.”

Some of the places we own digital assets are through providers and devices like Google, Apple, Kindle, Amazon, Facebook, Yahoo, Instagram, YouTube and even Bitcoin, a type of currency. Mr. Joye estimates that he owns over 1,000 books on Kindle for example, and at a price of at least \$10 a piece, that adds up.

Few of us take the time to read through all the Terms of Service agreements we consent to when we sign up for these various services, but virtually all of them say the same thing: ownership of stored digital assets is *non-transferrable* to others.

So, when we lend our password or give someone else control of these accounts, we are in violation of those agreements and are technically breaking the law.

What can be done? The various states are taking up this issue, somewhat belatedly through the Revised Uniform Fiduciary Access to Digital Assets Act of 2015 (Revised UFADAA). Again according to Joye, "This act updates state fiduciary law for the Internet age. When a person dies or loses the capacity to manage his or her affairs, a fiduciary receives legal authority to manage or distribute the person's property as appropriate. Most people now have a great variety of digital assets, including photographs, documents, social media accounts, web sites, and more, some of which present special privacy concerns. Revised UFADAA provides the legal authority for a fiduciary to manage digital assets in accordance with the user's estate plan, while ensuring that a user's private electronic communications remain private unless the user consented to disclosure."

A fiduciary is one who is legally required to put the interests of his client ahead of his own. About 30 states have enacted this act, as of this writing, including big states like New York and Florida. Significantly, other states like California, Pennsylvania, Massachusetts, and Louisiana have not. Still others like Georgia, Texas, and our home state of Alabama introduced the legislation this year. In May the Alabama legislature passed it, but Governor Ivey has yet to sign it.

Please ask if you would like a copy of a map showing into which category your state falls in relation to Revised UFADAA. From an estate planning standpoint, a good way to address the issue of digital assets is to appoint a Digital Executor in your will who is empowered to deal with all digital property.

Please consult with an attorney in your state for the appropriate wording for a Digital Executor. It is also possible to name Supporting Executor(s) as assistants. As the landscape shifts from owning only physical assets to a mix of physical and virtual assets, estate planning needs to shift accordingly.

Financial Facts

The U.S. government's latest report on Social Security cites 61 million beneficiaries and 171 million covered workers and their families. That's an increase of more than 32% and 14%, respectively, over the last 13 years.

35th Anniversary

This year, 2017, marks the 35th anniversary of Southern Capital Services, Inc. Terry started the firm back in 1982, and he would like to thank you all for your confidence in us!

35th
Anniversary

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