



YOUR DIGITAL ESTATE

Frequently Asked Questions: Answered





FAQ: ANSWERED

WHAT'S SO UNIQUE ABOUT DIGITAL ASSETS?



The term "digital asset" is an oxymoron. The "digital" in digital asset defines the form of the asset as an electronic record, which is by definition easily duplicable. An "asset" is usually defined as something of value. Quite often assets gain their value from their uniqueness. So when we talk about digital assets, we are talking about an easily duplicable (perhaps unique) thing of value.

These assets are considered "digital" because they exist because of technology. So to understand digital assets, we also need to clarify "technology."

Technology is a technique or device that solves a problem. Most of the accounts we are discussing when we talk about Digital Asset Estate Planning are unique, scalable solutions to a problem many humans face.

As we rely on technology to solve our communication, organization, or automation problems, we start to rely on the companies whose job it is to solve these problems. Our reliance on these companies and the solutions they provide can create unintended consequences. Technology can solve one problem while creating another.

The easily duplicable and shareable nature of digital assets makes managing digital assets different from managing physical assets. However, that doesn't change the fact that the management of any asset requires thoughtfulness and intention.

Given the rapid pace of technological change, lack of intentional management leaves digital assets both more difficult to keep private and also easier to lose at the point of death.



FAQ: ANSWERED WHAT ABOUT THAT BROAD SWEEPING LANGUAGE IN MY TRUST?

Many attorneys are drafting clauses into estate planning documents that give an executor or trustee permission to access all of a deceased person's digital assets. This may provide proof of intent and shield the personal representative from some liability. However, if this language is encountered after death, there will still be quite a lot of work to be done.

For example: if the Trust of John Doe is presented to an online service provider, how will they know the Trust of John Doe and the death certificate of Jonathan D. Doe actually correspond to the platform user @gameshowguy? After confirming whether the digital asset is transferable at all, the estate administrator will have to prove to the service provider that the digital asset corresponds with the description of digital assets in the document and that the account owner is represented by the death certificate that is presented.





FAQ: ANSWERED HOW TO CONSIDER APPS AND SOFTWARE PROMISING A DIGITAL ESTATE PLAN SOLUTION?



Although digital asset estate planning isn't as popular as social media or online gaming, there are still technology solutions popping up in the space. How should we consider the technology solutions and apps that are promising to help solve our digital asset estate planning needs?

Like any technology solutions, make sure the technology is addressing a problem you have. Make a list of the problems you are trying to solve; evaluate the software against your priorities and concerns; investigate what the company is doing with the data they are storing for you.

- Are they accessing or using it in other ways?
- Is it encrypted?

Make sure they are not over promising something they cannot provide. Ask technically savvy people in your life or look at Consumer Reports to get a feel for what is technically feasible if you aren't sure yourself. Consider their business model.

- How do they make money?
- Is the company likely to be around longer than you are?

It's relatively easy and mostly an act of self discipline to organize and document what you own and use regularly and why. It is quite a bit more difficult, and sometimes practically impossible, to legally insure your wishes are completed, especially when it comes to digital assets. Remember advice given by lawyers and documents created by lawyers are protected by malpractice insurance in most cases. Technology companies and their solutions are not required to insure their work or the promises they make in any way.