

# LAW WEEK

## COLORADO

## Modern Digital Assets

*Estate planning attorneys remain attentive as technology evolves and dependency increases*

BY SARAH GREEN  
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Twenty years ago, the thought of assigning a digital executor to manage one's electronically stored accounts was not a priority for those looking to mindfully plan their estate in case of death or disability. We didn't have social media accounts, websites and financial and security phone applications that contained sensitive information that needed to be accessed after someone died.

Today, however, people around the world now own digital property and planning to protect and manage such property has been steadily rising because of the uncertainty of existing and changing laws, identity theft and ensuring someone's end of life wishes are carried out. Since technology has quickly expanded beyond the home desktop computer and into the palm of our hands, many people have learned that protecting their digital assets is just as important as protecting their financial and physical ones.

Technology and platforms such as Facebook, Google, online gaming and Bitcoin will become more sophisti-

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cated in how people transfer digital assets, said Fairfield and Woods managing director and Wealth and Succession Planning Department chair Bruce Fowler, and the industry will devote more time and effort to the area.

“(Digital property) is unique because these aren't just financial assets, this is somebody's life and some people live a different life in the digital world than they do in the real world,” he said. “So there are sensitive, personal issues out there.”

Fowler added that when younger, unmarried people who seek out estate planning attorneys for their services are sometimes unaware as to the depth of their online engagement, and will often attempt to appoint an agent who they perhaps would not want to view their online activity.

“(Some clients) tend to feel comfortable appointing their mother or their father as their personal representative, but when we have that discussion of (allowing their parents) to have access to their Facebook account, that often gets their attention,” he said. “Which is fine because then we can nominate somebody else.”

### ONCE UPON A TIME

Digital assets were once limited to the desktop computer, where photos, documents and other financial and sentimental assets were kept on a hard drive or the computer's disk space. Now, in a time where we can store information to the cloud, track medical records, book flights, make banking transactions, provide electronic signatures and even secure our homes with the verification of a finger print on your phone, the need to protect digital assets is greater than ever — and will continue to become an important aspect of estate planning in a digital world.

### FOR THE LESS PRIVY

For estate planning clients who are less familiar with modern technology and its rapid growth, or for those who only believe that email and social media accounts are the only forms of digital property, it is important for estate planning attorneys to educate their clients who may be unaware that they own digital currency, such as Bitcoin, or digital property held in video games or online virtual worlds.

“For a lot of people it is difficult to keep up,” said Barbara Cashman, an



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estate planning and elderly law attorney, adding that most estate planning attorneys have updated trust documents, wills and durable powers of attorney to include digital asset clauses.

Last year, Colorado enacted the Revised Uniform Fiduciary Access to Digital Assets Act and more than 20 other states have enacted similar laws. Additionally, the Uniform Law Commission created the Fiduciary Access to Digital Assets Act, which allows digital executors to access online accounts on behalf of a deceased person, and while many states have yet to get on board, it shows there's some forward momentum regarding digital property and estate planning.

### HOT POWER, STANDARD POWER

Digital assets require a special kind of power, Cashman said, because it's not something that can be approached with a standard power — the ability of an agent to open up a bank account, for example, in someone's name.

“That's pretty standard power. What is not a standard power is the ability of the agent to change the beneficiary on a person's IRA. That is a specifically delegated power, or a ‘hot power,’” she said, adding that digital assets are now only outlined as hot powers in her documents, since specific online accounts need to be dealt with separately.

“You don't give away everything (in a POA document). You give your agent the standard powers and use the digital assets clause as a hot power,” she said, noting that digital executors are similar to historical literary executors who manage an author's work or writing.

“It's kind of an old concept, but (digital executors have) some potential for the future for folks that have

a lot of online assets that need to be tended to in ways that are very specific.

### ARCHIVING TOOLS

There are online tools, such as Everplan, to help people organize and plan for their digital assets. Everplan, and other archiving sites allow users to store photos and documents, and name a personal representative to access those files in case of death or disability.

However, some are still skeptical about storing everything online.

“And as for managing access and passwords electronically, It's the same problem that we had before we had the Uniform Power of Attorney Act,” Cashman said. “It's a different set of concerns with those internet providers ... and I'm skeptical of these private businesses doing these kinds of things. I think everyone has a different comfort level.”

### AVOID THE FINE PRINT

Large online providers, such as Google and Facebook are already taking steps to give users the chance to appoint digital agents in the event of death or disability, Fowlers said, pointing out that under Colorado law, in order for the larger providers intentions to be effective, it can't be hidden in their service agreements — buried in the fine print of a website's agreement documentation.

“It has to be something other than something hidden in that service agreement that no one ever reads,” Fowler added. “It has to be something that the user is given the opportunity and given specific direction about that account.”

The idea of digital assets and assigning a personal representative is something that everyone will have to take part in eventually, Cashman said.

“Our law is evolving all the time. People don't think of law as evolving. They think of it as dry and in a book somewhere, but it changes. The internet has become such a bigger environment and it is the biggest psychology experiment,” Cashman said. “It's a bigger playground, without playground monitors and unfortunately there are more opportunities for people to get hurt.” •

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