Essential Elements Of Your Estate Plan Including Planning For Digital Assets

August 7, 2017 | by

Why You Should Have a Will and Title Assets Properly. According to a recent survey, 60% of Americans do not have a will or an estate plan, a general durable power of attorney, or a living will. This can be disastrous and costly for loved ones who have to deal with the aftermath of one's disability or death.

For example, if you die without a will in New Jersey, the laws of intestacy will determine how your assets will be distributed, which most likely will not be in a manner you would have preferred. Of course, any jointly-owned assets such as bank or brokerage accounts and real estate, and assets such as life insurance, IRAs, and pensions (such as 401(k) plan accounts) and other employee benefits, in which you designated a beneficiary upon your death, will pass by operation of law to those surviving joint owners or by contract to those designated beneficiaries. But other assets titled in your name alone will pass by intestacy. Even if you named one child as joint owner of your financial accounts, this will not fulfill your wish to distribute those accounts equally among all of your children, which can create dissension, unwanted litigation between family members, and unnecessary expenses and legal fees to the family. You should periodically review your joint accounts and your designations of beneficiary for life insurance, pensions, etc. to make sure they are in accord with how you want those assets distributed to your loved ones.

By meeting with an experienced estate attorney to help arrange your affairs, draft your will and create an estate plan in accord with your desires, you should be able to avoid the often costly and time consuming problems associated with dying without a will or with improperly designated accounts that may lead to family members contending with each other over how your asserts should have been distributed. Careful and thoughtful deliberation and planning with an estate planning attorney about your will and estate plan can save your family thousands of dollars in unnecessary litigation costs and legal fees.

What Happens to Your Digital Assets. “Digital assets” include all internet activities such as online accounts (Amazon.com, PayPal, online banking, business accounts, etc.) and usernames and passwords that provide access to those accounts so that your executor can properly manage and dispose of them after your death.

Planning for digital assets accomplishes several goals. First, upon your incapacity or death, your executor of your estate, your agent under your power of attorney, or your guardian, and family members will have to search for access to your digital assets unless you make it easy for them to readily locate that information without undertaking a massive search. Preparing and storing a list of your digital assets with the usernames and passwords in a safe deposit box or other secure location is paramount. To complicate things, the law is not clear regarding the rights to access the digital assets by executors, agents, guardians, and surviving family members. Some companies may require court orders before granting access to those individuals. In any event, you should still be prepared to make this information available in a secure manner to those acting on your behalf during your lifetime and after your death.

A second goal in planning for and securing your digital assets is to help prevent identity theft after your death. Upon your death your executor should immediately send notice of your death to the companies maintaining your digital assets so they can take the additional steps necessary to update their records to prevent criminals from gaining access to your accounts.
A third goal is to safeguard the financial assets of your estate.

A fourth goal is to prevent the disclosure of private or confidential material that you want to be kept secret.

Planning Ideas for Digital Assets After Your Death. First, some companies maintaining digital assets may provide instructions on their websites for what happens to those assets after your death. You should download and read those instructions carefully and ether take steps to follow those instructions or notify the company of how you want your information handled, if the company permits that. For example, Google has a service known as “Inactive Account Manager” that will notify individuals you designate, after a period of inactivity on your account, regarding what to do with your

account information per the instructions you gave Google during your lifetime. Alternatively, you can instruct Google to delete all your information following this period of inactivity.

Second, you can store all of your digital asset information in a separate flash drive (encrypted) and keep it secure in a safe deposit box and update it when necessary. To ensure safety, usernames and passwords should be kept on separate flash drives and kept in different locations and given to different individuals. You can prepare a memorandum, which can be referenced in your will, indicating which beneficiary receives which digital asset. You can change the memorandum as often as you like without having to change your will. The last dated and signed memorandum will control the disposition of your digital assets. The list of the asset information on the flash drive and the memorandum will assist the executor in administrating your estate and will also be helpful to your family members.

On September 12, 2016, legislation was introduced in New Jersey to approve the Uniform Fiduciary Access to Digital Assets Act, which would authorize the executor or administrator to take control of online accounts. The legislation is still in progress.

Why You Should Have a Financial Power of Attorney. If you become physically or mentally incapacitated rendering you unable to handle your affairs, you will need someone to take care of your finances including managing your bank accounts and paying your bills, signing documents on your behalf, and having access to your digital assets. No one, including your spouse, may perform any of these tasks if you are incapacitated, and you do not have a general durable financial power of attorney. Not having one in place before you become mentally incapacitated will result in costly and time consuming guardianship proceedings for your loved ones to appoint someone, with court approval, to handle your financial affairs. Having a general durable financial power of attorney in place can avoid this from happening. It is the simplest and least expensive estate planning tool available and should be part of everyone’s basic estate plan. Another consideration to plan for is to determine whether you will have sufficient financial resources to replace your income in the event that your disability renders you unable to work, which brings up the importance of disability insurance that you should discuss with your insurance agent.

Why You Should Have a Health Care Directive and Living Will. Appointing someone to make health care decisions for you in the event you are mentally incapacitated and cannot make them yourself is also an important estate planning tool. This is known as a health care directive or proxy directive. You only name the person to make those decisions but you do not specify your health care instructions. That is done in the Living Will, which states how you would want to be treated in certain health care situations. Both the proxy directive and the living will can be combined in one document known as an Advanced Medical Directive and Living Will. You can specify whether and what kind of extraordinary medical procedures should be taken for you in certain health care situations.

Hiring an estate planning attorney to guide you and prepare and implement the essential elements of an estate plan for you and your family should go hand in hand with your other family financial planning to preserve and protect your assets for future generations.