

Digital Assets in a Will



Have you appointed a digital executor? Will you leave access to your digital properties when you die? What do you want to happen to them, should they be stored or deleted?

The first thing to say is that most Wills automatically cover your digital assets. It is the responsibility of your Executors to deal with these and unless they are specifically given away, they will form part of the Residue of your estate. However, things are not quite that simple and there are a number of issues to be addressed.

What are your Digital Assets?

There are two broad categories of assets, those with financial value and those whose value is primarily personal or sentimental. The first category covers such things as Bitcoin, bank and related financial assets and intellectual property, which may be attached to such things as a YouTube channel. In addition, although the value is usually fairly low, there are such things as loyalty schemes.

The second category covers most forms of social media. Together with things such as iTunes and cloud storage of photographs, these can matter hugely to the individual but are unlikely to have any significant financial value. In addition, there are a multitude of accounts that most of us have with different online sites such as Amazon, different stores and suppliers; although these generally have little or no financial or sentimental value.

Locations and what law covers them?

This is an area which can cause considerable problems. Bitcoin and crypto currencies are by definition operating in an unregulated space and are not easily identifiable as belonging to any particular individual, which in turn makes identifying and locating these very difficult. At present there is no regulation of Bitcoin in the United Kingdom, however this will probably change in the future but for the present this absence of regulation means that the only way of dealing with these is by having access to the necessary computer keys. Fortunately, dealing with most other financial assets is less of an issue. Most of our banking assets are clearly located in the country in which the relevant bank is located and can if necessary be controlled by old fashioned methods i.e. quill pen and ink! For most of us this means that these are UK assets subject to UK law or occasionally they may be EU based.

Social Media is a completely different story. Most of the main Social Media companies are based overseas with their terms and conditions stipulating that the law applicable is the law of the country in which the company is based, most commonly this tends to be USA.

How do you Executors take control of your digital assets?

The general rule is that digital assets are property which



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vests in the Executors of a deceased person. However, as a general rule the duty of an executor is to deal with those assets which have value, and while things like social media accounts may well vest in the Executors, it is questionable whether they have an obligation to chase up these assets. Given this, one increasingly widely held view is that a will should appoint a "digital manager" to deal with non monetary assets. However this alone may not be enough.

Looking firstly at what are probably the easy items, namely bank accounts and loyalty schemes. Generally it is a matter of dealing with these using traditional methods, which is producing a death certificate and probate.

Bitcoins and crypto currencies are the nightmare asset. Unless the executors have access to the deceased's public and private keys, they simply will not be able to access them and there is a widespread belief that there are Bitcoins going unclaimed.

Social media assets are also something of a nightmare. Action to deal with these is to a great extent determined by the terms and conditions of the different providers. Some providers state that it is possible to in some way memorialise an account but this has to be set up in advance. Others simply provide that an account is closed, others are frozen. Occasionally the executors may be able to obtain some sort of access but this can prove to be a slow and painful process.

What should you start doing?

First and foremost, you need to start to understand what your assets are and what are the terms and conditions attached to them. You then need to take whatever action is required by the provider. For example, if you have an iTunes account, you do not own your music. You merely have a licence which expires on your death and the music is simply lost. Given this, you probably need to download the music that matters to some other format. Similarly, photographs held in the Cloud may be lost, so you should consider printing them or get them backed up to a separate hard drive.

Secondly, you probably need to set up some sort of record of your assets and also all the passwords. Quite how you do this is less than straightforward, as writing down passwords may well compromise your security, and may also be contrary to the terms and conditions of the provider. The answer may be to use a password manager, but if you do this, it is of course important to ensure that

someone somewhere knows how to access the code for the password manager, and/or the computer on which it is stored. If you fail to do this, it may simply be impossible for anyone to access your accounts.

Thirdly, you probably need to name someone as a digital manager, whether or not this person is named in your Will is a slightly open question but the general view seems to be that this would probably be wise.

To conclude, this remains a difficult area in which the law is still developing. It seems likely that at some stage we shall see legislation on Bitcoins. It would be good to have some sort of standardised terms and conditions governing social media but whether this will happen is uncertain. As consumers we probably have to try and take control ourselves so it is best to consider what digital assets you own and what you would like to happen to them.

If you require advice on setting up a digital Will, please contact our Private Client team on 0118 977 4045.



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