

Digital Estate Planning Guide



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*Snapshots*TM

Digital Estate Planning Guide

What happens to your digital property after you die? Canada lacks legislation that gives your executor or attorney the automatic authority to deal with your digital assets, even though most Canadians have multiple digital accounts.

In the past, estate planning dealt mostly with Wills, Trusts, Power of Attorneys (POA), Life Insurance Policies, financial accounts and any property one might own. Paper versions of formal legal documents may still be saved in a person's home or with an attorney, but many financial, business, personal, and administrative documents may primarily exist in a digital form.

Some Canadians do not even print out statements or contact coordinates, leaving little or no basic information about their digital assets that may have a financial value. User or service agreements make it challenging for an executor or attorney to deal with digital assets unless the Will and POA for financial matters specifically authorizes them to do so.

Adjusting to the Digital Age

The Estates industry is undergoing a dramatic transformation as it adjusts to the digital age. More of our assets are held and/or accessed via digital means. Accordingly, our estate administration laws and planning tools need to factor in this paradigm shift.

There are several Canadian legislative developments impacting Wills and Estates Administration. For example, certain jurisdictions in Canada now allow for the remote witnessing of Wills, introduction of electronic Wills (British Columbia), electronic Grants of probate (Ontario) and electronic designation of beneficiaries for trustee registered plans.

There have been legislative developments that impact the administration of digital assets. Saskatchewan is the first Canadian jurisdiction to introduce legislation that grants executors and other fiduciaries access to digital assets for the individuals they act on behalf of. There is proposed privacy legislation (Canada) recognizing that the executor has the right to access the personal information of the testator. This would provide the executor with the authority to direct a service provider to destroy/delete "personal information" of the deceased collected and retained by the service provider.

These legislative changes, along with technological developments, are the impetus for the transformation of the estates industry. Although such legislative changes are needed, additional risks such as fraud, undue influence, cyber-security and data protection accompany each of these developments.



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Section 1

Instructions and Special Handling

While the instructions in the Will or POA document govern, the information in your digital log should provide your executor or representative with enough details to help them determine which digital assets have no value, those that might be sold or eventually transferred to a beneficiary, or indicate if arrangements have already been made with the service provider. They can also help identify any assets that require special handling due to privacy issues or historical significance. This will help save time and money and make it less likely that any digital assets are overlooked.

To assist your executor or representative identify and deal with your digital assets, it is highly recommended that you:

1. Update your Will so your executor has the authority to access, modify, delete and preserve any digital assets, and perhaps have the power to hire and pay a computer expert.
2. Update your proxy or POA document for finances so your attorney has the authority to access, modify, control or delete any digital assets in the event of mental incapacity.
3. Prepare a personal digital inventory that lists your digital assets, passwords, and offers handling guidance.
4. Highlight those digital assets with financial value because some service providers will delete a digital account and its content after a period of non-use.
5. Specify the location of electronic devices (computers, laptops, mobile phones, hard drives, USB flash drives) that may contain digital assets and or access to digital assets. Note that Apps on a phone might provide a clue to relevant digital assets.

There are huge gaps in this area of the law and the rules vary among service providers. Some user or service agreements actually prohibit others accessing information.

Other service agreements allow you to indicate an alternate person on your account and what you want done with that account – which may provide a solution for those digital assets. It is up to you to ensure that your representative has access to the electronic devices, the authority and knows which digital assets have financial or personal value.

The personal digital inventory

While it takes time to develop and maintain a personal digital inventory listing your digital assets, this separate list of information provides an important guide to your executor or attorney. When it is stored with your important papers, your representative will know what digital devices, accounts, and data you have and what could be done with them. Technically speaking, digital assets are any "electronic record" that you own, license, or control. This includes just about any online account or digital file that you have authority to access – email, online banking, social media accounts, cloud storage, blogs, or anything else that you do online, on your phone, tablet, or computer that requires a login. It does not include assets held under a non-transferrable agreement or license.

Some individuals provide details of their digital assets in their will. However, this may not be advisable because a probated will is a public document and these details may result in abuse. Therefore, ask your lawyer where to keep such lists so that the executor has access, but it is not included in a document that will be public.

“ You have been told, rightfully, not to share or write down passwords or PIN numbers, but this information is required to access most of your physical devices and digital assets. ”

Access information

You have been told, rightfully, not to share or write down passwords or PIN numbers, but this information is required to access most of your physical devices and digital assets. Additionally, many devices require multi-factor authentication such as facial recognition and a simple PIN or Password is no longer enough.

You should discuss how to handle this with your executor or legal professional when you update your legal documents. One possible solution is to encode and encrypt passwords and contemplate incremental alternatives to the authentication process.

Authorize your representatives

Make sure your Will and POA document for financial matters are updated to include language specific to digital assets and passwords, giving the representative the authority to access, control, manage, dispose, and distribute the digital assets.

The following is part of an excerpt from a power of attorney for financial matters related to digital assets in Ontario. **You should obtain your own legal advice for the current wording to use in your province.**

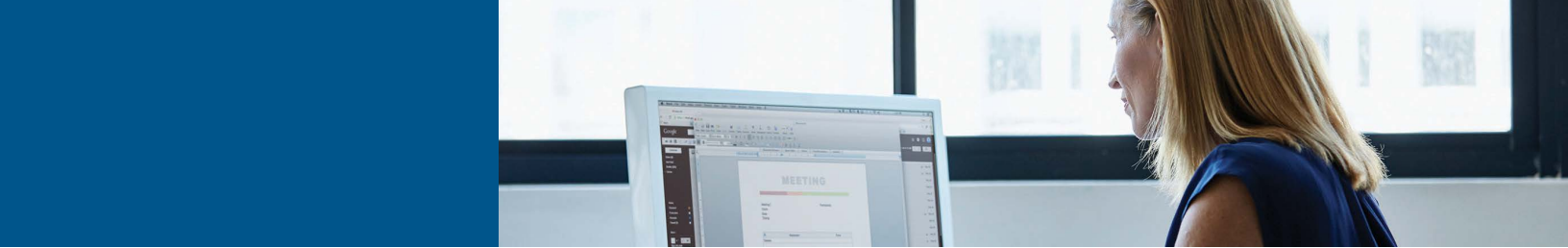
Sample Wording:

“I authorize my attorneys to:

- i access, use and control my digital devices, including but not limited to, desktops, tablets, peripherals, storage devices, mobile phones, smartphones and any similar digital device which currently exists or may exist as technology develops for the purpose of accessing, modifying, deleting, controlling or transferring my digital assets
- ii access, modify, delete, control and transfer my digital assets, including but not limited

to my emails received, email accounts, digital music, digital photographs, digital videos, software licenses, social network accounts, file-sharing accounts, financial accounts, banking 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 exist or may exist as technology develops

- iii obtain, access, modify, delete and control my passwords and other electronic credentials associated with my digital devices and digital assets described above”



Section 2

Digital Assets Log Book

Practice basic digital housekeeping to protect and secure your data on a regular basis, not just as part of an estate plan.

These practices include making regular backups of important files, contacts, photographs, movies, blogs and other information stored on your computer, smartphone, or in the cloud and encrypting sensitive data.

Common types of digital assets



Personal computer and other electronic devices



Email accounts



Social media accounts



Cloud storage



Banking and finance



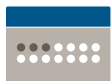
Online accounts for utilities



Online shopping accounts (e.g. Amazon, eBay)



Subscription accounts (e.g. Amazon Prime, professional journals)



Loyalty cards



Blogs and websites



Books, music, and videos or streaming



Photo storage and digital photos



Cryptocurrency and exchange wallet



PayPal, ApplePay



Gift cards

“ Practice basic digital housekeeping to protect and secure your data on a regular basis, not just as part of an estate plan. ”



Personal computer and other electronic devices

Type	User ID	Password (if case sensitive)	Name(s) of files (with financial information and or passwords for executor)	Materials to be deleted ASAP
Desktop				
Laptop				
iPad/tablet				
External hard drive				
Mobile phone				
USB flash drive				
Other				



Email accounts

Email (list all emails)	User Id	Password (if case sensitive)	Answer to security questions	How to handle (close/inactive)
Gmail				
Yahoo				
Rogers				
Hotmail				
Other				



Social media accounts

Name of social media	User Id/email associated with	Password (if case sensitive)	Answer to security questions	How to handle (close/inactive)
LinkedIn				
Facebook				
Twitter				
Instagram				
Other				



Cloud storage

Name of website	User ID/ email associated with	Password (if case sensitive)	Answer to security questions	Account#	Type of information stored
Dropbox					
Google docs					
OneDrive					
Mobile phone storage account					
SharePoint, Other					



Banking and finance

Name of institution (bank, e-trade, brokerage)	User ID/ email associated with	Password (if case sensitive)	Answer to security questions	Account#	Type of account	Paper or paperless



Online accounts for utilities

Name of institution	User ID/ email associated with	Password (if case sensitive)	Answer to security questions	Account#	Type of account	Paper or paperless
Cell phone company						
Internet provider						
Hydro						



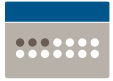
Online shopping accounts

Name of store/site	User ID/ email associated with	Password (if case sensitive)	Account#
Amazon			
eBay			
Other			



Subscription accounts

Name of site	User ID/ email associated with	Password (if case sensitive)	Answer to security questions	Type of account or number
Amazon Prime				
Professional journals				
Legal forms				
Professional software (tax, financial)				
Other				



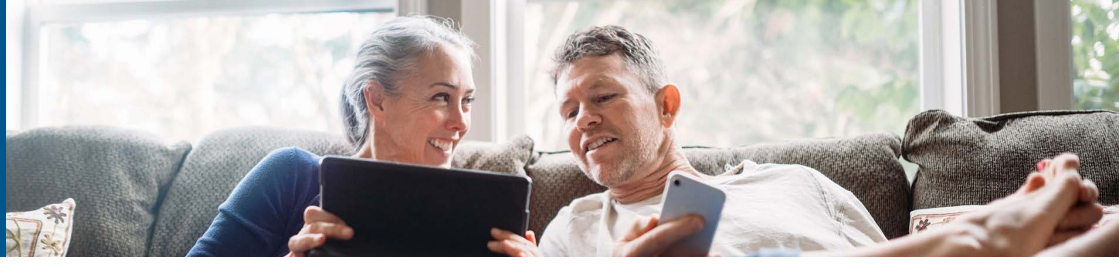
Loyalty cards

Name of card	User ID/ email associated with	Password (if case sensitive)	Answer to security questions	Type of account or number
Credit card "cash back"				
Frequent-flyer miles				



Blogs and websites

Name of site	User ID/ email associated with	Password (if case sensitive)	Answer to security questions	Type of account or number
Blog-building sites				
Domain-name registrars				
Third-party hosts				



Books, music, and videos or streaming

Name of site	User ID/ email associated with	Password (if case sensitive)	Answer to security questions	Type of account or number
iTunes				
Google Play				
Netflix				
YouTube				
Other				



Photo storage and digital photos

Location	User ID/ email associated with	Password (if case sensitive)	Answer to security questions	Type of file
Smartphone				
Tablet				
Cloud				
Hard drive				
Other				



Cryptocurrency and exchange wallet

Crypto Account Name	Crypto Account Type (Savings, Investment, Other)	Access ID Applicable (Email account, Phone Number, Passcode, Facial Recognition, etc.)	Authentication type and or answers to applicable security questions	Credit Card (if any) applicable to account activity/transactions
Bitcoin				
Ethereum				
Other				



Gift cards

Name of card	User ID/ email associated with	Password (if case sensitive)	Answer to security questions	Account number
Visa, AMEX, MasterCard				
Retail, Food				



Account Name	Email Account Applicable for Access	Passcode/Password Applicable	Answer to security questions	Credit Card or Bank Account Number Associated with Account
ApplePay				
PayPal				
Other				

A final thought

While there is no right nor wrong way when it comes to the format of your digital inventory list, take your time to document all the confidential information in this Log Book and keep it secure at all times. It should not be viewed as a legal document nor be viewed as a replacement to any existing documents. Its value lies in the process: gathering the information, and providing an important guide to your executor or attorney.

This publication is intended as a general source of information and should not be considered as estate, tax planning, personal investment or tax advice, nor should it be construed as being specific to an individual's investment objectives, financial situation or particular needs. We recommend that individuals consult with their professional financial or tax advisor before taking any action based upon the information found in this publication. The information and opinions contained herein have been compiled or arrived at from sources believed reliable but no representation or warranty, express or implied, is made as to their accuracy or completeness. While we endeavour to update this information from time to time as needed, information can change without notice and Dynamic Funds® does not accept any responsibility for any loss or damage that results from any information contained herein.

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