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Estate Planning and Digital Assets

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Legacy

The following article was featured in the July 2016 edition of *Legacy*, the Vorys newsletter focused on wealth planning.

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What happens to your Facebook and Pinterest accounts when you die? What about all those photos and documents stored on the Cloud and Google Drive? How about all of your electronic passwords to access your bank accounts, investment accounts and retirement accounts? What about your YouTube channel, iTunes and Bitcoin accounts? Good questions. Welcome to the world of estate planning for digital assets. Other examples of electronic or digital assets include online access information for email accounts, credit cards, insurance, medical information, online shopping accounts, PayPal, and the list goes on. Think about how many times a day you use an electronic device to access private information. Now, think of whether that private electronic information would be useful or valuable to someone after your death. Everyone should have a plan for the transfer of their assets at death. With the advancement of technology, that plan now needs to address the transfer of digital assets and electronically stored information.

Don't presume service providers will automatically disclose user identification and password information to your spouse, parent, child, or business partner. Chances are they won't. Remember, those service providers have language in their terms of service or end user license agreements to protect your privacy. There are also federal laws that prohibit disclosure of some information – even if a family consents to the release. Service providers are going to err on the side of nondisclosure.

As the world becomes more virtual, this has become such a problem that several states are considering, and some have passed, laws to control access to and disposition of an individual's digital assets upon incapacity or death. Not surprisingly, the legislative process to enact such laws is not moving at the speed of technology. You may wait and

hope there is a state law in place to protect and control the transfer of your digital assets. Or, you can address the issue with a little planning.

The first step in planning for your digital and electronic assets is to identify the assets. Create a digital inventory. Can someone access your home computer or phone to check your applications or is everything password protected? Although it may be against every internet security warning you have read, a list of user id's and passwords may be warranted. Such a list should be stored securely and with other important papers and files a person would look for if something happened to you.

In addition to a digital inventory, you should be sure that your durable power of attorney, will and trust agreement all specifically provide for the access to and disposition of your digital and electronic assets. Such documents may contain a list of directions for the disposition of certain of these assets. You may have prepared a tangible personal property memorandum in connection with your estate plan to indicate where your china goes or who gets Grandma's silverware or the heirloom rifle. Why not do the same for your digital assets? If you want your online diaries deleted, say so. If you want the novel you have been working on to pass to a particular person to finish or just to read, express your wish accordingly.

If you have any questions concerning the transfer of your digital or electronic assets, please contact your Vorys attorney.