

# The urgent need for digital estate planning



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## FIDUCIARY MATTERS

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It was not that long ago that we only had paper records. We could simply point to a filing cabinet or drawer and tell someone 'everything is in there when the time comes'. But almost without realising it, we have shifted toward an all-digital culture. Future heirlooms like family photos, home movies, and personal letters now exist only in digital form, and in many cases they are stored using popular services like Gmail, YouTube, Dropbox and Flickr.

These digital possessions chronicle our lives and constitute a digital legacy.

It is clear that given the amount of information we keep on computers and the internet, estate planning is simply no longer complete without including digital assets and social media accounts.

Consider the type of information you keep digitally. Here are just a few examples

- online banking, online bill-paying activities
- online accounts with no connection to a bricks-and-mortar establishment eg Amazon, eBay, Bitcoins



- blogs, domain names, credit cards and financial data
- photographs, videos, emails and music playlists on a computer, tablet or smartphone

There are numerous legal, cultural, and technical issues that could prevent access to these assets in the event of your death, and if you don't take steps to make them available to your heirs, your digital legacy could be lost forever.

### What should you do?

The first step is to make an inventory of the digital property you own and then update or amend your Will, ideally with the guidance of an expert such as a member of the Fiduciary Institute of Southern Africa (FISA).

Decide whom to give access in the event of your death to be your digital personal representative. It is generally recommended that your executor be this person and he/she should be empowered in your Will to attend to the digital estate. This person will then be given a record of your user name and password for the relevant accounts. It is important not to include usernames and passwords in your actual Will, because once a Will is filed, it becomes part of the public record.

An increasingly popular option is to store all your passwords encrypted in one place online using a software programme such as 'keepass'. Your executor need then only be given one password to open this account.

In your Will indicate whether you want your digital personal representative to archive or share or delete your content (or secure privacy of some content which may be harmful).

### What about social media?

Specify in your Will what should happen to your social media accounts ahead of time to avoid uncertainty about what might happen at the direction of close family members. For example, it is becoming common practice to memorialise the account of a deceased person on facebook or LinkedIn.

When facebook memorialise a Facebook account they keep the profile on Facebook, but only let friends and family look at pictures or write on the user's Wall in remembrance. You can report a deceased person's profile. Facebook may also close an account if they receive a formal request from the person's next of kin.

If LinkedIn learn that a user is deceased, they may memorialise the user's account. In these cases they may restrict profile access, remove messaging functionality, and close an account if they receive a formal request from the user's next of kin or other proper legal request to do so.

It is not pleasant to think about but you may wish to consider having your executor add an auto response on your email address for a few months, informing the writer that you have died, giving an email for condolences to be sent to your family. It is also not unusual to arrange for a final 'tweet' or 'post' to be sent to your friends by your executor if this is your wish.

By taking control and including your digital assets in your Will, your executor or digital personal representative can distribute or delegate your digital assets according to your wishes. If you don't have your wishes clearly expressed at the time of your death, your digital assets will be distributed according to the laws of the country in which you are residing. The law in South Africa is still evolving in this regard.

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