

INCLUDE DIGITAL PROPERTY IN YOUR ESTATE PLAN

Prior to the digital age, the inventory of an estate consisted of property deeds, bank and brokerage accounts, retirement funds, business interests, and tangible personal property. Now it also includes digital property, and locating and getting access to it can be challenging for an executor if the matter is not addressed in an estate plan.

Over 55 percent of Canadians now bank online. Many also pay bills, receive account statements, and conduct business transactions entirely online. Without a list of these accounts, an executor may have to conduct an Internet search, possibly hiring a computer forensics expert, and without a list of passwords or legal authorization, data privacy laws may block entry to the accounts.

In addition to obtaining a portal to financial information, the executor must determine whether the digital property itself has value and who is entitled to it. Most digital property, such as social networking sites, has little or no financial value, but there can be valuable intellectual rights in digital property. For instance, there could be downloaded digital songs, rights to revenue from Web pages, licenses, applications, frequent-flyer miles, and domain names owned by the deceased person. Some people are now trading online using virtual currency, and the amount credited to an account could be significant. An executor would need to appraise such digital property and include it in the total value of estate assets. Not surprisingly, the Internal Revenue Service (IRS) in the United States is now instructing agents to conduct Internet searches to discover taxpayer e-commerce activities. Presumably, the Canada Revenue Agency (CRA) will soon follow this example.

As you update your estate plan, it is important to take the following actions regarding your digital property:

- Make a list of all accounts and programs that are accessed via a password and the passwords for each. Keep a copy of this information in bank safe deposit box or a home

safe, and tell the persons whom you have selected for a durable power of attorney and executor where it is kept.

- Indicate which of this digital property you want family and friends to have and which private communications should be permanently deleted.
- Execute an authorization and consent for release of electronically stored information to the person who has your power of attorney in case you are incapacitated. Include a similar authorization for the executor named in your will.
- Maintain a running list of charities to which you have made online contributions. This will assure that gifts are credited whether or not you are able to do so.
- Remember that you can make contributions online to *(name of charity)*. This is a convenient and increasingly popular way to give, and we will provide a paper receipt as well as an electronic acknowledgement.