

# The Hand from Beyond the Grave...

MANAGING YOUR DIGITAL PROPERTY IN THE AFTERLIFE

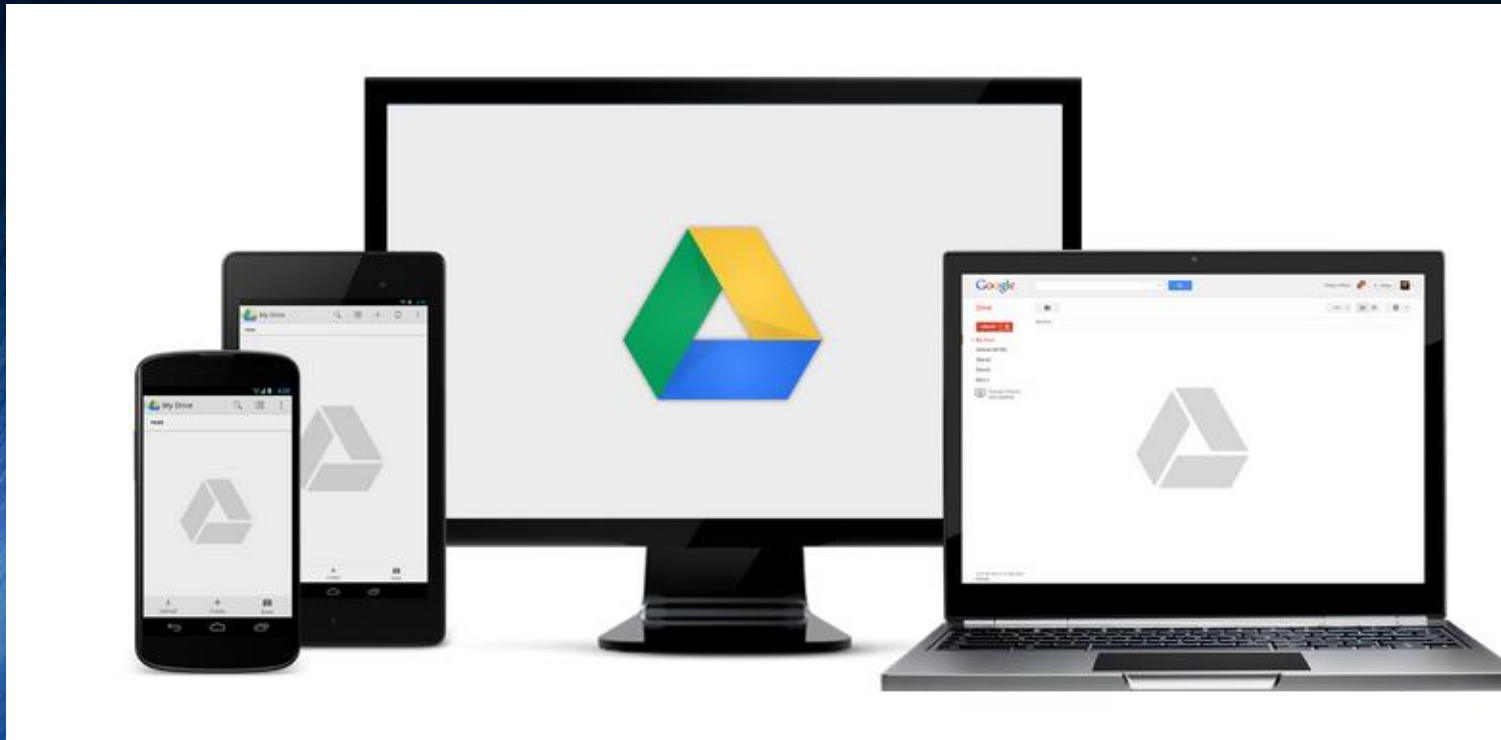
- Milena Christopher, J.D., Law Office of Milena Christopher
- Shannon FitzPatrick, J.D. , Office of the Attorney for Students,  
Texas State University

# Digital Assets

- What are digital assets?
- Value of digital assets
- What could happen if your clients don't think ahead
- Steps to recommend to clients to avoid emotional pain and suffering involved in dealing with these issues

# What are Digital Assets?

- Anything on your computer, tablet, iPhone – yes, even your wristwatch!



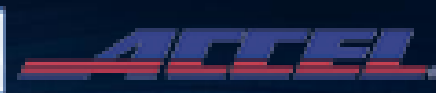
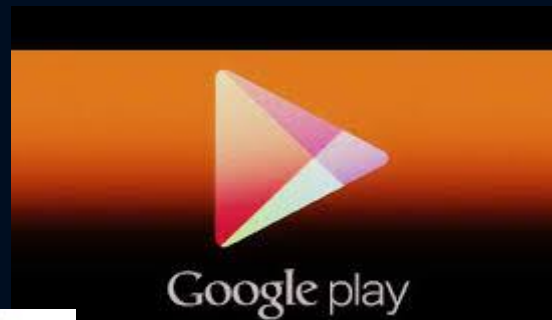
# Types of Digital Assets

- Personal
- Social Media
- Financial Accounts
- Business Accounts
- Domain Names
- Blogs
- Loyalty Program Benefits



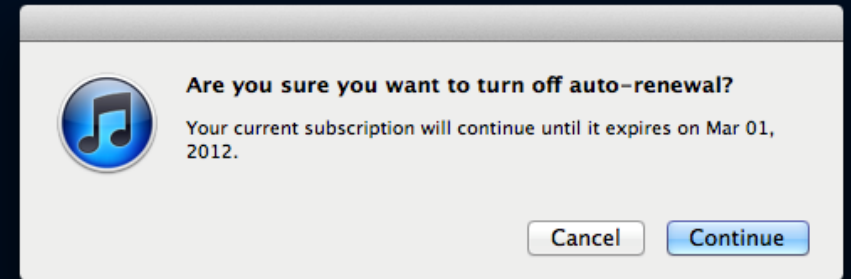
# What are Digital Assets?

- **Paying for things online...** Etsy, Amazon, iTunes, PayPal, Google Play, GoogleBooks, eBay, overstock.com, HEB (yes!), taxes, etc.



# What are Digital Assets?

- **Communicating or storing things online...** Email, Blogs, Websites, Dropbox, Google Drive, etc.



craigslist



# What are Digital Assets?

Handling health issues online... TexFlex;  
Caremark; Blue Cross/Blue Shield, etc.

The screenshot shows the ERS (Employees Retirement System of Texas) website. The top left features the ERS logo with the text "EMPLOYEES RETIREMENT SYSTEM OF TEXAS". The top right displays "Customer Service: (877) 377-0987" and a Humana logo. A navigation bar includes links for Home, Plans, Value-added Benefits, Forms, Customer Service, Overall Health, and ERS Website. The main content area is titled "Value-added Benefits" and features a "Printer-Friendly Page" button. A prominent section for "My Dental IQ" includes a thumbnail image of a report and a detailed description: "MyDentalIQ.com is an interactive website where you can receive a personalized, printable dental health report based on your history and habits. The report contains a wealth of information that you can use to initiate conversations with your dentist. To get started, just go to [www.mydentaliq.com](http://www.mydentaliq.com)". A note at the bottom states: "Note: ERS cannot and does not guarantee the length of time that a specific type of value-added product will be offered or that a product will be offered in the future. If you have product questions or concerns, please contact HumanaDental directly."

Other states are thinking about this...

The Bar's Most Recent Survey Results -- Page 3

est. 1974



# The Florida Bar News

Volume 41, Number 18      [barnews.org](http://barnews.org)      September 15, 2014



## When you die, are your digital assets accessible?

*RPPTL drafts legislation to address the 'chaos'*

By Jan Pudlow  
Senior Editor

When a time, we walked into banks to cash our paychecks. We glued precious photos in albums for safekeeping. We kept important papers in file cabinets.

But in today's paperless, high-tech world, paychecks are deposited electronically and bank statements arrive online. Photos pile up in the invisible cloud. And many documents are stored as data on a computer server and accessed via the Internet.

What happens when someone dies, and the executor of the will needs access to online accounts, but doesn't have the passwords? What happens if someone becomes incapacitated and can no longer log on to computers, and a guardian

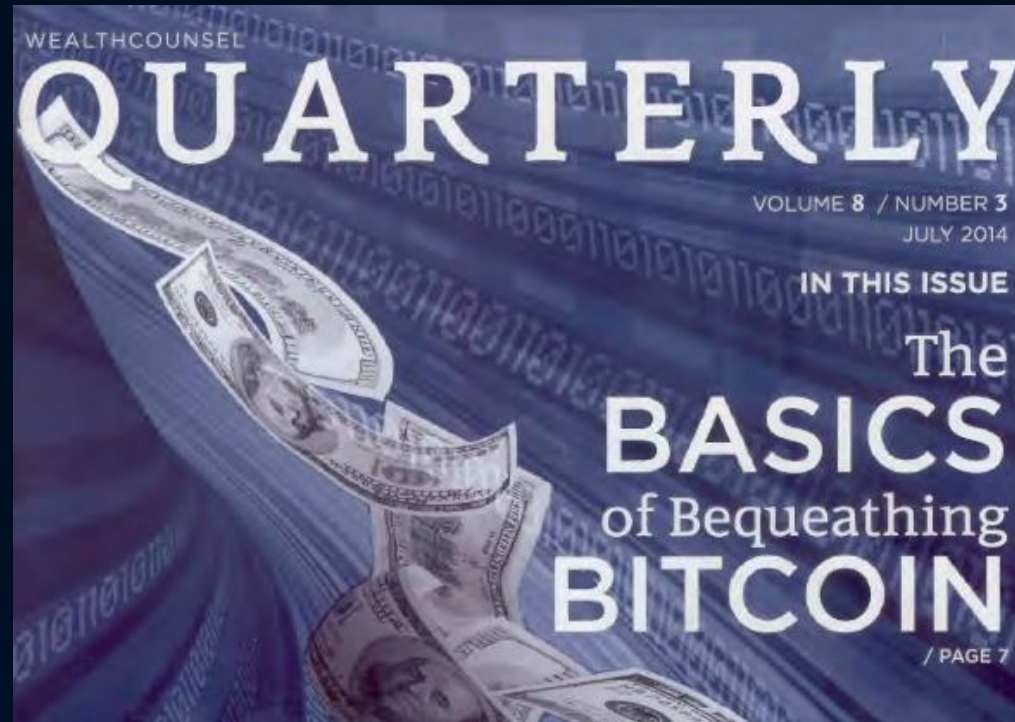
needs access to accounts? "Just about anybody in Florida is using the Internet, whether you are young, old, or in between. People have eBay accounts, Amazon accounts, photo sites, Google Plus, Dropbox, online banking, you name it. Well, our current law doesn't tell our fiduciaries how to access or control those assets. It's unclear. For every account, the fiduciary doesn't know whether they have the ability to access or control that account or not. There is chaos, basically," said J. Eric Virgil, a Coral Gables attorney who chairs



See Assets, page 5



Other economic sectors are thinking about this...



# DIGITAL REMAINS



# Why Plan for Digital Assets in your Estate Planning?

- Easing stress for executors and family members
- Prevent identity theft
- Prevent Loss to the estate
  - Bill payment
  - Domain names
  - Encrypted files
  - Virtual property
- Avoid losing the deceased's personal story
- Prevent unwanted secrets from being discovered!
- Prepare for an increasingly information-drenched culture

# User Agreements

- Terms of Service
  - Facebook, iTunes, PayPal, Instagram, etc.: It is a violation of their policy to log into another person's account
- Ownership
  - Some companies do not allow a transfer of interests (i.e. Yahoo). Once the owner dies, that is it.

# Federal Laws/ State Laws

STORED COMMUNICATIONS ACT

COMPUTER FRAUD AND ABUSE ACT

UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

The purpose of UFADAA is to vest fiduciaries with the authority to access, control, or copy digital assets, while respecting the privacy and intent of the account holder. This uniform law address four types of fiduciaries:

- (1) personal representatives (also known as executors) of a deceased person's estate;
- (2) conservators (also known as guardians) for a living person;
- (3) agents acting under a power of attorney; and
- (4) trustees of a trust.

# What Executor's Duties Can Include...

- YEARS AGO

- Identify assets & debts
  - Search of the decedent's records, accounts and bills
  - Identified through stored records or subsequently received mail
- Pay the decedent's liabilities and debts
- Distribute the decedent's assets

## TODAY

- All this and more!
  - email, smartphones, computers, online accounts, photo-sharing & social media accounts
  - However, because of laws and user-service agreements, our heirs may have trouble...even if they have the passwords!
  - Paper trail harder to follow...

# PLANNING SUGGESTIONS

- Specify disposition according to provider's instructions
- Back up tangible media
- Prepare comprehensive inventory of digital assets
  - Creation
  - Storage
- Provide immediate access to digital assets
- Authorize agent to access digital assets
- Place digital assets in a trust
- Use online afterlife company

# Basic Language

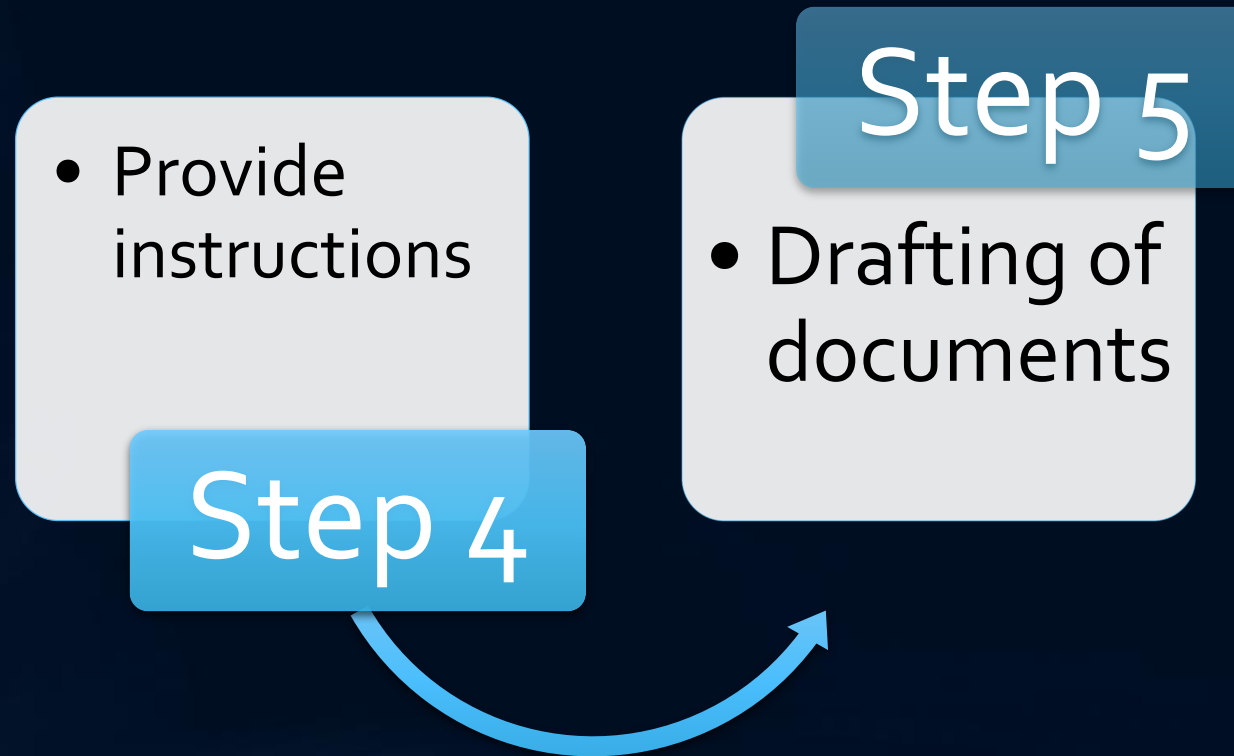
- DISPOSITION OF ESTATE
- B. Digital Assets. My executor shall have the power to access, handle, distribute & dispose of my digital assets
- DEFINITIONS AND INTERPRETATIONS
- C. "Digital Assets." "Digital Assets" includes files stored on my digital devices, including but not limited to, desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smartphones and any similar device which currently exists or may exist as technology develops or such comparable items as technology develops. The term "digital assets" also includes but is not limited to emails received, email accounts, digital music, digital photographs, digital videos, software licenses, social network accounts, file sharing accounts, financial 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 currently exist or may exist as technology develops or such comparable items as technology develops, regardless of ownership of the physical device upon which the digital item is stored.



# What can you do with your estate?



# What can you do with your estate?



# So how do you gain access?

## USE A SECURE ONLINE SERVICE

- 1Password
- mSecure
- LastPass
- KeePass
- PasswordBox

## CREATE YOUR OWN DIGITAL LOCKBOX

- Create an Excel spreadsheet and secure the password (review/protect & share)
- **Pros:** quick, easy, cheap
- **Cons:** If you work from more than one computer it can be challenging.

# I've Taken Care of It! Really?

## AFTERLIFE MANAGEMENT COMPANIES

- Asset Locker
- Dead Man's Switch
- Great Goodbye
- If I Die
- Legacy Locker
- My Wonderful Life
- Slightly Morbid

# Dealing with Digital Assets After a Loved One's Death

- Do NOT Close accounts right away
- Do NOT Delete anything yet
- Change Passwords
- Copy and Secure all Hard Drives, Flash Drives and Data
- Copy and Secure all Websites, Online Accounts, Financial Info and Client records
- Remove Credit Card info from Online Shopping Accounts
- Notify Friends and Family (check contact lists, emails, social media)
- Get Technical and Legal help as needed

# The Future

Connecticut, Indiana, Rhode Island, Oklahoma, Idaho, Virginia, Nevada  
Have all developed digital estate laws

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