

Digital Estate Plan

By Jean Schultz at Pfizer, Inc.

Most people have or know they should have a **Last Will, Durable Power of Attorney, Medical Power of Attorney** and a **Living Will** – but few of us have thought about having a **Digital Estate plan** as well.

Historically, our estates consisted of only tangible assets – real estate, stocks, insurance policies, trusts, jewelry and furniture.

As we spend more and more time “on line” – we also have more important information on line and even sometimes assets on line. (Think photographs, libraries, domain names, business records).

Having a Digital Estate Plan is increasingly important – and it is still uncharted waters from a legal standpoint in most states - including Michigan. That is because it relates to complex issues of privacy rights, data protection, retention, access, authentication, fraud and conflicting state and federal legal requirements.

Michigan is among the **majority of states** that don't have laws that grant executors or others access to digital accounts. Bills have been introduced in Michigan (In 2014 Kevin Cotter introduced a package of bills that would make changes to existing estate planning laws to grant access to personal representatives, trustees, conservators and agents) – but none have become law. There has been debate at the Federal level, nothing substantive has yet to emerge.

Post death – your digital life is currently largely governed by “Terms of Service” agreements – the one that you never read, but checked the box anyway when you established your Facebook, Google, email or online banking accounts.

You would be surprised by the rights you have already signed away. In many cases your digital life can only be “terminated”, but not accessed.

Many of us manage our finances, business and personal lives online – but few of us have ever organized or centralized those documents. I have a hard enough time organizing my recipes every few years!

That can make managing and distributing our assets difficult after we have gone to chapter eternal – and can lead to confusion, denial of access and even an inability to locate accounts or information in the first place.

How can a digital estate plan help your family after you are gone?

- Locate any assets you have on line
- **Access** those accounts or the information in those accounts
- Determine if your digital property has any financial value that needs to be reported or submitted to probate
- Distribute or transfer digital assets to the appropriate parties
- Avoid online identity theft

What should you do?

Make a list of all your Digital Assets and how to access each one.

The list should include:

1. Computing hardware (and where they are located)
 - a. Computers
 - b. External hard drives
 - c. Flash drives
 - d. Tablets
 - e. Smartphones
 - f. Digital music players
 - g. E-readers
 - h. Digital cameras
2. Any information or data that is stored electronically – whether stored online, in the cloud or on a physical device
3. Any online accounts
 - a. Email/Twitter/MySpace/LinkedIn
 - b. Bank accounts
 - c. Charge accounts
 - d. Utilities that are paid on line
 - e. Healthcare website accounts (Medical, Dental)
 - f. Social Media (Facebook)
 - g. Video gaming accounts
 - h. Online storage

- i. Websites or blogs you manage
 - j. Professional Association membership
4. Domain names (yes – some have value or need to be re-registered every few years)
5. Intellectual property

How to access should include:

1. Login ID
2. Password
3. Answers to Security Questions
4. URL address
5. If you use a password manager program, you can simply share access information to that account

Decide what you want DONE with these assets:

1. Maybe you want some assets archived and saved (like photographs or family geneology)
2. Maybe you want others to be deleted (like your emails or FB traffic)
3. Maybe you want some transferred to specific family members, friends or business colleagues

If your wishes conflict with some companies' terms of service, it's still valuable for your Executor to know what your wishes are.

Do your assets have monetary value? Instruct your Executor to handle assets in specific ways

1. Revenue generating assets may be transferred to people who will continue to manage the accounts
2. Credits or "Points" or cash values should be redeemed
3. Airline miles – can be transferred or contributed to charity

Name a Digital Executor

1. Who do you trust to carry out your wishes for your digital assets?
2. Don't designate someone who is not tech savvy
3. You can add that as a codicil to your will
4. In most states (currently) a Digital Executor is not legally binding or an enforceable designation – but your Executor can still designate them to follow the wishes laid out in

your digital estate plan or at least “help” your Executor with the digital aspects of your estate. (Most of us did not designate an Executor based on the technology abilities 😊)

If possible, make it legal

Depending on the state you live in, you may be able to formalize your digital estate plan in a legally binding document, such as your will or a codicil to your will.

The easiest way to do this is to name a Digital Executor in your will (or specify who your traditional Executor should work with to settle your digital estate).

You should specify the location of your digital asset inventory, so the Digital Executor can find and access your plan.