

# Digital Estate Planning Guide



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*Snapshots*<sup>TM</sup>



## Digital Estate Planning Guide

What happens to your digital property after you die? Canada lacks legislation that gives your executor or attorney the automatic authority to deal with your digital assets, even though most Canadians have multiple digital accounts.

In the past, estate planning dealt mostly with wills, trusts, powers of attorney (POA), life insurance policies, financial accounts and any property one might own. Paper versions of formal legal documents may still be saved in a person's home or with an attorney, but many financial, business, personal, and administrative documents may exist primarily in a digital form.

Some Canadians do not even print out statements or contact coordinates, leaving little or no basic information about their digital assets that may have a financial value. User or service agreements make it challenging for an executor or attorney to deal with digital assets unless the will and POA for financial matters specifically authorizes them to do so.

## Adjusting to the Digital Age

The estates industry is undergoing a dramatic transformation as it adjusts to the digital age. More of our assets are held and/or accessed via digital means. Accordingly, our estate administration laws and planning tools need to factor in this paradigm shift.

There are several Canadian legislative developments impacting wills and estates administration. For example, certain jurisdictions in Canada now allow for the remote witnessing of wills, introduction of electronic wills (British Columbia), electronic grants of probate (Ontario) and electronic designation of beneficiaries for trustee registered plans.

There have been legislative developments that impact the administration of digital assets. Saskatchewan is the first Canadian jurisdiction to introduce legislation that grants executors and other fiduciaries access to digital assets for the individuals they act on behalf of. There is proposed privacy legislation (Canada) recognizing that the executor has the right to access the personal information of the testator. This would provide the executor with the authority to direct a service provider to destroy/delete "personal information" of the deceased collected and retained by the service provider.

These legislative changes, along with technological developments, are the impetus for the transformation of the estates industry. Although such legislative changes are needed, additional risks such as fraud, undue influence, cybersecurity and data protection accompany each of these developments.



## Table of contents

|                               |   |
|-------------------------------|---|
| Digital Estate Planning Guide | 2 |
| Adjusting to the Digital Age  | 2 |

### Section 1

|  |          |
|--|----------|
| <b>Instructions and Special Handling</b> | <b>4</b> |
| The personal digital inventory           | 5        |
| Access information                       | 5        |
| Legacy contact                           | 5        |
| Inactive account manager                 | 6        |
| Authorize your representatives           | 6        |

### Section 2

|  |          |
|--|----------|
| <b>Digital Assets Log Book</b>                 | <b>7</b> |
| Common types of digital assets                 | 7        |
| Personal computer and other electronic devices | 8        |
| Email accounts                                 | 8        |
| Social media accounts                          | 9        |
| Cloud storage                                  | 9        |
| Banking and finance                            | 10       |
| Online accounts for utilities                  | 10       |
| Online shopping accounts                       | 11       |
| Subscription accounts                          | 11       |
| Loyalty cards                                  | 12       |
| Blogs and websites                             | 12       |
| Books, music, and videos or streaming          | 13       |
| Photo storage and digital photos               | 13       |
| Cryptocurrency and exchange wallet             | 14       |
| Gift cards                                     | 14       |
| ApplePay, PayPal                               | 14       |

### Section 3

|   |           |
|---|-----------|
| <b>Digital Estate Management and Administration Tools</b> | <b>15</b> |
| Electronic wills (e-wills)                                | 15        |
| Digital vault software                                    | 15        |
| Password managers   | 15        |
| Memorialization   | 16        |
| A final thought   | 16        |

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# Section 1

## Instructions and Special Handling


While the instructions in the will or POA document govern, the information in your digital log should provide your executor or representative with enough details to help them determine which digital assets have no value, those that might be sold or eventually transferred to a beneficiary, or indicate if arrangements have already been made with the service provider. They can also help identify any assets that require special handling due to privacy issues or historical significance. This will help save time and money and make it less likely that any digital assets are overlooked.

**To assist your executor or representative identify and deal with your digital assets, it is highly recommended that you:**

1. Update your Will so your executor has the authority to access, modify, delete and preserve any digital assets, and perhaps have the power to hire and pay a computer expert.
2. Update your proxy or POA document for finances so your attorney has the authority to access, modify, control or delete any digital assets in the event of mental incapacity.
3. Prepare a personal digital inventory that lists your digital assets, passwords, and offers handling guidance.
4. Highlight those digital assets with financial value because some service providers will delete a digital account and its content after a period of non-use.
5. Specify the location of electronic devices (computers, laptops, mobile phones, hard drives, USB flash drives) that may contain digital assets and or access to digital assets. Note that Apps on a phone might provide a clue to relevant digital assets.
6. Consider a digital vault software subscription to store and manage essential documents and important personal, financial and legal information.

There are huge gaps in this area of the law and the rules vary among service providers. Some user or service agreements actually prohibit others from accessing information.

Other service agreements allow you to indicate an alternate person on your account and what you want done with that account – which may provide a solution for those digital assets. It is up to you to ensure that your representative has the authority to access electronic devices and knows which digital assets have financial or personal value.



“ You have been told, rightfully, not to share or write down passwords or PIN numbers, but this information is required to access most of your physical devices and digital assets. ”

## The personal digital inventory

While it takes time to develop and maintain a personal digital inventory listing of your digital assets, this separate list of information provides an important guide to your executor or attorney. When it is stored with your important papers, your representative will know what digital devices, accounts, and data you have and what could be done with them. Technically speaking, digital assets are any “electronic record” that you own, license, or control. This includes just about any online account or digital file that you have authority to access – email, online banking, social media accounts, cloud storage, blogs, or anything else that you do online, on your phone, tablet, or computer that requires a login. It does not include assets held under a non-transferrable agreement or license.

Some individuals provide details of their digital assets in their will. However, this may not be advisable because a probated will is a public document and these details may result in abuse. Therefore, ask your lawyer where to keep such lists so that the executor has access, but it is not included in a document that will be public.

## Access information

You have been told, rightfully, not to share or write down passwords or PIN numbers, but this information is required to access most of your physical devices and digital assets. Additionally, many devices require multi-factor authentication such as facial recognition; a simple PIN or Password is no longer enough.

You should discuss how to handle this with your executor or legal professional when you update your legal documents. One possible solution is to encode and encrypt passwords and contemplate incremental alternatives to the authentication process.

## Legacy contact

Legacy contact features on smartphones, tablets, social media platforms, software subscriptions and cloud-based services enable users to specify a designated person to access and manage their data in the event of incapacity, prolonged absence or death. The feature plays a crucial role in accessing, managing and preserving digital assets and the designated person will have the ability to make decisions regarding your digital footprint.



## Inactive account manager

Inactive account manager is a digital management feature for online tools that allow users to specify what should happen to their digital accounts and data after a prolonged period of inactivity. This feature allows users to specify a trusted contact and the ability for the contact to be notified if the account has been inactive for a period of time. The user will be able to specify what data can or cannot be shared with the trusted contact. Inactive account managers may allow users to specify if the account is to be deleted if the inactivity period elapses.

## Authorize your representatives

Make sure your Will and POA document for financial matters are updated to include language specific to digital assets and passwords, giving the representative the authority to access, control, manage, dispose, and distribute the digital assets. Ensure that your designated and or trusted contact person is a trustworthy individual as they will have limited but specific access to sensitive information.

The following is part of an excerpt from a power of attorney for financial matters related to digital assets in Ontario. You should obtain your own legal advice for the current wording to use in your province.

### Sample wording:

"I authorize my attorneys to:

- i. access, use and control my digital devices, including, but not limited to, desktops, tablets, peripherals, storage devices, mobile phones, smartphones and any similar digital device which currently exists or may exist as technology develops for the purpose of accessing, modifying, deleting, controlling or transferring my digital assets
- ii. access, modify, delete, control and transfer my digital assets, including, but not limited to, my emails received, email accounts, digital music, digital photographs, digital videos, software licenses,

- social network accounts, file-sharing accounts, financial accounts, banking 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 exist or may exist as technology develops
- iii. obtain, access, modify, delete and control my passwords and other electronic credentials associated with my digital devices and digital assets described above"



## Section 2

### Digital Assets Log Book

Practice basic digital housekeeping to protect and secure your data on a regular basis, not just as part of an estate plan.

These practices include making regular backups of important files, contacts, photographs, movies, blogs and other information stored on your computer, smartphone, or in the cloud and encrypting sensitive data.

#### Common types of digital assets



Personal computer and other electronic devices



Email accounts



Social media accounts



Cloud storage



Banking and finance



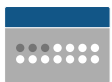
Online accounts for utilities



Online shopping accounts  
(e.g. Amazon, eBay)



Subscription accounts  
(e.g. Amazon Prime, professional journals)



Loyalty cards



Blogs and websites



Books, music, and videos or streaming



Photo storage and digital photos



Cryptocurrency and exchange wallet



ApplePay, PayPal



Gift cards

“ Practice basic digital housekeeping to protect and secure your data on a regular basis, not just as part of an estate plan. ”



### Personal computer and other electronic devices

| Type                | User ID | Password<br>(if case sensitive) | Name(s) of files<br>(with financial information and/or passwords for executor) | Materials to be deleted ASAP |
|---------------------|---------|---------------------------------|--|------------------------------|
| Desktop             |         |                                 |  |                              |
| Laptop              |         |                                 |  |                              |
| iPad/tablet         |         |                                 |  |                              |
| External hard drive |         |                                 |  |                              |
| Mobile phone        |         |                                 |  |                              |
| USB flash drive     |         |                                 |  |                              |
| Other               |         |                                 |  |                              |



### Email accounts

| Email<br>(list all emails) | User ID | Password<br>(if case sensitive) | Answer to security questions | How to handle<br>(close/inactive) |
|----------------------------|---------|---------------------------------|------------------------------|-----------------------------------|
| Gmail                      |         |                                 |                              |                                   |
| Yahoo                      |         |                                 |                              |                                   |
| Rogers                     |         |                                 |                              |                                   |
| Hotmail                    |         |                                 |                              |                                   |
| Other                      |         |                                 |                              |                                   |





## Social media accounts

| Name of social media | User ID/email associated with | Password (if case sensitive) | Answer to security questions | How to handle (close/inactive) |
|----------------------|-------------------------------|------------------------------|------------------------------|--------------------------------|
| LinkedIn             |                               |                              |                              |                                |
| Facebook             |                               |                              |                              |                                |
| Twitter              |                               |                              |                              |                                |
| Instagram            |                               |                              |                              |                                |
| Other                |                               |                              |                              |                                |



## Cloud storage

| Name of website              | User ID/email associated with | Password (if case sensitive) | Answer to security questions | Account number | Type of information stored |
|------------------------------|-------------------------------|------------------------------|------------------------------|----------------|----------------------------|
| Dropbox                      |                               |                              |                              |                |                            |
| Google docs                  |                               |                              |                              |                |                            |
| OneDrive                     |                               |                              |                              |                |                            |
| Mobile phone storage account |                               |                              |                              |                |                            |
| SharePoint, Other            |                               |                              |                              |                |                            |



## Banking and finance

| Name of institution (bank, e-trade, brokerage) | User ID/ email associated with | Password (if case sensitive) | Answer to security questions | Account number | Type of account | Paper or paperless |
|--|--------------------------------|------------------------------|------------------------------|----------------|-----------------|--------------------|
|  |                                |                              |                              |                |                 |                    |
|  |                                |                              |                              |                |                 |                    |
|  |                                |                              |                              |                |                 |                    |
|  |                                |                              |                              |                |                 |                    |



## Online accounts for utilities

| Name of institution | User ID/ email associated with | Password (if case sensitive) | Answer to security questions | Account number | Type of account | Paper or paperless |
|---------------------|--------------------------------|------------------------------|------------------------------|----------------|-----------------|--------------------|
| Cell phone company  |                                |                              |                              |                |                 |                    |
| Internet provider   |                                |                              |                              |                |                 |                    |
| Hydro               |                                |                              |                              |                |                 |                    |
|                     |                                |                              |                              |                |                 |                    |
|                     |                                |                              |                              |                |                 |                    |



## Online shopping accounts

| Name of store/site | User ID/email associated with | Password (if case sensitive) | Account number |
|--------------------|-------------------------------|------------------------------|----------------|
| Amazon             |                               |                              |                |
| eBay               |                               |                              |                |
|                    |                               |                              |                |
|                    |                               |                              |                |
| Other              |                               |                              |                |



## Subscription accounts

| Name of site                           | User ID/email associated with | Password (if case sensitive) | Answer to security questions | Type of account or number |
|--|-------------------------------|------------------------------|------------------------------|---------------------------|
| Amazon Prime                           |                               |                              |                              |                           |
| Professional journals                  |                               |                              |                              |                           |
| Legal forms                            |                               |                              |                              |                           |
| Professional software (tax, financial) |                               |                              |                              |                           |
| Other                                  |                               |                              |                              |                           |



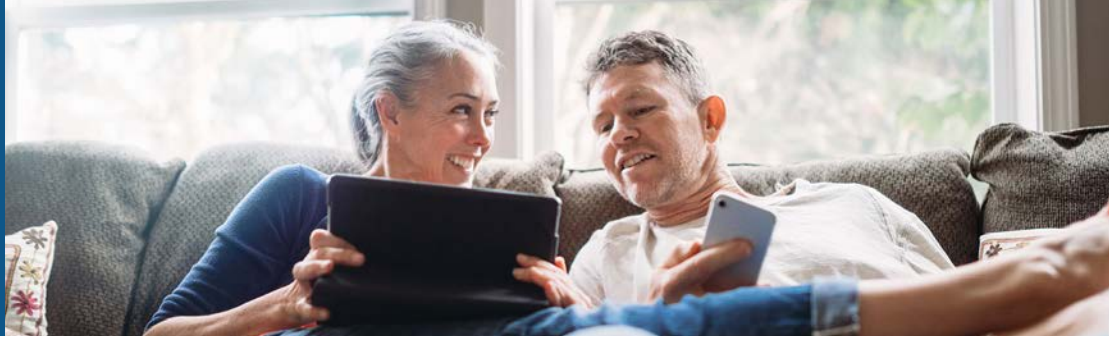
## Loyalty cards

| Name of card            | User ID/email associated with | Password (if case sensitive) | Answer to security questions | Type of account or number |
|-------------------------|-------------------------------|------------------------------|------------------------------|---------------------------|
| Credit card "cash back" |                               |                              |                              |                           |
| Frequent-flyer miles    |                               |                              |                              |                           |
|                         |                               |                              |                              |                           |
|                         |                               |                              |                              |                           |
|                         |                               |                              |                              |                           |



## Blogs and websites

| Name of site           | User ID/email associated with | Password (if case sensitive) | Answer to security questions | Type of account or number |
|------------------------|-------------------------------|------------------------------|------------------------------|---------------------------|
| Blog-building sites    |                               |                              |                              |                           |
| Domain-name registrars |                               |                              |                              |                           |
| Third-party hosts      |                               |                              |                              |                           |
|                        |                               |                              |                              |                           |
|                        |                               |                              |                              |                           |



## Books, music, and videos or streaming

| Name of site | User ID/email associated with | Password (if case sensitive) | Answer to security questions | Type of account or number |
|--------------|-------------------------------|------------------------------|------------------------------|---------------------------|
| iTunes       |                               |                              |                              |                           |
| Google Play  |                               |                              |                              |                           |
| Netflix      |                               |                              |                              |                           |
| YouTube      |                               |                              |                              |                           |
| Other        |                               |                              |                              |                           |



## Photo storage and digital photos

| Location   | User ID/email associated with | Password (if case sensitive) | Answer to security questions | Type of file |
|------------|-------------------------------|------------------------------|------------------------------|--------------|
| Smartphone |                               |                              |                              |              |
| Tablet     |                               |                              |                              |              |
| Cloud      |                               |                              |                              |              |
| Hard drive |                               |                              |                              |              |
| Other      |                               |                              |                              |              |



## Cryptocurrency and exchange wallet

| Crypto account name | Crypto account type (savings, investment, other) | Access ID applicable (email account, phone number, passcode, facial recognition, etc.) | Authentication type and/or answers to applicable security questions | Credit card (if any) applicable to account activity/transactions |
|---------------------|--|--|---|--|
| Bitcoin             |  |  |   |  |
| Ethereum            |  |  |   |  |
| Other               |  |  |   |  |



## Gift cards

| Name of card           | User ID/email associated with | Password (if case sensitive) | Answer to security questions | Account number |
|------------------------|-------------------------------|------------------------------|------------------------------|----------------|
| Visa, AMEX, MasterCard |                               |                              |                              |                |
| Retail, Food           |                               |                              |                              |                |
|                        |                               |                              |                              |                |



| Account name | Email account applicable for access | Passcode/password applicable | Answer to security questions | Credit card or bank account number associated with account |
|--------------|-------------------------------------|------------------------------|------------------------------|--|
| ApplePay     |                                     |                              |                              |  |
| PayPal       |                                     |                              |                              |  |
| Other        |                                     |                              |                              |  |



## Section 3

### Digital Estate Management and Administration Tools

#### Electronic wills (e-wills)

An electronic will, or e-will, is a will that is created, signed, executed and stored in electronic format. It may use electronic signatures instead of traditional wet signatures and eliminates the need for physical documents. Historically, Canadian estate law required wills to be in a physical, written form with the testator's signature witnessed in person. The acceptance of electronic wills varies by province, with evolving legislation aiming to accommodate digital estate planning.

Some provinces allow for digital or e-wills and virtual witnessing (via video) of the will. There is still concern around security, fraud, and the testator being subject to undue influence associated with the execution of e-wills. With varying regional adoption and specific legislative requirements, e-wills in Canada are gaining traction. Their validity is increasingly recognized, though further legal clarity and safeguards are expected to refine their implementation across Canada.

#### Digital vault software

Digital vault software is a secure online platform that allows a user to store essential documents, such as wills, powers of attorney, tax returns, insurance policies, financial records in a centralized repository. It enables users and their representatives to organize and access these critical documents and assets in a secure manner making them only accessible to authorized individuals. Digital vaults facilitate estate planning by allowing users to assign trusted contacts who can access specific documents upon death or incapacity. Many digital vaults support the controlled sharing of specific documents or folders with family members, advisors, fiduciaries and other professionals. Access permissions are customizable, and the software provides high reliability in protecting and managing personal and estate information.

#### Password managers

Password managers are digital tools that securely store and manage a user's passwords. They allow a user to create complex, unique passwords without the need to remember them individually. Password managers are highly effective for enhancing digital security, minimizing password reuse, reducing the risks of breaches and improving password strength across accounts.



## Memorialization

Memorialization features are digital tools offered by certain online platforms to manage and preserve a deceased user's account as a form of digital legacy. These features can vary by platform but generally aim to turn an active account into a lasting tribute, which preserves the individual's digital presence while limiting potential misuse. For example, some platforms allow posts and photos to remain visible to the deceased's connections, with "Remembering" or similar wording added to signify the account's memorial status.

Memorialization has some of the same features as legacy contact and inactive account managers, helping protect the deceased's account from unauthorized access or hacking.

For estate planning purposes, memorialization features offer an effective way to safeguard and honour digital legacies while minimizing administrative complexities.

## A final thought

While there is not a right nor wrong way when it comes to the format of your digital inventory list, take your time to document all the confidential information in this Log Book and keep it secure at all times. It should not be viewed as a legal document nor should it be viewed as a replacement to any existing documents. Its value lies in the process: gathering the information, and providing an important guide to your executor or attorney.



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