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FAMILY MATTERS

Insights on key topics—
through a multi-generational lens.

TOPIC:

SECURING YOUR DIGITAL LEGACY

In an increasingly “plugged-in” world, estate planning needs to adapt to include digital assets. This installment of Family Matters can help you address planning considerations to protect and preserve your digital legacy. We are pleased to offer insights from Richard Gotterer, CFP®, Director and Senior Wealth Advisor at Calamos Wealth Management.

We created the *Family Matters* insight series to spark ideas and spur conversation among family members on a wide range of important financial topics. They’re purposely written as a primer for more in-depth discussions with your Calamos Wealth Management advisor on how the matters presented will apply to you and your family’s unique situation. We hope you find that the multi-generational lens by which topics are presented promotes pass-along readership to multiple family members. Your Calamos Wealth Management advisor is available to all members of your family to provide guidance on matters you care about most.

It's clear to James Morneau that the digital gene skipped a generation in his family. His daughter, Beatrix, has been online practically since birth and somehow her YouTube channel on Korean pop music (AKA "K-Pop") has more than 98,000 subscribers. But he had no idea how deep into cyberspace his father, Guy, had travelled—at least not until Guy died unexpectedly last summer.

James shouldn't have been surprised—dad was always in the Avant-garde. A hotshot fashion shooter in the '70s, Guy launched a second career in fine art photography and developed a modest but passionate following that included several deep-pocketed Asian collectors.

At the funeral, when he bumped into the gallery owner who gave Guy his first show, James suggested he stop by to discuss the management of the catalog. The owner just chuckled and said his father had ditched the gallery in 2014, digitized his life's work, and moved it all to some website called "pixPocket."

Digital assets are often out of control

Until his conversation with the gallery owner, James had never heard of pixPocket. But over the next 12 frustrating months he would come to know it—more specifically its heavy-handed Terms of Service Agreement ("TOSA")—better than he ever wanted to.

Not everybody has a million-dollar photography collection locked away in the cloud, however a McAfee global survey found that the average American owns more than \$55,000 worth of digital assets¹—things like small business websites, cryptocurrency or credit card and airline rewards points.

For the affluent, the figures can be much higher. Inc. magazine recently reported² on a Canadian executive who died unexpectedly and took his passwords with him, leaving some \$190 million worth of Bitcoin completely inaccessible to his clients and his heirs, despite hiring professional hackers and online sleuths.

According to Richard Gotterer, CFP®, senior wealth advisor at Calamos Wealth Management in Miami, the challenges of digital assets in the context of estate planning fall into three broad categories: location, access and ownership. "Even if relatives have a good idea where certain digital assets can be found, all the things we are told about maintaining online security—

change your passwords frequently; don't make them easy to guess; use a mixture of words, numbers and special characters—can make it very challenging for your loved ones to access them after you're gone."

In regard to ownership, some digital assets can become a matter of contention. While banks, insurance companies and brokerage firms are generally responsive to probate court orders and other commonly used estate planning mechanisms for transferring ownership, users of online service providers sometimes effectively sign away their ownership to their digital content on day one when they assent to the provider's TOSA.

"There's an emerging framework of law in most states created in 2015 called RUFADAA (Revised Uniform Fiduciary Access to Digital Assets Act) that seeks to create a standard, predictable path for transferring digital assets to rightful heirs," says Gotterer. The framework allows for "tools" that online service providers can use in the place of digital POAs. If no online tool or other legal documentation exists, then the provider's TOSA will take control.

The framework really only applies if the deceased had truly owned the assets in the first place. "When dealing with any digital assets, be sure you know which possessions you own and which you own a license to use," Gotterer cautions. "For example, one

¹McAfee and MSI International global survey of 3,000 consumers reported on Businesswire.com, Sept. 2011

²Inc.com, A CEO Died. He Never Shared His Passwords. Now His Customers Are Out \$190 Million That Can't be Accessed, Bill Murphy Jr., Feb 4, 2019

can own libraries of physical books, but in the case of e-books, the user may only have a license to access a digital library.”

Getting a virtual handle on things

By the time he secured his famous late father’s digital photo catalog, James had taken to calling the website “PickPocket” instead of pixPocket. It got him thinking--and talking to his professional advisors--about how he could make things easier for his heirs when it came to pass on his somewhat more modest cyber-legacy of hard-earned frequent-flyer miles, a professional blog associated with his management consulting business, and an online music app that commingles the entirety of his large CD collection (downloaded to the app and subsequently tossed out) with more recent albums he purchased digitally from the app provider.

The first step in planning for the transfer of digital assets is conducting a thorough inventory of what you own (or, to the earlier point, think you own), says Gotterer. An obvious adjunct to conducting such an inventory is simultaneously gathering the myriad passwords for accessing the assets in a single place. That’s where password management applications that collect all of your passwords in a single secure domain, accessible with a single password, can prove invaluable—just make sure your trusted heirs know how to get inside. Gotterer notes that a password manager also serves as a protected, private place for password aggregation that doesn’t run the risk of becoming public through the probate process like a will might.

Part of this exercise can also include providing informal instructions – perhaps notes stored together with legal documents such as wills – on how you want certain aspects of your digital legacy handled. While some people wish to live forever on social media, Gotterer warns that in some cases,

the information in such accounts can be used by identity thieves even after you are gone. Some social media platforms have taken steps to address this issue, such as Facebook’s introduction of the option to “memorialize” a profile if you’re the account’s designated “legacy contact.” For other popular social channels, stated procedures for dealing with deceased accounts remain vague.

The second step is working with your legal, financial and estate planning professionals to update your will, powers of attorney and trust documents giving consent for your online providers to give access to individual heirs and executors and for them to reset or bypass your passwords. While this language can be broad, Gotterer says it can be a good idea to specifically address the transfer of your most valuable digital assets when amending your planning documents.

In the absence of digital POAs or other legal documentation, any heirs that attempt to access your accounts could be charged with a hacking felony, even if it was your dying desire for them to do so. As more industries and firms move into the digital realm, important information, once physical, may now be locked behind not only an online log-in screen but also legal protections that may prove cumbersome to navigate.

The brave (and potentially lucrative) new digital world

When James met with his attorney to overhaul his own estate plan for the digital age, he casually mentioned Bea and her 98,000 K-Pop fans on YouTube. He laughed when the lawyer asked whether his 16-year-old daughter had legal representation but stopped when he realized the guy was dead serious.

Anyone who has spent any time online has probably clicked through a TOSA without looking too closely (or at all). They are a fact of life in the digital age.

But because they are often so one-sided in favor of the service providers, they deserve extra scrutiny the minute the stakes start increasing. The old axiom of digital content, “If you’re not paying for the product, you are the product,” still holds, but if you start to go viral and the value of your product takes off, you deserve to be compensated and should protect your ownership rights to the content you are creating. In such cases, Gotterer says, it may be worth having an expert review the terms you agreed to when you first signed on to the platform.

Consider your whole digital presence, not just the assets with monetary value

Gotterer stresses that it’s important to consider the whole picture of your digital presence. “Your online footprint is more than just your social media and major accounts – it’s the sum of every online action you make. Every time you enter your email address, name or birthday, you’re putting your information out on the web. Think about how that information is used for targeted ads, for example – everything

you do is tracked.” And while you may not currently have concrete ownership of much of that data, the question of who should own it is becoming increasingly prominent.

Your digital legacy goes beyond monetary value – it’s an integral part of your identity and should be an integral part of your estate plan as well. Working with a financial or estate planning professional can ensure that you have the proper documentation and tools for both you and your heirs to get the most out of your online assets.

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