



# LAWYER FOR *Life*

KEEPING YOUR FAMILY HEALTHY, WEALTHY & WISE

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## ESTATE PLANNING AND DIGITAL ASSETS

What happens to a person’s Facebook account when he or she passes away? What about the photos you share on social media, the documents you’ve stored in the cloud, your texts to family and friends? While the law is clear about how to handle physical property when a person dies, it is only now beginning to address the management of digital assets. A recent article in *The Conversation* discusses this issue. Here are some of the highlights.

Last year, a group of attorneys crafted a draft uniform law that would allow people to specify in their wills

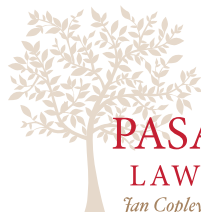
whether or not their estate’s executor can access their social media profiles and emails. Thus far, 39 state legislatures have adopted it while seven more have taken it under consideration.

The uniform law does not specify the exact manner in which such access would take place. As of this writing, a decedent’s executor must contact the company behind each platform to figure out how to access the decedent’s accounts.

**(CONT.)**



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# ESTATE PLANNING AND DIGITAL ASSETS (CONT.)

## Privacy concerns

While many legal issues surrounding digital assets remain undecided, people should still consider including them in their estate planning. Access to a decedent's email is an important consideration. Such messages can be highly personal in nature. What is more, bank accounts, utilities and other accounts may be linked to certain email addresses and messages. Access to this information can help administer a decedent's estate. Meanwhile, limiting who can access it can protect the privacy of the decedent as well as his or family and friends.

So what planning steps can you take? First, state in writing what you want to happen to your digital assets. List all the accounts in your name, then determine which accounts you want your executor to access and which accounts you want to be deleted.

It is important to note that your usernames and passwords should not be listed in your will. Wills become public documents when a person passes away. Instead, keep your access information in a safe place, such as secured password management software. Make sure you leave instructions to your executor about where and how to find them.

## What about e-books, iTunes and other digital assets?

Digital assets like these are ultimately controlled by the provider's End User License Agreement (EULA). If you've actually read your iTunes or Kindle EULA, then you know just how little control you have over your music and e-books. When you hit Kindle's "Buy" button, for example, you are not really buying the e-book, you are licensing it for your personal use. In essence, your e-books and iTunes are not legally yours so you can't pass them on to heirs. The law has simply not caught up with the fact that perhaps you have thousands of dollars in digital books and music and would like to leave them to a loved one when you die. For now, the only solution may be to leave your executor instructions on how to access your accounts and then back up your media on external hard drives.

With some planning, you can make it easier for your heirs to manage your digital estate and protect both your privacy and theirs. Given that some of your digital assets are today's version of shoeboxes containing photographs, letters and other personal mementos, digital estate planning can help preserve your legacy.

You can read the entire article in The Conversation by visiting <http://theconversation.com/estate-planning-for-your-digital-assets-90613>

## NOW IS A GOOD TIME TO MAKE SURE YOUR PLAN IS UP-TO-DATE

Has your financial or medical situation changed since your plan was created? Have any of your children or grandchildren gotten divorced and remarried, or started families of their own? Do your beneficiary designations continue to reflect your wishes? What about the people you have chosen to make financial and medical decisions on your behalf—are they still willing and able to do so? Are all of your trusts properly funded?

Your plan must take all of these issues, and more, into account for it to accomplish your goals. The fact is, an outdated or improperly designed plan is often worse than having no plan at all.

As 2018 draws to a close, you'll likely reflect upon what kind of year it has been for you and your family. In doing so, we hope you'll also take time to review your plan and update it to take into account any changes in your financial, medical and family situation. If you have any questions about your plan, don't hesitate to reach out to us.



**Contact us at your earliest convenience for a personal meeting.**



## THE IMPORTANCE OF CHOOSING THE RIGHT BUSINESS ENTITY

If you want to start a business of your own, or are in the early stages of doing so, you are no doubt feeling a certain amount of stress about how to set it up. Your formation strategy must take into account the possibility of rapid growth while at the same time provide protection against potential short and long-term losses. It must also shield personal and family assets from any losses associated with the business itself. Finally, your plan must protect your business from a wide range of potential threats, including lawsuits, the inability of loved ones to access assets if you become incapacitated, the manner and timing of your exit from the business, tax minimization, and problematic partners and employees.

All of this makes choosing the right business entity extremely important. What is the ideal entity for you? Here is a short introduction to some of the most common approaches.

### **Sole Proprietorship**

Sole Proprietorships are generally suitable for self-employed people who have not formally organized their business.

### **Partnership**

Partnerships can be informal or formal agreements between individuals who agree to work together and share both profits and losses. Partnerships can be General, wherein all parties share profits, losses and liability.

There are also Limited Partnerships, in which one (or more) of the partners contributes capital, shares in profit or loss, but is not actively involved in running the business.

### **Corporation**

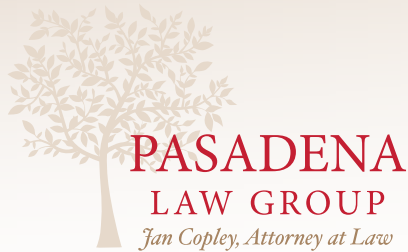
A Corporation is the most common type of business organization. It provides many important legal rights to owners, including limited liability, the ability to issue shares of transferable stock and greater flexibility in managing overall ownership structure. Through incorporation, owners have separate legal standing from the company and are protected against personal liability if the corporation itself is sued.

### **Limited Liability Company**

Limited Liability Companies combine the flexibility of Partnership with the protection of limited liability for owners, much like that inherent in a Corporation. Another benefit of an LLC is that it is considerably easier to create and register than a Corporation.

Given the importance that the success of your business will have on the overall well-being of your family, it is essential to choose the right business entity and have a properly designed plan in place for the future. We are here to help you every step of the way.





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## A PERSONAL NOTE FROM JAN

### *Welcome to the Pasadena Law Group's latest newsletter!*

Our first article is about handling digital assets — such as accounts with Facebook and Amazon.com — held by someone when he or she becomes disabled or dies. Since most people have an online presence, dealing with these assets on someone's behalf is becoming more and more necessary for an incapacitated or deceased person's successor.

California has adopted the "Revised Uniform Fiduciary Access to Digital Access Act" to address this issue (if you're having trouble sleeping, you can read it: it's California Probate Code sections 870-884). The law provides that a user may designate another person to access an online account on the user's behalf. This has to be done with each online account! If the user has not designated someone to access a particular account, then the user may provide in his/her will, trust and/or power of attorney for someone to access the digital information. You may or may not have noticed, but the powers of attorney and trusts I draft for my clients now include provisions to this effect.

I have not yet had to use the provisions of the Act, but the day is coming! I've also started asking people if they have cryptocurrency, and I'm waiting for the first time I help settle an estate with a Bitcoin account.

In the newsletter, we also talk about choosing a correct business entity if you have some kind of business enterprise, even if it is as simple as owning rental property. People don't necessarily think about this when they make investments or open a business, but the type of entity you choose can have tremendous asset protection ramifications, as well as affecting your income and property taxes. Talk to me about what works best for you.

Finally, we discuss updating your plan. Estate plans can become stale — for example, if you created your plan more than five or six years ago, it probably doesn't contain necessary language to handle your digital assets. Why not use the New Year to get everything up to date?

*I wish all of my readers a happy, healthy and wonderful New Year!*

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