

## PRESERVE ACCESS TO YOUR VIRTUAL ASSETS

Virtual assets are electronic data stored on a computer or the internet. These assets include emails, digital photos, electronic bank statements, domain names, online accounts, as well as the passwords that access them. There is emotional, and sometimes financial, value in virtual assets. Online accounts are used to store personal data, communicate, pay bills, access financial assets and conduct business. Often, when the account holder passes away, nobody has access to passwords, or worse, nobody knows the account exists. As a result, online accounts and other virtual assets are left untouched.

The rise of the internet has led to the proliferation of virtual assets. As people of all ages use the internet to save and manage personal and business data, virtual asset issues are increasingly encountered during administration of decedents' estates.

Consider a decedent with substantial assets and a tendency to manage those assets in a way that leaves little or no paper trail. Suppose the decedent managed the financial assets online, received paperless account statements by email, and maintained information about those assets only through a computer. It is difficult to discover that those financial assets even exist. This can lead to the estate failing to identify and report substantial assets, which carries consequences of interest and penalties on death taxes, and delayed distributions to beneficiaries.

There is currently more than \$32.9 billion of unclaimed assets held in U.S. state treasuries. As people conduct more of their financial business online, this amount of unclaimed property will rise even higher, unless careful steps are taken to provide access to virtual assets after death. The law on virtual assets has been slow to develop. Unless and until a legislative solution is provided, careful planning that addresses virtual assets is important for anyone with a significant internet presence.

A statement of virtual asset authority within a Will specifically grants the executor access to virtual assets. This type of statement is also useful in a Power of Attorney, in situations where a person wants his or her agent to access the virtual assets if he or she becomes incapacitated.

Statements of authority in Wills and Powers of Attorney are not enough to disclose the existence of specific virtual assets, so next, an inventory should be prepared including all online accounts, including email, social networks, photo sharing sites, shopping sites, credit card accounts, online bill paying accounts, etc. The inventory should include log-in and password information, as well as answers to secret questions. The inventory is then part of a separate virtual asset instruction letter that should be kept in a safe and secure place.

The separate instruction letter serves as a road map that announces the existence of virtual assets, and lists everything about them in the inventory. Since the inventory contains private password and account information, the instruction letter should be kept in a secure location, such as a safe deposit box or home fire-proof safe, which can be accessed only by a legal representative.

There are now companies providing services that allow lists of accounts and passwords to be accessed online, or stored to a computer under a master password. These services can facilitate developing a virtual asset instruction letter. There are also online data-management companies that claim to transfer virtual asset access to beneficiaries upon death.

State and federal laws, and online terms of service can conflict with some of the services being offered by companies. Therefore, it is important to not rely solely on such services, and also address virtual assets in one's estate plan.

To discuss ways to address virtual assets in your estate plan, or for help administering an estate encountering virtual asset issues, please contact one of the attorneys in our Estates & Trusts Department.

Andrew P. Grau, Esq.  
[AGrau@HRMML.com](mailto:AGrau@HRMML.com)