

Checklist for clients

Helping your clients address access to their digital assets can add value to your relationship, and also—whether you are serving as their fiduciary or dealing with another who is—make the process of dealing with those assets much smoother and easier. (See the “client talking points” for more information.)

1. Planning for digital assets

- Have clients identify the digital assets that they have by filling out a digital assets questionnaire.
- Help clients determine whether their fiduciaries should have access to some or all digital assets, and whether such access should be limited in any way. *Example: The client might have an email account that they use for personal emails that they would like to exclude from the general grant of access.*
- Encourage clients to use online tools when available. So long as the client can access the tool at any time and make changes, the decisions set forth in the online tool will typically override other declarations of their intentions.
- Have clients notify appointed agents of the appointment and let them know how to obtain the necessary information. Information about digital assets, particularly with the detail anticipated on the digital assets questionnaire, must be kept very safe and strictly confidential. Some clients will provide some information about how to access the information to one friend or relative and the rest of the information necessary to another, so that neither alone can access the information.
- Strongly encourage clients to update their estate planning documents (for many reasons, including with respect to digital assets). Their estate planning documents should incorporate the intended powers that give the fiduciaries not only general powers – often general powers are not sufficient to grant access to digital assets – but specific powers setting forth what the client intends with respect to each of the three types of digital assets (content of emails, catalogue of emails and other digital assets). Clients should inform their estate planning attorneys if they have digital assets with objective financial value, such as cryptocurrency, so that they can be included in the overall plan and specifically addressed. If they have those digital assets, their documents should indicate that and explain how their fiduciaries will obtain the necessary information for access (without revealing too much information that would cause the assets to be at risk). Distribution of digital assets should also be specifically addressed in the estate planning documents to avoid confusion over the intentions because of the current lack of clarity under the law as to whether some assets are personal property, cash, or something else.
- Special concerns – Some clients will have concerns specifically related to their situations, such as an attorney who maintains confidential client information on a home computer or a person who is serving as the guardian for an incapacitated person. The client will need to make special arrangements, and the client's fiduciaries will need to take special care, to maintain the privacy and confidentiality not only of their principal, but also of those other parties.

2. Resources

- **Online tools:** Use of the custodian's online tool is the best way to set forth the client's intentions. Not all custodians offer online tools, so other methods may be needed, such as specific grants of powers over digital assets in the estate planning documents.
- **Terms of service agreements:** Clients should be aware of the terms of service agreements that they have with respect to their various accounts. Under the RUFADA Act, online tools and estate planning documents override the standards terms in a terms of service agreement, but the client should be aware of the laws in the relevant jurisdiction and prepare accordingly.
- **Digital assets services:** Services are available that will provide varying degrees of assistance with maintaining digital assets. Services can provide storage for documents, management of various videos and images and any type of digital asset, some with more than mere storage. For example, there are services that will maintain mortgage records such that each monthly payment is reflected and changes the account balances. The client should evaluate what services they want and what may be available with respect to their particular digital assets.
- **Passwords keepers:** Many options for password and username managers exist. Although giving someone the master password to the account may provide the information necessary for a fiduciary to access various digital assets, such services will not typically provide the authority for the fiduciary to access such assets. Access without authority might run afoul of federal laws.

3. Information and instructions for fiduciaries regarding digital assets

Encourage clients to consider what they want to have their agents do with their digital assets. Ask them to consider whether they would want them to close the accounts, to transfer the content, to update the content (such as updating their Facebook status), and/ or to sell any digital assets that can be sold (e.g., a gaming account, if the account can be legally sold). Specific written instructions should be provided to fiduciaries.

4. Digital assets questionnaire

Completing a digital assets questionnaire is a substantial undertaking, but it will greatly assist a client's fiduciaries. This information must be kept very safe and strictly confidential. If there are private keys and other information about cryptocurrency and other digital assets with objective financial value, your client might want to separate that information and keep it behind at least one additional safety measure. Without that information, however, fiduciaries will not be able to gain control of those assets, and the assets—and the value they represent—will be lost completely.

Fiduciary Access to Digital Assets: A Practical Guide

Digital assets questionnaire

PERSONAL AND CONFIDENTIAL

1. Information

<input type="text"/>	<input type="text"/>
Name	AKA (also known as)
<input type="text"/>	<input type="text"/>
Address	City
	State
	Zip code

2. Locations of hard copies of records (if any) and/or media backup of digital assets:

<input type="text"/>
Financial records and tax returns
<input type="text"/>
Employment records
<input type="text"/>
Homeowner records
<input type="text"/>
Medical records
<input type="text"/>
Birth certificate, marriage certificate, passport, etc.
<input type="text"/>
Other

3. Other confidential information:

<input type="text"/>
Combination/location of key for home safe
<input type="text"/>
Safe deposit box (bank, number, location of key)
<input type="text"/>
Other
<input type="text"/>
Password-protected documents/files

4. Passwords, user names, PINs, etc.

On the following pages, include all information necessary to log in, utilize, update, terminate and otherwise access all accounts and subscriptions that you have. Your fiduciaries may need to terminate accounts and delete credit card information and other payment information, even if the accounts will no longer be used or cannot be transferred.

If you have a password keeper program, app or service, provide the information necessary to access it:

<input type="text"/>

5. Cryptocurrency, tokens, etc.

On the last page, include all information necessary for your fiduciary to gain access to any digital assets that have objective financial value such as cryptocurrency, digital securities, fractional ownership via tokens and any type of financial instrument represented by a token.

6. Attachments

Attach as many pages as necessary to provide complete information and number each page. The number of pages of this questionnaire, including this page, is ____.


Also attach, as available, print versions of online tools, terms-of-service agreements, estate planning documents (relevant portions) and instructions for fiduciaries. (These need not be included in your page count.)

Date _____ Principal _____




7. Electronic communications accounts

Identify and provide information for all email accounts, cellphone texts, iMessage, LinkedIn direct messages, Facebook direct messages, etc. Attach as many pages as necessary to include all electronic communications.




# 1 Email address, phone number, username	
Nickname (e.g., home email, cell texts, etc.)	
Type of account: <input type="checkbox"/> email; other (identify)	
Website for access	

✓	Fiduciary access:		
	• Online tool used	• Password	
	• Access to all content 	PIN	
	• Access to catalogue only	• Recovery account	
	• No access	• Security Q&As	
	• Delete immediately		
• Account receives invoices, account statements, tax information, etc., that my fiduciary will need.			

# 2 Email address, phone number, username	
Nickname (e.g., home email, cell texts, etc.)	
Type of account: <input type="checkbox"/> email; other (identify)	
Website for access	

Fiduciary access:		
• Online tool used 	Password	
• Access to all content	• PIN	
• Access to catalogue only 	Recovery account	
• No access 	Security Q&As	
• Delete immediately		
• Account receives invoices, account statements, tax information, etc., that my fiduciary will need.		

# 3 Email address, phone number, username	
Nickname (e.g., home email, cell texts, etc.)	
Type of account: <input type="checkbox"/> email; other (identify)	
Website for access	

Fiduciary access:		
• Online tool used 	Password	
• Access to all content 	PIN	
• Access to catalogue only	• Recovery account	
• No access 	Security Q&As	
• Delete immediately		
• Account receives invoices, account statements, tax information, etc., that my fiduciary will need.		

7. Electronic communications accounts (continued)

# _	Email address, phone number, username	
	Nickname (e.g., home email, cell texts, etc.)	
	Type of account: <input type="checkbox"/> email; other (identify)	
	Website for access	

✓ Fiduciary access:

• Online tool used <input type="checkbox"/>	Password	
• Access to all content <input type="checkbox"/>	PIN	
• Access to catalogue only	• Recovery account	
Delete Immediately	Security Q&As	
No access		
Account receives invoices, account statements, tax information, etc, that my fiduciary will need.		

# _	Email address, phone number, username	
	Nickname (e.g., home email, cell texts, etc.)	
	Type of account: <input type="checkbox"/> email; other (identify)	
	Website for access	

✓	Fiduciary access:	
	• Online tool used	• Password
	• Access to all content <input type="checkbox"/>	PIN
	• No access <input type="checkbox"/>	Security Q&As
	Access to Catalogue only	• Recovery account
	Delete Immediately	
	• Account receives invoices, account statements, tax information, etc., that my fiduciary will need.	

# _	Email address, phone number, username	
	Nickname (e.g., home email, cell texts, etc.)	
	Type of account: <input type="checkbox"/> email; other (identify)	
	Website for access	

✓	Fiduciary access:	
	• Online tool used <input type="checkbox"/>	Password
	• Access to all content <input type="checkbox"/>	PIN
	• Access to catalogue only	• Recovery account
	• No access <input type="checkbox"/>	Security Q&As
	• Delete immediately	
	• Account receives invoices, account statements, tax information, etc., that my fiduciary will need.	

8. Financial accounts and data

Include all information necessary for your fiduciaries to access your devices and accounts. Even if the accounts will not be used, your fiduciary should delete any credit card and other payment information and/or terminate the account to avoid potential misuse.

Category	Examples
Banking and financial accounts:	Bank, investments, retirement accounts, credit cards, PayPal, insurance, 529 accounts, online tax accounts
Debts and liabilities:	Mortgage, car loans, student loans, home equity loans
Financial software:	Quicken, TurboTax
Utilities:	Electric, gas, internet, trash, water, cable TV, satellite TV, streaming services

#1 Company	Type
Website	
Account/member/identification number	
Username	Password
PIN	Associated email account
Security questions and answers	

#2 Company	Type
Website	
Account/member/identification number	
Username	Password
PIN	Associated email account
Security questions and answers	

#3 Company	Type
Website Account/member/identification number	
cation number Username	
	Password
PIN	Associated email account
Security questions and answers	

#_ Company	Type
Website	
Account/member/identification number	
Username	Password
PIN	Associated email account
Security questions and answers	

8. Financial accounts and data (continued)

#_	Company	Type
	Website	
	Account/member/identification number	
	Username	Password
	PIN	Associated email account
	Security questions and answers	

#_	Company	Type
	Website	
	Account/member/identification number	
	Username	Password
	PIN	Associated email account
	Security questions and answers	

9. Accounts, subscriptions, log-ins

Include all information necessary for your fiduciaries to access your devices and accounts. Even if the accounts will not be used, your fiduciary should delete any credit card and other payment information and/or terminate the account to avoid potential misuse. If there are in-app or online purchases that can be transferred to a subsequent or co-owner, note that in the last column.

Category	Examples
Electronic devices:	Computers (including laptops), tablets, e-readers, Alexa devices, software accounts (e.g., Microsoft), internet security accounts (e.g. Norton), printers, toner replacement plans
Phones:	Smart phone, voicemail (cellphone, home, work), Apple ID
Medical records:	UPMC, Aetna, CVS, Highmark, AHN My Chart, MedBridge
Employee benefits:	PayCom, health savings account, cafeteria plan accounts
Social media accounts:	Facebook, LinkedIn, Twitter, Instagram, YouTube, Pinterest, blogs, vlogs
Home:	Security system, wi-fi network, router, Nest, Sonos, iRobot, Ring, other home controls
School:	Schoology, Skyward
Subscriptions:	Netflix, DirecTV, Audible, Hulu, HBO, Spotify, Pandora, Kindle, iTunes, Apple TV, Disney+
Digital news/magazines:	The New York Times, The Washington Post, The Athletic
Shopping websites:	Amazon, eBay, Target, Walmart, Costco, Kohls, Lowe's, Staples
Rewards programs:	Marriott, Starbucks, airline miles, grocery stores
Online storage/backups:	Dropbox, Google Drive, One Drive
Online photographs	Snapfish, Shutterfly
Memberships:	Museums, cultural societies, library, clubs
Video meeting apps:	Zoom, Skype, WebEx, GoToMeeting, Microsoft Teams, Facetime
Gaming:	Xbox, PlayStation, Nintendo Switch, Fortnite, Pokemon, Brawl Stars, Super Cell
Misc.:	Domain names, shipping apps, EZ Pass

9. Accounts, subscriptions, log-ins (continued)

#	Name	Username	Password	PIN/other info	Online purchases
1					
2					
3					
4					
5					
6					
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10. Cryptocurrency, tokens, digital securities

Such digital assets will each have a unique set of data necessary to gain access and control of the digital asset. Provide the information necessary for each such account or asset. If you have taken additional security measures to bifurcate the information such that one person or source has only part of the necessary information and another person or source has the other part, please explain here and be certain that a contingency plan exists in the event that one of such persons dies or becomes incapacitated and can no longer provide the information.

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