

# A Tangled Web: Estate Planning for Digital Property

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## Overview

1. What is “digital property”?
2. Why should we care?
3. Four main fiduciary obstacles
4. Four planning steps

## Overview



- Every 60 seconds on the Internet:
  - 1.7 million gigabytes of data transmitted
  - 168 million emails sent
  - 695,000 Facebook status updates

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## Overview



- Every 60 seconds on the Internet:
  - 48,000 apps and 15,000 songs downloaded from Apple's iTunes
  - 31,250 photos added to Instagram
  - 72 hours of video added to YouTube

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## Overview

- Traditional estate administration:
  - Go to the person's home
  - Review the paper records
  - Check the U.S. mail for bills, account statements, etc.

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## Overview

- Brave new digital world:
  - Statements delivered electronically
  - Records stored electronically
  - Bill payments, tax return filings, and financial transactions done online

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## Overview

- Planning ahead is essential:
  - For full access to digital property
  - To keep costs down
  - For smooth administration
  - To ensure no property is overlooked

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## What is “digital property”?

- Electronically stored information
- Digital music, videos, photos, audiobooks, eBooks, and apps
- Online accounts
- Virtual currency and property
- Internet domain names
- Intellectual property rights

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## Why should we care?

- Ignorance of technology is no excuse
- Fiduciary duties:
  - Find, value, and inventory assets
  - File tax returns
  - Preserve or transfer assets

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## Why should we care?

- Financial value
  - Purchased digital music, videos, books
  - Internet domain names
  - Digital creations by authors and artists
  - Online sales
  - Video games

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## Why should we care?

- Virtual currency
  - Convertible virtual currency
  - Over 600 in use
  - Bitcoin, Ripple, Litecoin

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## Why should we care?

- Virtual currency
  - May 2010: 10,000 bitcoins paid for two large Papa John's pizzas
  - At today's price/bitcoin: \$2,584,400 (\$161,525 per slice)

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## Why should we care?

- Sentimentally-valuable digital property
  - How to find it?
  - How to collect it?
  - How to distribute it?

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## Four main fiduciary obstacles

1. Passwords
2. Encryption
3. Computer crime laws
4. Data privacy laws

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## Four main fiduciary obstacles

### 1. Passwords:

#### – Weak passwords:

- Name of a family member, pet, sports team, or city where you've lived
- Birth date or anniversary
- A word found in the dictionary
- Any of the 100,000 most commonly used passwords

## Four main fiduciary obstacles

### 1. Passwords:

password	baseball	michael
123456	football	shadow
12345678	letmein	master
1234	monkey	jennifer
qwerty	696969	111111
12345	abc123	2000
dragon	mustang	jordan



## Four main fiduciary obstacles



### 1. Passwords:

- Strong passwords use a mix of at least 14 letters, numbers, and symbols
- Personal computer login passwords typically can be reset or bypassed
- Online account passwords typically won't be reset or revealed

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## Four main fiduciary obstacles



### 2. Encryption:

- Encryption scrambles data using a key:

“The quick brown fox jumps over the lazy dogs.”

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## Four main fiduciary obstacles



### 2. Encryption:

- 128-bit AES encryption has . . .  
340,282,366,920,938,463,463,374,607,431,768,211,456  
possible key combinations
- Example:
  - 77 billion years to guess one  
password

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## Four main fiduciary obstacles



### 3. Computer crime laws:

- Federal Computer Fraud and Abuse Act  
(CFAA)
- All 50 states have laws on unauthorized  
computer access

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## Four main fiduciary obstacles



### 4. Data privacy laws:

- Federal Stored Communications Act
- Protects the contents of certain electronic communications
- Providers are prohibited from disclosing contents unless an exception is met (*e.g.*, with the user's consent)

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## Four planning steps



### 1. Prepare a list of digital property:

- Written list:  
[www.digitalpassing.com/digital-audit/](http://www.digitalpassing.com/digital-audit/)
- Electronic list software:  
Dashlane, KeePass, Keeper, LastPass, 1Password, RoboForm, etc.

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## Four planning steps

### 2. Back up important data:

- Back up online account data to your local computer's storage
- Back up your local computer's storage to an external drive or to a cloud backup service

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## Four planning steps

### 3. Protect valuable data with a strong password and strong encryption

- Encrypt data stored locally or in the cloud
- Let family members know where the encrypted data is stored and how to access it

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## Four planning steps

4. Contact your estate planning attorney
  - Make sure your legal documents grant your fiduciaries the access, powers, and authority needed for digital property
  - Review your estate plan every 3-5 years or whenever you have a significant change in your life

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## Legislative efforts

- Uniform Fiduciary Access to Digital Assets Act (UFADAA)
- Nine states have enacted laws on fiduciary access to digital property
- Over half of the states, including Minnesota, are considering enacting UFADAA

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## Keep current with changes



- For more information and updates:  
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