



Law Office of Levi K. Hookano, LLC

P.O. Box 2687
Honolulu, HI 96803

www.hookanolaw.com

808.600.4332
levi@hookanolaw.com

Estate Planning with Digital Assets

Have you ever thought about what happens to your online presence when you pass away? With the proliferation of social media, much of our lives exist in cyberspace. Hawaii has passed the Uniform Fiduciary Access to Digital Assets Act, which can help you and your agent deal with your online accounts.

The use of an “online tool” to direct the disposition of a digital asset takes precedence over all other authorizations. This means if one is completed, similar to a beneficiary designation, then it will take precedence over the directions in your will or trust. Absent the use of an “online tool” the terms of estate planning documents will then have priority, followed by the site’s terms of service. See Hawaii Revised Statutes, § 556A-4.

Below are some samples of what options are available through various popular social media sites.

Google

Google allows a user to set up an “inactive account manager” to plan ahead. This person should be a trusted friend or family member. Basically, if Google detects that your account has been inactive for a long enough period of time, such as through a failure to log in or use Google apps, the account will be deactivated along with its associated accounts, such as Gmail, YouTube, etc. This can be done through your account settings.

You will have the option of providing either a simple notification to your inactive account manager that the account has been inactive, or, allowing them access to your account’s data. Unless you inform him or her, your inactive account manager will not be notified that they have been designated until the account becomes inactive.

If a Google user does not designate an inactive account manager or provide clear instructions about how to handle their account, Google will work with an immediate family member or designated representative to handle the account, and only after thorough review to protect the privacy and data of the user. Passwords and login info will not be provided.

Facebook

If Facebook is notified of a user’s passing, there are ways to provide limited access to a trusted family member or friend. Facebook will also “memorialize” your page. If a user wants to designate someone in advance here is how it is done: Within your security settings you may designate a trusted contact to manage your account after your death. This user, called a “legacy contact” by Facebook, *will not have full access to your account.*

Your legacy contacts will have the following authorizations:

- Write a pinned post for your profile (ex: to share a final message on your behalf or provide information about a memorial service);
- Respond to *new* friend requests (ex: friends or family members who weren't yet on Facebook); and
- Update your profile picture and cover photo.

Legacy contacts *CANNOT*:

- Log into your account;
- Remove or change past posts, photos and other things shared on your timeline;
- Read your messages;
- Remove any of your friends;

In addition to the above, your legacy contact will be allowed to download a copy of your profile. This archive will include the following:

- Photos and videos you uploaded;
- Wall posts;
- Profile and contact info;
- Events; and
- Friends list;

A legacy contact will not receive:

- Messages;
- Ads you clicked;
- Pokes;
- Security and settings info; and
- Photos you automatically synced (from other electronic devices) but didn't post.

Facebook *may* provide access to this type of information in response to a valid will or other legal consent document expressing clear consent. Be sure the possible consequences of such authorization are thoroughly discussed.

LinkedIn

LinkedIn will close a deceased person's account if provided information about the death of a user. This will not grant access to the account. This would be an example of utilizing the sites terms of service. The following information must be provided to LinkedIn in order for them to start the process:

- The member's name;
- The URL to their LinkedIn profile;
- Your relationship to the user;
- Member's email address;
- Date they passed away;
- Link to obituary; and
- Company they most recently worked at.

Twitter

The following is what Twitter will do in the event of a user's death or incapacitation, absent any estate planning documents.

Only an authorized agent or verified immediate family member will be granted permission to request that Twitter deactivate a deceased member's account. Twitter will not grant access to the account itself. An online form is available on Twitter's website to request deactivation of an account. After a request is made to Twitter, the following additional documentation needs to be provided: information about the deceased, a copy of your ID, and a copy of the deceased's death certificate.

If you are working with an incapacitated person, a request can be made to Twitter by an authorized agent. After an online request Twitter require the following additional documentation: information about the user, a copy of your ID, a copy of the account holder's ID, and a copy of a Power of Attorney authorizing you to act on the account holder's behalf.

Snapchat

Snapchat currently does not have any published information regarding access or deactivating a user's account in the event of their death. In this case, it may be best to plan ahead and inform a trusted friend or family member about how to get access to delete a user's account after their death. A will or power of attorney may help.

Conclusion

With an increasing amount of our lives existing in the digital realm, the use of online tools and estate planning documents will ensure our wishes will be carried out not just with our physical possessions, but also our digital assets as well. Be sure you discuss with your estate planner about what online accounts you currently hold so that proper advice can be given.