



ADMINISTERING AN ESTATE: THE CHALLENGES AND PITFALLS IN THE DIGITAL AGE

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AGENDA

1. What are digital assets and digital estate planning?
2. The importance of a flexible estate plan.
3. The role of an Executor.
4. Signs that you need professional assistance.
5. Raymond James Trust Services.



IMPORTANT NOTICE!!



Raymond James Trust (Canada) advisors **do not** provide tax or legal advice.

Clients are encouraged to consult and rely on their own lawyer or qualified tax advisor regarding their specific situation.

WHAT ARE DIGITAL ASSETS?



WHAT IS DIGITAL ESTATE PLANNING?

PROTECT YOUR DIGITAL MEMORIES FOR FUTURE GENERATIONS

THE IMPORTANCE OF A FLEXIBLE ESTATE PLAN

2000



2020



PROTECT YOUR DIGITAL MEMORIES FOR FUTURE GENERATIONS

Online YouGov polling released earlier this month shows that:

- **67%** of Canadians say that what happens to sentimental digital possessions like photos, videos, and social accounts following their passing is important to them, compared with **35%** for financial digital assets.
- But almost half of respondents (**49%**) have not made any plans to pass on their digital assets.
- Strikingly, only **5%** of people have used the digital legacy tools provided by Google, Apple, and others.

STEP (Society of Estate and Trust Practitioners), a worldwide body for professionals that help families plan for their futures, has launched its '[Protect Your Digital Memories](https://www.memories.step.org)' campaign to encourage people to make plans for what happens to their photos and videos after they've gone.

Learn how to protect your digital memories:
www.memories.step.org

DIGITAL ASSET RIGHTS AND LEGAL CHALLENGES IN TRANSFERRING CONTROL

Why are digital assets so complicated for Wills?

- Technology moves fast, laws move slowly.
- Currently, Canada has no legislation regarding the disposal of rights and succession to digital assets. It is up to individuals to provide their personal representatives with instructions and authorization for their digital assets in their powers of attorney and Wills.
- While banks and other financial institutions will accept the Will, death certificate and grant of probate to release funds, some online providers may only accept a court order. This can create a lot of hassle and expense for the family members seeking access.

In practice, many people simply deal with this by saying “Well, I’ll just write down a list of all my usernames and passwords, and give them to a trusted confident.”

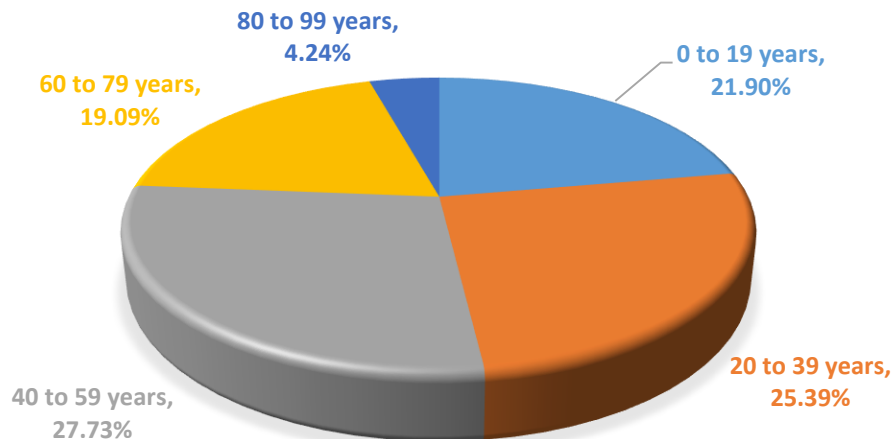
However, this is not an effective and legal way to handle the situation. In fact, when a third-party user accesses someone else’s account without being an authorized user – even because that original owner handed them the login credentials – it is technically an act of “hacking”.

WHAT IS ESTATE PLANNING?



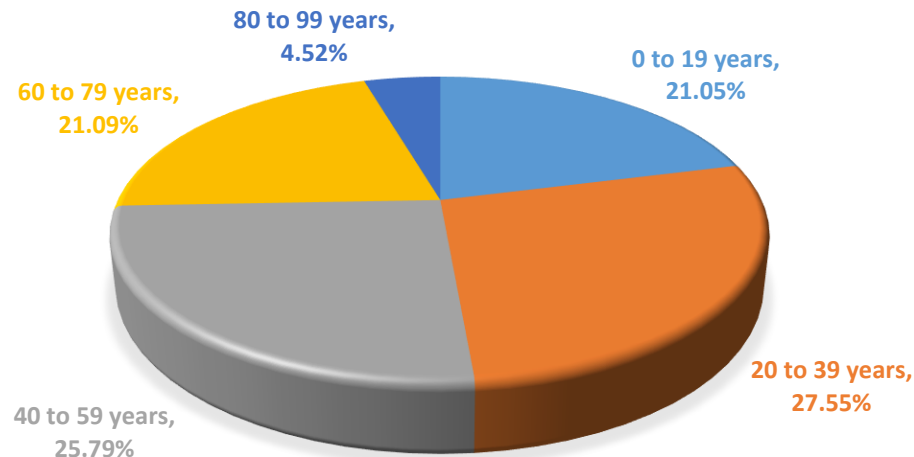
THE CANADIAN LANDSCAPE

POPULATION PER AGE GROUP IN 2017



23% of population over the age of 60

POPULATION PER AGE GROUP IN 2022



26% of population over the age of 60

55% of Canadians have a Will and 40% have powers of attorney drawn up. For Canadians under age 35, the challenge seems to be creating an estate plan in the first place, since only 22% have a Will and only 9% have drawn up powers of attorney.

StatCan – July 1st, 2022

EXAMPLE OF DIGITAL ASSETS CLAUSE IN A WILL

Digital Assets

Subject to any relevant terms herein and the relevant law, my Trustee shall have full power and authority to manage, administer, sell, transact, delete, gift, and otherwise give directions for, any and all digital or electronic property, assets, or information contained in electronic form that belong to me at the time of my death, or over which I had access privileges or which contain information about me, including but not limited to such digital assets as passcodes, account information, social media webpages or websites which contain my personal information, internet domain name registrations, electronic accounts, emails and any other digital property or information that may be stored on servers that do not belong to me but that relate to me whether directly or indirectly.

THE ROLE OF THE EXECUTOR

PREPARING YOUR EXECUTOR

- ✓ Keep estate documents updated
- ✓ Understand the structure of your assets
- ✓ Consider your choice of executor carefully
- ✓ Keep and update estate information:
 - Integrated Will Memo
 - Digital Inventory
 - ***Make sure your Will provides the necessary powers to deal with digital assets.***
- ✓ How will obligations be met on death
 - Contractual
 - Family (support, property claims)
- ✓ Create a business succession plan



HOW TO SELECT AN EXECUTOR

Need to consider:

1. Time



2. Age

What is your date of birth?

DD	MM	YYYY
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For example: 31 12 1970

3. Knowledge



4. Executor location



5. Assets out of the jurisdiction



6. Personal Liability

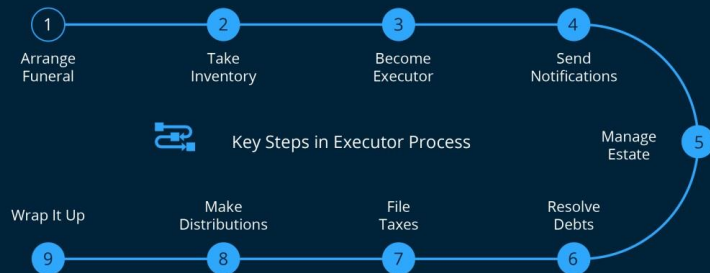


EXECUTOR: A SNAPSHOT

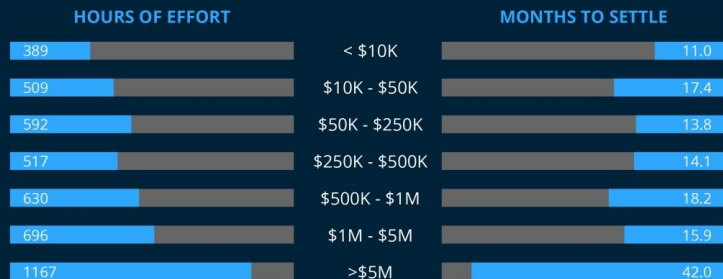
- ✓ Read and interpret the Will
- ✓ Carry out funeral arrangements
- ✓ Safeguard assets
- ✓ Find all assets and debts
- ✓ Appraise all assets and debts
- ✓ Amend or apply for insurance as necessary
- ✓ Review any contractual agreements
- ✓ Notify beneficiaries
- ✓ Advertise for creditors
- ✓ Apply for probate
- ✓ File and pay taxes
- ✓ Terminate all services and contracts
- ✓ Sell, transfer or otherwise deal with real estate
- ✓ Hire and monitor professionals for legal services, real estate, appraisals, tax preparation, investment, etc.
- ✓ Deal with household/personal assets
- ✓ Open and operate estate account
- ✓ Deal with digital assets
- ✓ Keep estate record of accounts
- ✓ Settle/litigate claims
- ✓ Maintain communication with beneficiaries
- ✓ Make distributions – interim and final
- ✓ Exercise discretion
- ✓ Obtain waivers or court approval where necessary
- ✓ Apply for final tax clearance



EXECUTORS: WHAT IS THE JOB?



It takes an average of **570 hours** of effort over a period of **16 months** for an executor to settle an estate (and 80% of estates are settled within 18 months). The graphs below show how these metrics vary by size of estate:



- Responsible for the administration of the estate
- Has full control over the administration
- Liable up to the value of the estate
- Entitled to fee (approx. 5% of value of estate) – taxable income
- May need to post estate bond, especially if out of province
- Should not be outside of Canada
- Will become the trustee of any trusts in the Will (unless stated otherwise)

Estate value does not always = estate complexity

ESTATE COMPLICATIONS



Blended Families



Operating
Businesses



Holding
Companies



Foreign Assets



Other Cross-
Border Issues



Charitable
Beneficiaries



Disabled /
Vulnerable
Beneficiaries



Conflict

COMMON EXECUTOR PITFALLS

Favouring Anyone
(including Yourself)

Keeping poor
records

Acting without
authority of Will or
court

Failure to hold
back when
distributing

Holding on to high
risk assets

Acting in conflict of
interest

Failure to file
proper tax returns

Failure to advertise
for creditors

Co-mingling estate
assets / liabilities

Failure to account
to beneficiaries
and obtain
releases

Liquidating assets
too early (or too
late)

Forgiving debts of
heirs

POTENTIAL LIABILITY OF EXECUTORS

1. LEGAL LIABILITY

Personal liability imposed under the law (tax, common law)

2. LIABILITY UNDER TERMS OF THE WILL

The will or any other testamentary instrument will set out standards of duty

3. OTHER LAWS: ENVIRONMENTAL, REAL ESTATE

Executors are subject to compliance with many laws when fulfilling duties as fiduciaries of property



ESTATE COMPLEXITY CALCULATOR – TO TRUST OR NOT TO TRUST, THAT IS THE QUESTION?



RAYMOND JAMES TRUST SERVICES



Executor and Executor Support

- Take on the full duties of an executor
- Provide professional, thoughtful administration of estates and trusts at all levels of complexity
- Dedicated team of trust professionals deal with the settlement process from beginning to end
- Manage any potential risks and liabilities associated with being an executor



Trustee and Trustee Support

- Serve as sole or joint trustee for a wide variety of trusts
- Bring not only technical, tax and reporting experience, but, most importantly, impartiality to the administration of trusts
- Provide support in an agency capacity to someone who is a trustee, lending expertise to the trust's administration



Appointment Under a Power of Attorney

- Undertake all aspects of financial administration in the event of loss of capacity
- Bring the professional skills and experience necessary to manage property and finances
- Ensure bills are paid, taxes are filed, and investments are managed, alleviating these burdens from family
- Additional expertise in out-of-province assets, private corporations, and real estate



Legacy Planning & Will Bank

- Ensuring all clients that wish to use our services benefit from comprehensive planning from our Trust Advisors.
- Working alongside external legal and tax professionals to ensure deed drafting aligns with planning
- Undertake Safe storage of your client's legal documents when they have appointed RJTC
- Regular review and updates as requested by Financial Advisor or their clients

Simplify.



SIMPLIFY

- Cash management service to alleviate burden from seniors and busy professionals
- SIMPLIFY services are flexible and can include:
 - Bill payment support
 - Income receipt processing
 - Recordkeeping
 - Important document review
 - Assistance with tax preparation and filing coordination

Charitable Giving Funds

- A structured charitable giving vehicle to invest and grow donated assets tax-free for distribution to client's favourite charities
- Like having a private foundation without the administrative burden of establishing a private foundation
- Carry on philanthropic family values and build a lasting legacy

QUESTIONS?



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