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Death In The Digital Age

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Death in the digital age has added dimensions to estate settlement that would have been considered science fiction just a few decades ago, and estate planners are wise to take notice.

Digital records are replacing the filing cabinets, desk drawers and shoe boxes that were once the common repositories of the artifacts of life. Executors should no longer expect to piece together a deceased person's financial picture just by sorting through paper documents. Increasingly, records are digital and stored on the Internet with each individual bank or utility or vendor with whom the deceased had an account. Likewise, the family of the deceased must often look online to find the videos, photographs and writings of their departed loved one. Paper ledgers, scrapbooks and photo albums are going the way of the typewriter. And the convenience of this new paperless existence brings new challenges for those whose business it is to help people plan for their own passing.

Passwords, Security And Estate Settlement

Whereas traditional estate settlement commonly involves rifling through a deceased client's paper files for bank statements, life insurance policies and other records of assets and debts, today these documents are increasingly available only online, and access is tightly restricted. This creates perhaps the single most frustrating challenge facing the estate planner, executor or personal representative in the digital age: Most people fail to leave behind an accurate record of current user names and passwords to permit access to their various online accounts after they die. As a result, the security features that protected them from fraud online become a barrier to anybody who needs access to their online information in order to settle their affairs.

In states with anti-hacking laws that prohibit unauthorized access to online accounts, this scenario puts the decedent's family and representatives in the difficult position of having either to try to guess his passwords—potentially in violation of privacy laws—or to approach the online service provider directly to gain access to the account. Because there is no uniform body of state or federal laws governing access to a deceased person's digital accounts, the disposition of those assets after his death is largely governed by each site's "terms of use agreement." Families then face the prospect of having to jump through a unique set of hoops for each account to which they seek access. These hoops come in all shapes and sizes: Google requires proof of death if someone wants to access a deceased person's e-mail account; Yahoo!, though, requires that a decedent's family obtain a court order to access the contents of an account—proof of death is sufficient only to allow a family member to close an account.

To a trustee, executor or personal representative, these barriers can mean expensive delays in estate settlement and the risk of inaccurate accounting. To grieving families, it can mean losing access to the sentimental value of a deceased loved one's online life. In an age when people increasingly live much of their lives, in one form or another, on the Internet, this is often a major loss. It can mean a loss of real money, too. Without passwords, balances can sit unclaimed in PayPal accounts indefinitely. Automatic payment systems may continue to debit the decedent's account long after he dies. And online investment platforms may continue to execute pre-arranged trades. So when it comes to disposing of digital assets, the consequences of losing access to a decedent's online information are considerable.

One low-tech solution is to counsel clients simply to keep a comprehensive paper list of online accounts and passwords, and to store that list in a safe place. If the list is to be kept with a client's other testamentary documents, many estate professionals ask that the list be provided in a sealed envelope. Fearful of liability, some professionals refuse to keep the list at all. Regardless, a paper list is only as valuable as the diligence with which it is updated. Passwords are changed so frequently that a paper list may be made useless. For this reason, many professionals encourage clients to write down their answers to the security questions used to reset passwords. A more sophisticated option is to create a durable power of attorney that designates an individual to deal with Internet companies on the client's behalf, though this is really useful only during life. For the postmortem, clients may wish to include provisions in their will or trust to dispose of their digital property; some of these provisions may even expressly grant the trustee or executor the power to hire specialized technical help to deal with complex digital property arrangements.

Hi-tech solutions are becoming increasingly common as well. LastPass and 1Password, for example, offer software that allows users to securely store and manage all their online passwords in one place, accessible with a single password.

Other companies provide services to manage digital assets after death. Leaders in this industry include Entrustet and SecureSafe, which will "help you securely store your online accounts and computer files, making them securely accessible anywhere in the world and enabling you to transfer or delete them when you pass away." Legacy Locker offers a "safe, secure repository for your vital digital property that lets you grant access to online assets for friends and loved ones in the event of loss, death, or disability." Similar services include BCelebrated.com and PartingWishes.com.

Digital Life And Legacy

Clients should be advised to take the disposition of their digital assets seriously if they have any desire to preserve aspects of their life and legacy. Personal relics are no longer just diaries, letters, photographs and other items squirreled away in attics and basements. Descendants of those living today will also want to peruse digital archives to get a better sense of who their parent or grandparent was and the times in which they lived. As society moves away from paper correspondences and documents, many clients are rightly concerned that their family will have few tangible mementos of their life after they pass away.

Even clients that do not use Twitter or Facebook likely create and store records of their lives in a digital format. E-mail has become a universal mode of communication, and text messaging and even video messaging only add to the mountain of digital correspondences that may be part of a decedent's life history. Online picture storage sites like Snapfish and Shutterfly have increased the volume of photographs that a person may take and store, enriching the story of that person's life. The proliferation of MP3 files can create a record that essentially provides a soundtrack to a person's history. Even the bookmarked sites on a deceased family member's Web browser may illuminate that person's hobbies and interests.

Perhaps more pointedly, browser histories and other digital records may reveal more detail than the deceased would wish. Blog posts, comments or other content created by the deceased can often be accessed even after being deleted from a computer screen. Everyone has had embarrassing moments in life, times when they've said something they wish they hadn't, and would prefer that it were all forgotten. But online digital information has a habit of taking on a life of its own, and is tough to get rid of completely. Tools like Waybackmachine.org—an archive of 150 billion Web pages dating all the way back to 1996—can enable an intrepid searcher to uncover facts that the deceased may want to die with him. If the prospect of leaving no family album is insufficient to prompt a client's attention to his digital assets, many professionals have found that reminding clients of the prospect of being embarrassed after their deaths is more than enough to spur action.

There are as many digital asset management solutions as there are pixels on a screen. Clients' needs will vary widely depending on their digital presence and on the continued evolution of digital technologies. Suffice it to say that if there is any universal imperative for estate planners in the digital age, it is to help—perhaps, even, to force—clients to confront the terabytes of data they will leave behind, and to sift through what can be ignored, what should be destroyed, what should be protected, and what should be shared.

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