Digital Assets Raise Estate Planning Questions

More and more, we are conducting our business on the Internet, whether that's online banking, shopping at Amazon and other sites, uploading documents and files to the "cloud," posting videos on YouTube, or communicating with high school classmates via Facebook.

So, what happens to all of our accounts and files when we become incapacitated or pass away? Will our spouses and children have access to them? Where will they find our usernames and passwords? Who can take down our Facebook and LinkedIn pages, or would we prefer that they continue for posterity? And if we've saved photos, videos and other files on the cloud, who should have access to them and how long should they stay out there?

These are questions almost everyone needs to think about today and they often raise difficult security and legal issues. For example, if you become incapacitated and your daughter starts handling your finances online, is she doing so legally? Presumably you've given her your assent to do so, but the bank may not have a durable power of attorney on file with this authorization. As far as the bank knows, you're still the person logging in and paying your bills or shifting your investments. Is this fraud on the bank? Does anyone care as long as your daughter is acting in your best interest?

And what if you pass away and your child, rather than notifying the financial institutions, continues to pay bills online and make distributions to family members? This is clearly contrary to law, but it could be much more convenient than going through the probate process. Is it an instance of no harm, no foul?

States are beginning to grapple with these issues. A few states have enacted laws, giving executors access to online accounts. In addition, every Internet provider has its own rules about access to user accounts, and generally users have agreed to these rules when they first enrolled, whether they actually read the service agreement or not. In April 2013, Google introduced the concept of an Inactive Account Manager who Google users can name to receive notice when a Google user has not accessed her account for a long period of time. The Inactive Account Manager has access to Google accounts designated by the user and can take whatever action is necessary to access them or shut them down.

The legalities aside, here are some steps we can all take to better manage our digital assets:

- **Inventory your digital estate.** Make a list of all of your online accounts, including e-mail, financial accounts, Facebook, Mint, and anywhere else you conduct business online. Include your username and password for each account. Also, include access information for your digital devices, including smartphones and computers.
- **Store the list in a safe place.** There are a number of options for where you and your representatives can store the list, each with its own problems. If you have the list on paper, someone who you don't trust might discover it and gain access. You can keep it in a safe deposit box or give it to your lawyer to hold in her files. In each case, your representative needs to know where it is and how to gain access. If you keep the list online, make sure you do so securely. You can upload the file to Dropbox, giving your representative access, or use one of a number of new services for this purpose. These include: Cirrus Legacy, and SecureSafe.
- **Give access to your personal representatives.** Once you have your inventory, you will need to provide it to the people who will step in if you become incapacitated or

pass away, or let them know how to find it when and if they need to do so. Make sure that they save the information as securely as you have yourself. You might want to simply give them access to one of the services listed above with a username and password that they can remember.

- **Authorizing language.** Make sure the agent under your durable power of attorney and the personal representative named in your will have authority to deal with your online accounts. The Web site DigitalEstateResource.com provides sample language.
- **Update the inventory.** As you open new accounts and services, purchase new devices, and change usernames and passwords, you will have to update your list so that it remains current.

Unfortunately, as the Internet makes our lives easier and quicker, it also makes them more complicated. We all need to take steps to make sure that our loved ones have the necessary access when access becomes necessary.

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Dealing with a Deceased Loved One's Debt Collectors

The last thing anyone wants after the death of a family member is calls from debt collectors dunning the loved one's estate. While some family members can be contacted by debt collectors, the family is protected from abusive, unfair, or deceptive practices.

Usually the estate is responsible for paying any debts the

deceased may have left. If the estate does not have enough money, the debts will go unpaid. A debt collector may not turn to relatives to try to collect payment (unless they were co-signers or guarantors of the debt). However, the spouse of the decedent may have responsibility for any debts that were jointly held.

Debt collectors are allowed to contact the personal representative (executor) of the estate, the decedent's spouse, or the decedent's parents (if the decedent was a minor) to discuss the debts. They may not discuss the debts with anyone else. The only reason debt collectors may contact other relatives or friends is to get the name of the personal representative or spouse. But they cannot say anything about the decedent's debt to those individuals or even say that they are debt collectors. When speaking with family members, debt collectors may not mislead the family into believing that the family members are responsible for the deceased person's debts. They also can't use abusive or offensive language.

Even if you are the person who is responsible for paying the estate's debts, you can request that a debt collector stop contacting you. To do this, you need to send a letter to the debt collector asking the collector not to contact you again. You should keep a copy of the letter for your records and send the letter "certified" with a return receipt. Once the collector receives the letter, the collector can contact you only to tell you that there will be no further contact or to inform you of a lawsuit. Remember, the estate is still responsible for paying its debts to the extent that it can.

If you have a problem with a debt collector, contact your state attorney general's office or the Federal Trade Commission at ftccomplaintassistant.gov.

Should I Enroll in Medicare If I'm Still Working?

Many people keep working well beyond age 65—the age when most people become eligible for Medicare. If your employer offers health coverage, do you need to enroll in Medicare? What if the employer offers or does not offer prescription drug benefits?

Most workers probably should enroll in Medicare Part A, which is free for most people and covers institutional care in hospitals and skilled nursing facilities, as well as certain care given by home health agencies and care provided in hospices. But ask your employer (or your spouse's employer, if that's where you get your coverage) whether your current coverage will change in any way if you enroll in Medicare, even just Part A. For more information on Part A, click here.

Medicare Part B has a monthly premium, which changes each year (it is $104.90 a month in 2013). Medicare Part B covers outpatient and preventative care like office visits and tests. Individuals who don't sign up for Part B when they first become eligible can pay a 10 percent premium penalty for each year that enrollment is delayed. However, there is an exception for employees who are currently employed and covered by their employer's group health plan. In most cases, as long as you have group health insurance through your employer, you can delay signing up for Part B without a penalty. When you retire, you will have a special enrollment period of eight months to sign up for Part B.

Whether you should enroll in Part B while you are still working depends on whether your employer has more than 20

employees. If your employer has more than 20 employees, you do not need to sign up for Part B right away because your employer's group health plan will be the primary insurer. If your employer has fewer than 20 employees, however, you should enroll in Medicare when you are first eligible. Medicare is the primary insurer, which means it pays before your employer's insurance pays. If you don't enroll, your employer's plan can refuse to cover you for services that Medicare would have covered. That means that you may have to pay for those services out of your own pocket. For more information on Medicare Part B, click here.

Medicare Part D covers prescription drugs. Even if you choose not to enroll in Medicare Part B, you can still enroll in Part D and doing so may be advisable to avoid a late-enrollment penalty similar to the one for Part B. If you already have prescription drug coverage through your company, your insurance plan should send you a letter that will state whether or not the company's coverage is "creditable" – meaning it is equal to or better than what Medicare is offering. If it is "creditable," then you won't have to pay a late-enrollment penalty if you decide to switch to Medicare Part D later.

Also, if you are already covered by your company's drug plan, a Medicare plan may not be right for you. Don't sign up until you compare your current plan with the Medicare plans available to you. Finally, before you sign up for a drug plan, ask your employer if you can drop your drug coverage without losing your other supplemental insurance. Once that insurance is gone, you may not be able to get it back.

If you are currently receiving Social Security benefits, you don't need to do anything to enroll in Medicare. You will be automatically enrolled in Medicare Parts A and B effective the month you turn 65. If you do not receive Social Security benefits, then you will need to sign up for Medicare by calling the Social Security Administration at 800-772-1213 or

online at http://www.socialsecurity.gov/medicareonly/. If you decide not to enroll in Part B, fill in the box on the back of your Medicare card declining Part B coverage and mail it back to the address listed. You will be mailed a new card.

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Can Life Insurance Affect Your Medicaid Eligibility?

In order to qualify for Medicaid, you can't have more than $2,000 in assets (in most states). Many people forget about life insurance when calculating their assets, but depending on the type of life insurance and the value of the policy, it can count as an asset.

Life insurance policies are usually either "term" life insurance or "whole" life insurance. If a Medicaid applicant has term life insurance, it doesn't count as an asset and won't affect Medicaid eligibility because this form of life insurance does not have an accumulated cash value. On the other hand, whole life insurance accumulates a cash value that the owner can access, so it can be counted as an asset.

That said, Medicaid law exempts small whole life insurance policies from the calculation of assets. If the policy's face value is less than $1,500, then it won't count as an asset for Medicaid eligibility purposes. However, if the policy's face value is more than $1,500, the cash surrender value becomes an available asset.

For example, suppose a Medicaid applicant has a whole life insurance policy with a $1,500 death benefit and a $700 cash surrender value (the amount you would get if you cash in the policy before death). The policy is exempt and won't be used to determine the applicant's eligibility for Medicaid. However, if the death benefit is $1,750 and the cash value is $700. The cash surrender value will be counted toward the $2,000 asset limit.

If you have a life insurance policy that may disqualify you from Medicaid, you have a few options:

- Surrender the policy and spend down the cash value.
- Transfer ownership of the policy to your spouse or to a special needs trust. If you transfer the policy to your spouse, the cash value would then be part of the spouse's community resource allowance.
- Transfer ownership of the policy to a funeral home. The policy can be used to pay for your funeral expenses, which is an exempt asset.
- Take out a loan on the cash value. This reduces the cash value and the death benefit, but keeps the policy in place.

Before taking any actions with a life insurance policy, you should talk to your attorney to find out what is the best strategy for you.

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Do You Pay Capital Gains Taxes on Property You Inherit?

Nope. When you inherit property, such as a house or stocks, the property is usually worth more than it was when the original owner purchased it. If you were to sell the property, there could be huge capital gains taxes. Fortunately, when you inherit property, the property's tax basis is "stepped up," which means the basis would be the current value of the property.

For example, suppose you inherit a house that was purchased years ago for $150,000 and it is now worth $350,000. You will receive a step up from the original cost basis from $150,000 to $350,000. If you sell the property right away, you will not owe any capital gains taxes. If you hold on to the property and sell it for $400,000 in a few years, you will owe capital gains on $50,000 (the difference between the sale value and the stepped-up basis).

On the other hand, if you were given the same property, as opposed to receiving it upon the owner's death, the tax basis would be $150,000. If you sold the house, you would have to pay capital gains taxes on the difference between $150,000 and the selling price. The only way to avoid the taxes is for you to live in the house for at least two years before selling it. In that case, you can exclude up to $250,000 ($500,000 for a couple) of your capital gains from taxes.

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