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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