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Myth of the Digital Executor

Digital estate myth #3: Digital executor solves the problem

By Sharon Hartung



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(October 23, 2019, 9:30 AM EDT) -- Digital assets remain one of the least understood aspects of estate planning and estate administration.

From a technology management perspective, I've seen three myths circulating about how to handle this new asset class. My first article in this series discussed the misunderstanding that all digital assets are the same. The second discussed relying too much on password managers and hard-copy password lists. This final article looks at the third myth.

Myth #3: Appointing Digital Executor solves problem

First, the term "digital executor" is a made-up term. It sounds convenient, but this myth is likely based on an oversimplification of the class of digital assets, and it does not recognize that our physical lives are very much intertwined with our digital lives. Here is one simple example that illustrates the point. Your client has an online subscription to a newspaper, magazine or content channel and engages with that channel through their account or app. Who is supposed to deal with this digital asset -- the executor or the digital executor?

Now, consider the flipside. Suppose your client has an unregulated cryptocurrency where specialized technical help may be required to deal with this asset. But what about the taxes? Does the digital executor deal with the tax liability or the executor?

From a project management perspective, perhaps what is happening is that today's executor not only has to deal with traditional estate matters, but probably has an additional job dealing with the deceased's digital estate as well. In addition, there are jurisdictional specific laws that govern what an executor, or anybody for that matter, can and can't do in handling a client's digital life, digital assets and online accounts. As executors engage specialized advisors depending on the asset, such as an art appraiser for art, or a real estate agent for property, perhaps in the digital age, the executor may need specialized advice in dealing with the client's digital life. Providing the executor with powers in a client's will to deal with their digital assets and digital estate is a good starting point. Recognizing or identifying additional guidance or technical support that the executor may need is another worthy measure.

In my previous article in this series I mentioned the Cloud Legal Project. Check out Part One of this project from the Queen Mary University of London, School of Law Research paper: *Beyond the Clouds, Part 1: What Cloud Contracts Say About Who Owns and Can Access Your Content*. While you're at it, consider these findings on Terms of Service (TOS) contracts:

1. Users are generally not permitted to assign their rights under cloud contracts.
2. The TOS of most cloud services do not address what happens when a user dies.
3. The TOS of all 35 services prohibited user password sharing.

4. The TOS of around one-third of services surveyed provided that user accounts terminate upon inactivity.
5. Cloud providers can typically change their TOS after notifying users of any material changes, either by email or through the service.

Given how dependent we are on technology and the power of the digital custodians, I expect consumers, with heightened awareness, will demand better options for estate planning from the online providers. The unfortunate reality is that digital assets are difficult to access after death, and this notion of a digital estate has only emerged in the past 30 years as a result of our reliance on the Internet. It is critical we raise our client's awareness of their digital assets and the impact on their estate plans.

Help educate your clients and your colleagues by busting these three myths about digital assets in estate planning.

This is part two of a three-part series. Read part one: Digital estate myth #1: All assets are the same. Part two: Digital estate myth #2: Hard copy, password managers the answer.

Sharon Hartung is the founder and principal of Your Digital Undertaker and has over 30 years of experience in IT management, project management and consulting. She is the author of the newly published Your Digital Undertaker — Exploring Death in the Digital Age in Canada.

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