

Digital Assets

Digital asset deep dive: How e-mail affects client's estate

By **Sharon Hartung**



Sharon Hartung

(December 16, 2019, 8:45 AM EST) -- From an estate planning and estate administration perspective, a client's e-mail is a digital asset and is part of their estate and estate plan.

There are six critical ways our clients use e-mail that will affect estate planning, and eventually estate administration:

1. Clients will have wishes about who can or can't read and/or access their e-mail correspondence after they have passed away. These wishes can be further complicated by the provider's Terms of Service with respect to allowing or denying access.
2. E-mail is now our client's digital home office. It potentially contains all the information that a fiduciary would have previously found in paper statements in a home office or in an estate binder. As such, a client's e-mail may contain information about their accounts, not only for their physical asset debts and liabilities, but for all their online accounts as well. E-mail records and folders also likely contain valuable information about relationships with the financial services and insurance institutions they deal with.
3. Your client's ability to transfer information and content or provide access to a fiduciary will be constrained by Terms of Service and the law. Two examples:
 - Google Gmail has a planning function called Inactive Account Manager, which is "...a way for users to share parts or all of their account data or notify someone if they've been inactive for a certain period of time." But in order for this to work, your client will need to set it up in advance of incapacity or death. As it stands, if you do not use this preplanning function, your fiduciary will need a U.S. court order to gain access.
 - Yahoo Mail has no mechanism to obtain access to a deceased person's e-mail account after death and the only option a fiduciary will have is to close the account.
4. E-mail accounts expire after a period of inactivity. This might not seem like an issue, but what if your client was ill prior to death and hadn't used their e-mail in a while? For example, Microsoft's page on: Accessing Outlook.com, OneDrive and other Microsoft services when someone has died, advises: "Outlook.com and OneDrive accounts will be frozen after 1 year and any email messages and files stored on OneDrive will be deleted shortly after. Microsoft accounts expire after two (2) years of inactivity."
5. Clients use e-mail in a variety of intended and unintended ways that will pose surprises and risks. To illustrate:
 - Some clients use their work e-mail to access their personal online accounts. How is that going to work on death, as it is unlikely the employer will share the contents of the e-mail or password?

- Some clients use e-mail to store information, such as using the draft feature or attaching documents to self-addressed e-mails. Gaining access to e-mail after death is highly restrictive for the reasons outlined above, and certainly impossible without preplanning. Clients should be encouraged to re-evaluate their use of e-mail for purposes other than correspondence.

6. Most clients will jump to the conclusion that leaving user names and passwords for their e-mail accounts solves the problem. The risk and challenge of this approach is that the majority of online service providers' terms and conditions prevent or prohibit the use of sharing user passwords.

This is the fourth of a five-part series. Read part one: Digital assets deep dive: Tech solutions; part two: Digital asset deep dive: Client management; part three: Digital asset deep dive: Dangers of ignoring e-mail.

Sharon Hartung, TEP, 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.

Photo credit / Sutad Watthanakul ISTOCKPHOTO.COM

Interested in writing for us? To learn more about how you can add your voice to The Lawyer's Daily, contact Analysis Editor Richard Skinulis at Richard.Skinulis@lexisnexis.ca or call 437-828-6772.

© 2019, The Lawyer's Daily. All rights reserved.

This article was originally published by The Lawyer's Daily (www.thelawyersdaily.ca), part of LexisNexis Canada Inc.)

Disclaimer: The intent of this information is to simply encourage individuals to consider the importance of digital assets in the context of a Will, estate planning and estate administration. The author does not warrant or guarantee the accuracy or currency of the information provided herein. The laws in a jurisdiction change and are potentially different than what was presented here. The author is not providing advice, and you are encouraged to seek qualified professional advice authorized in your jurisdiction for your specific situation.