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Phone: (800) 668-6481 | Fax: (905) 479-3758 | John.Carson@lexisnexis.ca

High-Tech Estate Planning

Estate planners: Getting ready for the digital age

By Sharon Hartung



Sharon Hartung

(August 28, 2019, 8:36 AM EDT) -- What do estate planning lawyers need in readiness for estate planning in a digital world? It boils down to understanding three new realities that fundamentally impact both estate planning and estate administration.

1. Digital assets — a new asset class: Your clients have a new class of assets called digital assets. We don't have hundreds of years of legal precedents or experience to guide us here, and many of these digital assets are constrained by the technology providers in the terms of service agreed to by clients. This alone will spawn a tremendous amount of work, as every digital asset your client owns has different characteristics that need to be examined and analyzed in order to effectively provide estate planning guidance.

2. The executor's (fiduciary) role has fundamentally changed: Estate planners who have only considered digital assets in the equation may have overlooked this shift in the executor's job. Digital assets are certainly important, but there is another more essential industry

transformation issue at play. The executor's role has fundamentally changed as a result of the shift from a paper to a paperless society.

Even if you are only working in estate planning, you have an obligation to recognize and inform your clients about how technology has impacted the ability of the executor to do their job in estate administration. It is not only prudent to advise a client of these changes, but down the road I anticipate that beneficiaries will hold estate planners to account.

If you boil down the executor's job, the elemental steps in the role from a project management perspective are to follow the will or court order, retrieve or create an asset/property inventory, close down the testator's life by paying off the bills and taxes, and then disperse the remaining assets according to the will itself. What is absolutely central to their ability to perform their duties is captured in the proverbial estate inventory or estate binder (a listing or paper trail of the testator's assets and liabilities).

The paper-filled era gave the executor a fighting chance with printed statements. With all of us online for everything, including managing our households and filing taxes, the executor will likely be faced with a locked computer or device screen potentially with limited or no ability, legally or otherwise, to access. The executor's job is thwarted right out of the gate, which could drive increased cost and effort in estate administration, and in the worst case frustrate the testator's wishes if assets are never found.

3. Technological disruption of the estate industry: I am fully expecting the same disruptive innovation that created fin tech to occur within the death-care and estate industries in creating estate tech. Closer to home with digital assets specifically, we can also expect consumers will require more tech to manage their inventory of tech and digital footprints.

With the increasing number of online accounts, we have seen the explosion of password-manager tools and containers to not only manage the volume, but deal with the cybersecurity requirements

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of longer and different passwords. Passwords are required in life but become problematic on death for a variety of technical, legal and other reasons.

Practically speaking, we'll need evolved or different tech management software or devices to deal with our digital assets. Solutions need to address the transfer of digital assets in situations of incapacity or death in a manner that meets regulatory, legal and technical planning requirements.

Estate lawyers will need to understand and keep current on digital asset management trends as technology evolves in preparation to serve their clients in identifying and pre-planning their digital assets.

Are estate planning lawyers ready? I would like to think so. I see positive signs that the respective provincial/territorial law societies have turned their attention to technology in estate planning and have encouraged their practitioners to attend webinars and sessions to learn about the topic.

Personally, I have been invited by legal bodies and estate planning associations to help them educate their membership on the information technology management aspects of their client's digital lives. As a Society of Trust and Estate Practitioners (STEP) affiliate and STEP Special Interest Group (SIG) committee member, I know how this global organization recognized the need and started the Special Interest Group on digital assets in 2017. Any estate planner can join the Digital Asset SIG without being a STEP member.

Even though I originally thought estate planning lawyers were getting ready, now I am not so sure. This is an extract from an e-mail I received recently:

"Thanks so much from a Senior with a Will prepared but not enough detail regarding digital. Some, but not enough. My lawyer had never heard of such a thing, but I made him put a clause in the Will anyway."

Maybe not all estate planning lawyers are ready. But the good news is, it is not too late.

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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