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Wills, Trusts & Estates

Digital assets deep dive: Tech solutions

By Sharon Hartung



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(November 26, 2019, 12:31 PM EST) -- In my practice, I have spoken at many workshops and conferences with estate lawyers, estate planners, clients and the general public. Regardless of the audience, some of the first words often blurted out are, "password managers" or the question is asked, "what about password managers" in an effort to tidily solve the entire digital assets dilemma in one fell swoop. We live in a complicated world where every minute of the day is taken by orchestrating client commitments, and we just don't have the time to investigate a new and evolving digital domain that requires more research than can be handled with a passing comment.

As I outlined in a previous article, Digital estate myth #2: Hard copy, password managers the answer, password managers just offer a technical solution to manage long and complex passwords in our digital inventory. Transferring digital assets upon death is complicated by legal, technical and/or practical challenges inherent in the contractual relationship we have with our online providers and agreed to in their Terms of Service. The law is still evolving and the business and technological options for pre-planning are immature. Yes, there are recognized solutions, such as Facebook's Legacy Contact and Google's Inactive Manager, but otherwise pre-planning options are mostly non-existent.

Starting point in discovery

From an estate planning perspective, information from a password manager, provided it is extracted as a list of user names, service providers and websites, may be a starting point in discovery. But it won't:

- identify or verify a client's key assets;
- tell you the Terms of Service;
- answer the ownership rights questions;
- have the client's goals, wishes and preferences;
- identify risks; it is unlikely to have detailed instructions on how to manage them from a technology perspective; and
- certainly won't have recommended strategies for dealing with a client's requirements.

And more concerning, a locked and encrypted vault of any type including a password manager will pose unique access challenges for the fiduciary. Notwithstanding the law and the contractual Terms of Service, what if the password for the password manager was written down incorrectly or not updated, or required secondary authentication, or had other access barriers? What if your client was ill for a long time before they died and stopped paying the credit card for the password manager subscription service?

Tech solutions can compound problem

It's easy to jump to a technology solution as the be-all-and-end-all to our business problems.

As those who have been involved in developing or maintaining client systems know very well, it all starts with defining the business problem. Invariably the best technical solutions, even ones right out of the box, generally come with an equal if not larger business process engineering requirement.

For successful implementation the client must evaluate what they are doing and why, along with the education, change management and communication and maintenance requirements. New systems often result in additional, unexpected requirements and all need time to work out the kinks. Rarely, have I seen a successful technology project where the technical solution stood on its own without inordinate effort before and after its implementation with an integrated effort between business owners and the technology solution providers.

Reframing the question

In that vein, how about we reframe the question of how best to manage digital assets. If we don our estate planning hats and turn to a business process answer as a starting point for handling digital assets, then as experienced planners we should leverage the processes and practices we already know.

Then the questions become: how does a client plan for their digital assets after-death management; and is a password manager part of the equation? Take the hypothetical situation of a client that comes to you for estate planning advice with a comprehensive and detailed list of assets — personal and business interests; a family tree; and a list of wishes and preferences. You'd probably be delighted as it would aid the assessment or discovery phase of your information gathering process. But that is only the beginning. Then, the follow-on steps result in developing a plan; taking client instructions; providing advice; and executing on the actions directed by the client.

This is part one of a two-part series. Part two will focus on client management.

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