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Digital Estate Planning

Digital asset deep dive: E-mail for estate planning discovery

By Sharon Hartung



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(January 3, 2020, 12:44 PM EST) -- This is the fifth article in a series on digital assets for estate planning and administration. The last article discussed the six critical ways clients use e-mail that affect estate planning. Here are the 10 key questions to ask about e-mail for estate planning discovery.

1. What do you use e-mail for? What e-mail provider(s) do you use? How many account(s) do you have and how do you use them?
2. Who else has access to your e-mail account(s) and why? Who can reset the password on your account and why?
3. Does your e-mail user name(s) match your given name(s)? For usernames that do not match your given name, how can you prove they are your account(s)?
4. Have you reviewed the Terms of Service for what happens to your e-mail account(s) upon death?
5. Have you used any preplanning options offered by the e-mail provider(s)? For preplanning functionality do you intend to select someone other than your executor? If so why?
6. In terms of correspondence (digital letters) contained in your e-mail, who do you want to be able to read and/or access them after death? For significant correspondence, have you made them available in another format?
7. Do you use your work e-mail for your personal online account(s)? Have you considered changing your online account(s) to your personal e-mail versus your work e-mail?
8. Do you use your e-mail for any other purpose than communication? If so, have you considered exploring other more appropriate tools or software for the other purposes?
9. Have you considered what information is in your e-mail that your fiduciary will need access to? Have you created a secondary source of information, such as an estate binder for your fiduciary other than expecting them to rely on e-mail? Have you also created a backup of that secondary source? How often do you plan on updating that information?
10. If it is the client's view that their e-mail is critical to their fiduciary's estate administration process, have they considered moving to an e-mail provider that provides preplanning functions and fiduciary access?

Note: This area will evolve as consumers become more aware and demand that service providers consider these estate planning requirements. These questions are not exhaustive, and as our collective use of e-mail and electronic communication evolves, these questions will change and expand. In addition, estate lawyers should also seek guidance from their respective law society,

estate planning professional organization and firm's policy and practices.

Clients should be made aware of the impact that their e-mail as a digital asset has on their estate plans. They should be cautioned on solely relying on e-mail and a fiduciary's access to it as a means of transferring critical information about one's estate and estate plan. Further, relying on passwords for a variety of legal, technical and practical reasons is not an effective estate planning option.

Clients should be encouraged to prepare secondary sources of information for their estate in addition to backup plans, as well as communication in advance with their fiduciary. The key point is that an estate plan and supporting documentation in an estate binder are as important for digital assets as they are for physical assets.

In many respects, integrating our digital lives and digital assets in estate planning also involves our clients tidying up their personal technology practices. And, if nothing else, they will thank you for that.

This is the fifth article in a 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; part four: Digital asset deep dive: How e-mail affects client's estate.

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.

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