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Death of Windows 7

Windows 7 died without will and estate plan

By Sharon Hartung



Sharon Hartung

(January 27, 2020, 8:40 AM EST) -- We love to stay current on tectonic shifts in technological innovation when they are shiny new objects, or future technology promises to transform our paradigm or save our world.

But what about the back-office aspects of technology, namely, the maintenance side? Those oft-neglected patches, updates, privacy and security settings, backup and recovery planning — the basic tech hygiene that we rely on and the IT department at work take care of. At home, we muddle through the various tools to keep ourselves operational hoping we don't get an intrusion from a nefarious source who wants to infect our home device so they can "fix" it.

Let's talk about that basic, necessary underpinning to home office technology: the operating system, or OS, and how it affects estate law.

The operating system is the software program that lets you interact with your computer or mobile device. Ignoring the hardcore techies and gamers for a moment, most home users are familiar with either Microsoft or Apple's OS. Who hasn't been interrupted by nagging reminders from our provider to update or upgrade our OS? Usually, it's more than that. It's their way of keeping us protected from viruses, malware, cyber intrusions and hacking risks when new vulnerabilities are exposed.

After 10-plus years, Tuesday Jan. 14, 2020, marked the passing of Microsoft Windows 7 personal computing operating system software. Although the operating system will keep working, updates to protect the consumer will be no longer provided for free, and don't look for new applications that work on that version. Operating system software doesn't normally get this degree of fanfare, but Windows 7 was such a popular version that many users didn't migrate to subsequent Windows versions. As early as 2015, Microsoft offered Windows 7 users a free migration (upgrade) to Windows 10 in anticipation of the end-of-support and they've been strongly warning users with pop-up messages over the past year.

In the months and weeks leading up to the death of Windows 7, many tech news outlets reflected fondly on the end-of-life of Windows 7 by describing its features and the reasons consumers clung to it instead of migrating to new versions.

Moving or upgrading to a supported version of an operating system or software application shouldn't be ignored. End-of-support means that anybody using an unsupported version will no longer receive technical support, updates against viruses, malware or security vulnerability protection or software functionality updates. Some software providers do offer business and education users some degree of post support, but it will cost. Apple users are not immune to the expiry of operating systems versions either.

Three reasons why estate lawyers should care about the death of Windows 7:

1. For firms, companies, charities, non-profits and businesses: Organizations stay on older versions of operating systems for a variety of reasons, including stability, cost, business impact

and concerns their application programs won't work on an upgraded version of the operating system without thorough testing. But staying on unsupported versions of software can put the firm and their client's data at risk in our interconnected world. Consider the Equifax data security breach that was attributed to the company not staying current on patches on its operating system.

2. Within an estate planning context and our client's digital estates: Clients have digital assets and digital estates that need to be included in their overall estate plan. The fundamental tenet of effective estate planning of digital assets requires concerted actions on behalf of the client while they are alive because a client's data privacy and security after death can be impacted by sloppy IT hygiene during life. A client who doesn't maintain their tech risks are introducing threats to their privacy and data, potentially exposing themselves to identity theft and cybercrime not only while alive, but after incapacity or death.

I anticipate it will be the norm for estate planners to encourage clients to protect themselves online. Our scope should expand to include recommendations for client adherence to best practices for digital devices, digital assets and online presence, which can include keeping hardware and software up to date. It's not that different than the advice you might provide for physical assets, be that real estate, art or other collectables that typically only retain value if they are looked after, protected and maintained.

3. Within the estate administration context: What we've yet to see is how the collective fiduciary community will deal with an incapacitated or deceased person's device. To illustrate the point:

- Suppose a fiduciary has been granted authority by the will to deal with a deceased person's digital assets and one of the stated wishes is that their digital photos be provided to a family member. What if the fiduciary discovers that the deceased person's computer where the photos reside does not have current virus protection software and the operating system is out of date?
- What should the fiduciary reasonably be expected to do in terms of time, risk and cost? Downloading photos from the deceased's device might end up transferring viruses to the beneficiary. Or, if the fiduciary attempts to update the deceased's machine, what happens if the upgraded photo software doesn't work?

How to manage technology in estate administration is an emerging conversation we've yet to see to the degree this scenario paints, but just as the bad guys are working on intrusions, our clients face increased risk to their digital assets.

For now, does an estate lawyer need to keep up with every major software update from every major player? Not necessarily. But an estate lawyer should keep up with technology in the digital age at minimum for the safety, security and protection of their organization and as a complete necessity for clients.

Our clients have an asset class called digital assets, and their fiduciary may encounter challenges in accessing both physical and digital assets as a result of our client's use of technology and the Internet. Professional associations are taking note. In 2013, the American Bar Association updated sections of its professional responsibility standards and set expectations for its lawyers "to better deal with technology and its effects on lawyers' practices."

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.

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