

## Wills, Trusts & Estates

# Social media deep dive: Estate complications

By **Sharon Hartung**



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(March 13, 2020, 1:16 PM EDT) -- As with any online account, an individuals' use of social media and their preferences for handling those accounts on incapacity and death will depend on how they used those social platforms while living. This can get complicated for estate planners for the following reasons:

1. Clients will have wishes and preferences about their social media presence if they become incapacitated and also after death. Without guidance or discussion, family, beneficiaries and the fiduciary may have preferences that differ from the testator (will maker). The challenge, as with all estate planning, is that the client's wishes and preferences for their social media and digital legacies will be unique to the individual and may differ between the various types of digital assets or even between social media accounts within the same class. For example, a client may want their family to have access to their photos on a social media platform, but may wish other social media accounts closed after death, or upon incapacity.

If you're looking for a psychological perspective of social media and digital legacy wishes, check out U.K. author and psychologist Elaine Kasket's book *All the Ghosts in the Machine: The Digital Afterlife of your Personal Data* (Kindle), and *All the Ghosts in the Machine: Illusions of Immortality in the Digital Age* (paperback). Through interviews and cases, Kasket outlines the spectrum of differing perspectives that not only the testator may have about their digital legacies, but what the beneficiaries, family or fiduciary might also want, and the challenges in meeting those wishes in our current context of the law and the service providers' terms of service. She also explores how the ways we grieve are changing as a result of our use of social media and technology and further cautions against relying on social media platforms to store memories.

2. Clients may have monetized their use of social platforms or are using them in ways that retain some form of financial or other exchangeable value. A client may be using a social media account that generates revenue, has brand or financial value, or is collecting tokens that have some form of value, such as ad or click revenue for posted content. Surprisingly, even gaming platforms have a form of exchange currency where value is exchanged between players, or value is retained in virtual constructs (e.g., tools, costumes, avatars, rewards, weapons, levels) that are bought and sold, valued, or awarded and won within the platform environment.

3. Data privacy upon incapacity and death are affected by life. The implication, as highlighted in my previous articles on obituaries (one and two), is that in the digitized connected world of the Internet we are providing significantly more information online than ever before. The nature of social media lends itself to providing gobs of personal information about where we live, our relationships, our workplace, our vacations, our possessions and our opinions. For example:

- I saw a photo on a social media post, which was open to the public, of an elated young woman receiving a framed gift from her three children. They had framed their artwork in celebration of her birthday, however, clearly evident were the full legal names and birth dates of the three children under their respective artwork.
- Upon death, Facebook allows the account owner to configure their privacy setting while the account owner is alive, which allows the individual to control who sees what content.

Simplistically, it can mean the difference between public access, where anyone in the world can see anything, to a locked down account where friends request access and only friends can see the posted material. While they are living is the only time an account owner can set privacy settings. After death, even if you have appointed a Facebook legacy contact, the privacy settings of the account can't be changed. The implication is that if an account was public while the account owner was living, it will remain public after death. That in itself may be an estate planning concern if the testator had wishes for the fiduciary to lock down the privacy settings or remove content after death.

This is the second of a four-part series. Read part one: Social media deep dive: Data privacy in death. And read the next article for more ways social media can get complicated for estate planners.

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