

## Wills, Trusts & Estates

# Social media deep dive: Client management

By **Sharon Hartung**



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(May 8, 2020, 1:19 PM EDT) -- As we have stated in the two previous articles in this series, an individual's 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. The last article talked about three of the reasons for this. Here are some more:

4. Some social media platforms offer pre-planning functions, but they need to be activated while the account owner is living. Unfortunately, at this time pre-planning functions are not the norm in most online accounts. For example:

- Facebook has created three pre-planning choices: namely the option to select between memorialization or deactivate/remove an account upon the death of the account owner; the ability to identify a legacy contact (released 2015); and a tribute feature (released 2019, but not yet available in all areas).
- Instagram has a memorialization function that has different features than Facebook. Instagram allows "verified immediate family members" with proof to memorialize the account or remove an account of a deceased person.
- LinkedIn does not currently have pre-planning functions. It has a function for reporting a deceased account member, wherein the account is removed.
- Twitter does not currently have pre-planning functions. It has a function for requesting an account of a deceased user to be deactivated/removed and a function for requesting that an incapacitated person's account be removed.

5. For the pre-planning functions that are available, they're more restrictive than you would think in terms of estate planning options. Unless there is emerging consumer consultation, regulatory and industry collaboration, I think we'll continue to see disparately different and limited options. Further, it has yet to be seen if service providers will provide pre-planning differences for the distinction between incapacity versus death. How long a provider will be around and what obligations they feel they need to provide for, and for how long is yet to be seen. Remember: they usually retain the right to change their terms of service.

- Facebook has three pre-planning choices, which are outlined above. Within the legacy contact option, what the selected contact can and can't do is spelled out in the Help section: a legacy contact can't read messages, make new friend requests nor can they change content in a timeline. The legacy contact must have a Facebook account.
- Facebook has a reporting feature for incapacity that provides only one option: a request for the removal of an account if an account owner is medically incapacitated.
- Google has a pre-planning feature called Inactive Manager where the account owner selects someone who will be notified of inactivity and/or Google will share account data that is pre-specified in advance. It addresses incapacity to a limited degree in that it only monitors inactivity: whether that is incapacity, death, or simply not using the service for the pre-defined period of inactivity — three to 18 months. For a fiduciary who may need immediate access to

information about an incapacitated or deceased person, three months can be a lifetime to wait, that is assuming the fiduciary was selected as person to be notified.

6. The client may be using the social platform beyond what it was intended or could have unrealistic expectations about what happens to the account or content after incapacity or death. For example, perhaps the client set up a social media account to blog on a specific hobby, then the hobby evolved into a business. Again, any plans for access after death need to be set up in advance depending on how the client has used the social media platform.

### **Protecting client's wishes and privacy in life and in death**

Discussion about one's e-mail, obituary and loyalty points have not been traditionally part of an estate lawyer's conversation with the testator (or will-maker). But in the digital age the client's ever-expanding digital estate, including social media, should be part of the estate planning conversation. Given the expanse and prevalence of social media platform types and choices within a type, the questions to ask during discovery could potentially be endless depending on the degree to which clients are using social media. Here is a sampling of deep-dive user and technology-based questions about a client's use of social media across different platform types to complement legal, tax and other estate planning questions:

1. Encourage clients to create an estate inventory that also includes their digital assets and social media accounts, and coach them to update the inventory periodically. This complements will planning and other estate planning instruments and documents. The key for inclusion in a digital inventory is the website of the online account and user name (as the user name may differ from the legal name). In addition, any information that ties, supports or validates an account holder to a specific user name is critical.

Consider adding supporting information for platforms where there may be no other personal authenticating information such as a credit card or a full legal name, which may not have been required on registration. The Digital Legacy Association in its publicly available downloads also recommends noting information if the account owner has downloaded a backup of the data, where the backup can be retrieved, and noting the wishes/preferences for each specific account. STEP Digital Assets SIG ([www.step.org/digital-assets](http://www.step.org/digital-assets)) offers a Digital Assets Inventory for its members use, any estate practitioner can join and there is no charge.

2. Execute pre-planning. Without pre-planning and guidance, a social media account is likely to remain active long after the death of the account owner, unless the service provider has a terms of use policy for inactive accounts. The question for the testator about each social media account upon death is, does the account holder want the account to remain online, such as memorialization if that feature is available; or shut down, closed and data removed. The answer could be different for each social media account. For example: a client may have very different choices for each of their social media accounts. Personal Facebook account preferences may differ from dating site preferences. Professional account requirements will differ again.

Even though pre-planning choices for preferences upon incapacitation may be more limited or cumbersome, determining account holder preference in these circumstances is equally important.

This is the third in a four-part series. Read part one: Social media deep dive: Data privacy in death; Part two: Social media deep dive: Estate complications.

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