

Wills, Trusts & Estates

Social media deep dive: Digital details

By **Sharon Hartung**



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(May 13, 2020, 1:44 PM EDT) -- 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. As we have explored in the first three articles in this series, this can get complicated for estate planners. Here are the final reasons why:

3. Understand the limitation. Encourage clients to use pre-planning functions if they are available, but understand the limitations of those functions. If this function exists within a specific social media provider, it can be found either in settings, or via a quick search of the help function. For example, a client might be using a social media account to research legacy information, such as genealogy.

By their nature, some genealogy accounts allow for other users to set up profiles "tied" to the original account holder by obtaining access to specific information (as authorized) by the original account holder. Again, these options must be set up while the account owner is alive. For more information on account pre-planning, a digital vault/archive provider —

Everplan.com — keeps an up-to-date list called "How To Close Online Accounts And Services When Someone Dies," with links to providers. Currently they have listed 230 different providers and the list is growing.

4. Evaluate social media account monetization. Ask the client if they have monetized their use of social platforms or used them in ways that have financial or other convertible value. Is the client receiving ad or click revenue for posting content? The answer to these questions should drive out specific wishes and preferences for these components after death. They might also be tied to physical property rights such as intellectual property (e.g., copyright, royalties). Has the client left detailed instructions on how the fiduciary is to legally access these accounts, and what is expected of them to facilitate estate administration? Have appropriate legal instructions been drafted to address client wishes about these assets? Which assets can be transferred in advance of incapacity and death and under what circumstances?

If the client is using a personal account, ask if their social media account can be converted to a business account or adjunct page, where additional members such as the fiduciary can be added with administrative privileges.

5. Review the account privacy settings regularly. Encourage clients to have private or restricted versus open, public or worldwide access accounts. Clients should also consider separate social media accounts for various audiences. It's not uncommon for a client to start with a personal page that evolves to include business clients or business interests. Having separate accounts or pages allows a client to more tightly manage access, privacy and content specific to an audience. For example, a client might want a business page open to the public, but a restricted client-only page, and a personal account for friends and family.

6. Evaluate establishing corporate or business accounts and pages. Some social media providers offer corporate/business accounts, pages or other adjunct pages separate from a personal page or account. Typically, these business accounts or adjunct pages allows individual(s) account management access with other update privileges. This can be a powerful tool to manage multiple person(s) access to a page, which is useful in estate planning for transferring a page or management

of a page to other individuals.

7. Consider account backup and enabling secondary source access. If content on social media is important to a client, they should consider regular backups, or enabling secondary sources access to that platform. Many clients use social media to share photos, but it can often be the only place they have retained those photos. Often, social media platforms offer functions allowing the user to download data from the platform. With the current limitations for pre-planning on many of these platforms, U.K.-based the Digital Legacy Association, which offers free social media guides on its "For the Public" page, recommends downloading important information on a regular basis. For example, if clients predominately use social media to share photos with friends and family, they should consider making that information accessible in other shared services' formats or forums.

8. Document community or group agreements for actions on death or incapacity of owning members or administrators. The client may have created or be part of a community, group, forum, or blog that has intrinsic value that either the account owner or the community itself will want to continue after the incapacity and death of the testator (will-maker). As previously recommended from a technology perspective, consider platforms that allow secondary (adjunct) or business pages, that allow others access, and back up data regularly on a secondary source.

Expectations in terms of access, departure of members, death or incapacity of administrators or owners, continuity/longevity of the group, and back up/recovery of the blog, forum or site data are all agreement considerations. For example, members of a lottery pool will document rules of engagement, so it shouldn't be a stretch that social media forums that will continue past the life of the creator(s) or owner(s) have something similar.

9. Evaluate social media ties to physical property. The client's use of social media might also be tied to physical property rights such as intellectual property. Has the client left detailed instructions on how the fiduciary is to access accounts and what is expected to facilitate estate administration? Have appropriate legal instructions and directives been drafted to address client wishes about these assets? Which assets can be transferred in advance of incapacity and death and under what circumstances? This also applies point #4 regarding monetization. Ask if their social media accounts can be converted to business accounts where additional members can be added with administrative privileges within the context of appropriate agreement and legal instruments.

Rely on the basics

This is an evolving space, as shown with Facebook's 2019 announcement of a tribute function and Twitter starting its own tweet storm over inactive accounts. Given the overall limitations and lack of mainstream pre-planning tools for social media or online accounts, you would be best to advise your clients to lock down their privacy settings while they are alive; purge accounts and content that is no longer of use; use any pre-planning functionality that is available; and on a regular basis download and back up any data, such as photos they want someone to have access to after incapacity or death.

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

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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