

## IF YOU WILL: *Short Takes on Estates, Taxes and Trusts*

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"IF YOU WILL: *Short Takes on Estates, Taxes and Trusts*" is a quarterly glance through a humorous lens at selected news items, court decisions, and/or legislative changes pertinent to estate planning. It is primarily intended to inform and entertain you. But if it causes you to pick up the phone and call us with a legal question, we won't complain; and if it inspires you to examine our more in-depth legal updates, you can view them at [burnslev.com](http://burnslev.com).

### DIGITAL LIFE AFTER DEATH

If you died, what would happen to all of your online accounts, assets, subscriptions and services? Would anyone even be able to access them, and, if so, would they know what to do with them? Who would get a hold of those crazy e-mails or goofball photos, and what could they do with them? This edition of "If You Will" provides a quick overview of how those questions might be answered, and how you might want to prepare for digital life after death.

#### Our Digital Assets

In order to ensure that your digital estate is handled in accord with your wishes, you first need to take some inventory of your digital assets, just as you would your physical assets.

You might want to make a list of all of your Internet accounts, and decide who should have access to them and what they should do with them after your death. To start with, you might want to consider the following kinds of online accounts and assets:

1. **Movies, photos and artwork.** Some photos may have family value or even market value. Even if you don't have a potential winner in America's Funniest Home Videos, you might have valuable logos, artwork or images for your business.
2. **Medical or genetic information.** This could be of great value to your descendants, but could also harm them if sensitive material were released to the public.
3. **Financial service accounts.** Your PayPal, eBay, and Amazon accounts, as well as your online banking, investing, tax, and insurance information could be invaluable... or it could be wiped out if that certain crazy relative got access to it.
4. **Business accounts.** If you own a business, chances are that big portions of it reside online now. Somebody should have access to those blogs, Websites, online drop-boxes, and customer lists after you die if the business is to continue. But who?
5. **Social media accounts.** You will no doubt want a plan for postmortem access to (or destruction and termination of) your Facebook, Twitter, e-mail and other social exchange accounts. Now, just who do you trust to see ALL of those e-mails (or to filter them before they are seen)?

#### The State of the Law

The law is, for the most part, still set in the pen and ink era. Only a few states have statutes that even address the issue of digital rights after death, so some relatives have had to go to court to adjudicate postmortem online access issues.

Connecticut has a statute that deals with postmortem access to e-mail accounts, Indiana has a statute that covers the rights and responsibilities of "any person who electronically stores information," and Oklahoma law empowers executors or administrators of estates to take control of online accounts. But most other states, including Massachusetts, do not provide significant legislative direction concerning digital life after death.

Thus, your descendants might have to deal with each online provider according to its own contractual terms or policies, even if you have provided directions about digital assets in your will. Some online providers will unlock accounts only if family members provide death certificates, specific instructions and/or a password from the departed. Others put accounts into "memorial mode" with some features disabled, and still others explicitly advise heirs seeking access to involve the estate lawyers for the deceased.

#### Action Plans to Consider

So what can you do to avoid leaving your heirs with a series of ad hoc decisions to make about how to access your digital assets and what to do with them?

First, you might want to visit with your lawyer and your trusted executor(s) about your post-mortem wishes. An attorney, in particular, can help you to ensure that your digital asset planning addresses key issues, such as: who will have access to your accounts, information and

assets after you die; who will filter any information you want screened before passing it on with your legacy; what accounts, information and assets need to be addressed in the will, in a durable power of attorney, in letter instructions or in other forms of directives to your online providers; and what assets will be distributed, licensed or sold postmortem, if any have market value?

You could also consider using any number of services that have popped up in recent years that do one or more of the following: a.) periodically check to see if users are still alive; b.) store pre-written postmortem e-mails to friends, associates and loved ones for distribution after death; c.) send basic password or other information to attorneys or executors after death; and d.) create online memorials complete with photos, messages and artwork. Such services include (without any endorsement whatsoever): Legacy Locker, Bcelebrated, DataInherit, Entrustet, Parting Wishes, and My Last Email.

As a side note, you might want to consider that electronic signature and witnessing technology is still not recognized as valid for estate planning, so any service offering that may be of little or no value. Your best bet for avoiding a costly postmortem digital asset debacle that turns into a mortifying YouTube sensation is carefully itemizing your digital assets and disposing of them as desired in your estate plan or through other detailed written communications.

## Who Needs Estate Planning and When?

For many people, the value of an estate plan will far exceed its cost due to tax savings. Furthermore, estate planning is not just for individuals who have a net worth in excess of state or federal exemptions (currently \$1 million and \$5 million respectively). The following people can greatly benefit from estate planning with experienced legal counsel:

- Individuals or couples who have dependents or beneficiaries with special needs;
- Adoptive parents, who need to make special provisions for inheritance that differ from state law provisions that apply to those without a legally enforceable plan;
- Other non-traditional families, such as those of unmarried couples or domestic partners;
- Married persons who have previous spouses or children from a prior marriage;
- Those who have special charitable goals; and
- Those who have ownership shares in a closely held business that could suffer grave disruption from an inheritance battle or significant death taxes on their estates (such people can benefit from a well-structured agreement providing for life insurance on key owners in amounts adequate to fund the purchase of a decedent's shares, according to valuations set in advance by agreement).

Furthermore, those who have estate plans should consider revising them if their life circumstances have changed due to marriage, divorce, children, births or deaths in the family, or due to significant career changes, such as a major promotion or retirement.

For more information, please contact your Burns & Levinson attorney.

To learn more about our Trusts & Estates practice, visit [www.burnslev.com/our-practices/trusts-estates](http://www.burnslev.com/our-practices/trusts-estates).

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