

TAKIN' CARE OF BUSINESS

Estate planning and your digital assets; part two

By Dan Hoops
Guest Columnist

In my last column, I briefly discussed the importance of estate planning if you are a user of a free email service, such as Gmail, Ymail, Hotmail or AOL. Because Internet users are, more or less, bound by the terms of service they eSign during their lives, this column discusses what to consider in planning a digital legacy.



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The first question a person needs to answer is whether or not they want someone to access their digital accounts; Facebook, LinkedIn, Gmail, Twitter, etc. For now, the only real option available to users of the most service providers is to give a list of all of their accounts and passwords to someone they trust.

The problem with this option, however, is that accessing the account of another user is a prohibited action under most of the terms of service. Violating the terms of service can result in a complete termination of the account and all of the contents stored. This is true if you have an account with a photo sharing site (e.g. Flickr), email, blog (e.g. blogger.com), or social network (Facebook, Twitter or LinkedIn).

So, going with this option places the user at risk of having his or her account terminated by the service provider. If

you are willing to take the risk of violating the terms of service, therein lies the planning: give someone your account passwords. Otherwise, a person is leaving their many years of stored communications in the hands of the service provider; the account can linger for years, the content published and out-of-the-control of the creator.

Now before you grant someone carte blanche access to your accounts, you really need to consider this carefully. Are their private communications in your email or social network account that you do not want this trusted person to see? Would this person impersonate you or maybe reply (as you) to email sent to your account? Could this person take all of your content and share it with all of your friends and family? Absolutely.

If you are comfortable with the person you designate as your "digital administrator," then prepare the list of passwords and leave it with your last will and testament. While there is nothing under Michigan law that allows you to make any direction to this "digital administrator," you should still provide a list of instructions so this person knows your wishes. For example, let this person know that they should download or print all of your data, or that you want them to share the data with certain people, or that their authority is limited to terminating all of your accounts.

Some service providers allow a deceased person's account to be memorialized. In other

words, the account becomes permanently fixed and only the service provider has the ability to maintain or remove content posted to the page. Whether or not you want your account memorialized, for example, with your Facebook or LinkedIn account, is something to consider when planning your digital legacy.

If you do make a set of instructions for your digital administrator, be very clear that you want your account terminated, removed or memorialized. This is your decision, not a decision the service provider should be making by default. Service providers place a tremendous amount of value on the number of users of their sites, this is part of their business model (and why we can use their sites for free). There are some things that the user needs to be proactive about and not leave their legacy lost in the ever-changing terms of service.

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