

PRACTICAL ADVICE FOR THE REAL WORLD

COX | SMITH

ATTORNEYS

# The Digital Afterlife

“You only get one chance to make a last impression.”

- MyWonderfulLife.com



# Objectives

- Profile/Status Change
- Communications:
  - Notification of death
  - Obituary
  - Responses to emails
  - Message(s) from the Grave
- Content Handling
- Access Rights (nb: agency and probate law, but also terms of service)
- Administrative Ease/Convenience
  - Organization
  - Payment
- Legal Acts (done while alive, implemented on death):
- Assignment of copyright in content
  - Assignment of trademark, copyright licenses
  - Assignment of URL's
  - Asset transfers (financial and intangible)
  - Closing or transferring non-financial accounts
  - Access to online banking or other financial accounts

# Concerns




- Legal
- Probate Law
  - Agency Law
  - Trust Law
  - Terms of Service
- Proof
  - Death of deceased
  - Identity of relative/designee
  - Relationship/designation of relative/designee
- Security/Integrity
  - Diligence / reputation
  - Cloud concerns (nb entrusting security of non-cloud digital assets in the cloud)
  - False death reports
  - Conflicting provisions of will
- Risk Assessment
  - Applicability across the board – sensitive, non-sensitive, health, financial, proprietary
  - Irreparable harm/loss of digital assets
  - Limitations of liability of online service provider

# Legal Backdrop

- State law
  - Substantive/Procedural issues
    - Solemnity
    - Formality
  - Jurisdictional Issues
- Asset classes
  - Non-Probate Assets (life insurance, joint survivor accounts,...)
  - Trusts
  - Passes by Will or background Probate Law
    - Everything else
    - Unusual / unspecified property to Residuary
    - Reference to lists maintained outside a Will
- Authorization to act
  - Powers of Attorney expire at death
  - Trustees
  - Executors/Administrators
- Fiduciary obligations



# Your Death in Social Media

		
<ul style="list-style-type: none"> <li>• Accounts are not deactivated for lack of use or periods of inactivity.</li> <li>• Friends or family members may notify Facebook of a death, providing information regarding their relationship with the deceased account holder, and proof of death (newspaper article or state issued death certificate).</li> <li>• A friend or family member of the deceased Facebook user may then either have the account deleted or memorialized</li> <li>• A deleted account has all information deleted and content is removed (only verified immediate family members of a deceased may request deletion of an account).</li> <li>• If the account is memorialized, the content remains preserved, no new friends may be granted access, and friends and family are allowed to continue to post on the deceased's wall.</li> </ul>	<ul style="list-style-type: none"> <li>• Accounts may be cancelled or terminated after nine (9) months of inactivity (failure to log in).</li> <li>• In order to access a deceased's email account, a friend or relative must provide: identifying information (name, mailing address, a verifiable email address and photo ID); the deceased's email address and an email from the deceased's email address; proof of death; and proof of control over the decedent's estate (Probate Court Order if deceased was 18 or older; a birth certificate if the deceased was younger than 18).</li> </ul>	<ul style="list-style-type: none"> <li>• Accounts may be deactivated over some period of non-use (typically six months).</li> <li>• For a friend or relative of a deceased to notify twitter of an account holder's death, they must provide: full name, contact information, and information regarding the requester's relationship with the deceased; the user name of the Twitter account; a link to an obituary or news article evidencing the decedent's death.</li> <li>• Upon receiving notification that an account holder is deceased, Twitter may assist a family member in removing the deceased's content or saving a backup of the deceased's public Tweets.</li> </ul>

# Cloud Provider Terms



Amazon cloud services are not automatically terminated after any period of time. See AWS Customer Agreement Section 7.1 (“The term of this Agreement will commence on the Effective Date and will remain in effect until terminated by you or use in accordance with Section 7.2.”).

- It is possible that a user’s account could be terminated as a result of the user’s death if, for example, accounts or credit cards used to pay for the cloud services are cancelled or expire.
- Amazon WS features an “Identity and Access Management” (IAM) system, which (from IAM FAQ):
  - “Enables subscribers to create multiple Users under an AWS Account and to manage the permissions for each User within the account.”
  - Typically used for businesses; however, potential application to individuals: it would be possible to set up alternate users to manage an account after the primary user’s death
  - A subscriber may “set user permissions – control the ability of individuals or groups to call web service APIs or access specific resources such as S3 buckets, SQS queues, SimpleDB domains etc.”
  - Notably, IAM Users are more limited in their participation than the actual subscriber – for example, “The AWS Account is responsible for paying all usage incurred by users defined under it. An individual User has no payment or billing configuration of its own and can’t individually subscribe to web services.”
  - Currently, IAM Users do not have the ability to administer the account; however this ability is planned for future release.

# LegacyLocker

- Account holder sets up account and designates a number of “Recipients”
  - Upon receiving a notification of death from a selected number of Recipients, Legacy Locker will release your information to certain selected Recipients
  - Information which may be stored and released to friends and family on death includes: digital copies of important documents; final letters and emails; final wishes; instructions; locations, and secret information (passwords, hidden accounts, and lock combinations)
- Allows you to pass on passwords and account information to the right people for: email accounts, online photo sites, and web accounts
  - States: “Maybe you have multiple email accounts. Maybe you do online backups. Maybe you’ve spent a lot of time customizing your Facebook or LinkedIn profile. Maybe you manage an online store with eBay or Amazon.com. Be sure that access to all these accounts are safe and protected with those you trust.”
- “Pass accounts to people you choose”
- Site specifically notes (using logos on site): eBay, KodakGallery, PartyPoker, PayPal, Gmail, AOL, iTunes, Facebook, LinkedIn, flickr, and Yahoo Mail.cc

# LifeEnsured



## LifeEnsured

- Digital assets placed into a registered trust, called the “Digital Asset Trust.”
  - “a document listing the online assets which you have claimed ownership of by registering them with LifeEnsured. It describes the fact that you appoint LifeEnsured as a successor trustee for the assets.”
- May set up an email address to have accounts transferred.
- Part of subscriber’s payment goes into irrevocable trust to execute wishes of account holder.
- Passwords to digital accounts are provided and, using such passwords, LifeEnsured takes action directly to execute a subscriber’s wishes with respect to the accounts (examples listed in FAQ include: passing to a family member, deletion, or “change[s];” further states that “we log in as you and perform the actions you have requested”).
- Death notifications can be received from family members, friends, attorneys, or Social Security Administration (may be set by subscriber).

# EstateLogic/Executor's Resource



- “EstateLogic helps you organize and archive critical information in the right way, across the Four Categories of Estate and Legacy Preparation” [Estate Documents; Financial Catalogue; Family Legacy; and My Instructions].
- Offers digital afterlife arrangements along with “industry leading wealth transfer solutions to the individuals and the advisors with whom they work.”
- EstateLogic is targeted not only at individual consumers, but also at estate planners and financial advisors, offering “peace of mind for [planner’s and advisor’s] clients.”

# Possible Legal Issues

- Security of sites (all claim to have strong security).
- Sharing of passwords
  - Errant designation in Cloud context could result in family member gaining access to consumer financial information.
  - Facebook has experienced false death reports
    - Similar incidents occurring at LegacyLocker, LifeEnsured, or EstateLogic could result in the dissemination of various types of sensitive information if Cloud passwords were included in any “digital asset trusts” or similar repositories.
  - Although they no doubt have very strict security standards, are they as strict as those imposed by the Cloud Security?
    - No contractual security obligations apparent.
  - FTC privacy enforcement actions often cite the sharing of passwords when coming down on a security breach – which is one service offered by Digital Afterlife firms.