

# Will Planning in the Cloud Social Media & E-Concerns

Presentation to Professional Development Seminar Jewish  
Community Foundation

Nancy Cleman

Sternthal Katznelson Montigny LLP

June 4, 2013

# Yesterday

- Recipe books
- Photo albums
- Vinyl Records
- Books & CDS
- Family Videos
- Board games
- Address books
- Paper files



<http://www.home-designing.com>; 1954 Armstrong Kitchen

# Today? Tomorrow?

- Epicurious.com
- Facebook
- iTunes
- E-readers (Kindle)
- On line folders
- On line games
- Cell phone contacts



Thinkstock

# The List Can Go On and On ....

- Paper statements
- Cheques
- Bill payment
- Business contacts
- On line statements
- Phone banking
- Internet banking
- Linked In



# Living On After We Are Gone

- If we do not take charge of what happens upon our death or disability we risk leaving a digital foot print that was unintended.
- On the one hand it is akin to leaving the house unlocked and letting people in to use your things without care or attention;
- On the other hand, it is leaving a locked treasure chest filled with valuables for which no one has the key



# Remember when all we had to do

- Was go to the safety deposit box to get all the important documents and a copy of the will
- Look into a file folder with the list of bank accounts and insurance policies
- Look through an address book with the names of the people to contact



# What Can We Do to Protect Our Privacy

- Who is the guardian of our privacy if we cannot speak ?
- How can we be sure that our legacy is protected and respected ?
- If we don't take care, we risk leaving a digital warehouse for others to use; or lose important information and assets.

# Steps to Take

Conduct an inventory and keep it current, including:

- Login information for mobile devices, tablets and computers
- Email accounts & passwords
- Back up email accounts
- Security questions
- Information on hardware, computers ; smart phones
- Social media – list of accounts and user ID and passwords

# Designate a Digital Executor/ Agent

- Once you have the information decide what should be done- keep the account? Close it?
- Find out what can be done – you may not control the web site where you store the information
- Have you ever read the “terms and conditions” or “privacy policy”? ( see links on the site)
- Designate a person to manage this information and these decisions

# Letter of Direction

- In addition to a memorandum/letter of direction with the information on where to access the information, consider what should happen
- If you don't give direction it is often left to the executor or liquidator to make decisions (if they can access the information)
- He or she may do something you with which you would not agree.
- Do you want your Facebook page to live on forever?

# Questions to Ask – Identity theft

- Does the person use social media to link to other accounts?
- For example does he or she use Facebook to log into shopping sites?
- Do these sites contain credit card information?
- Can you map or track this information?
- There is a concern of people hacking into sites and assuming identity of deceased persons

## List Your On Line Accounts & Loyalty cards

- On line book stores, e.g. Amazon
- Department stores; pharmacies;
- On line games- avatars
- EBay
- Domain names
- Reward programs ( e.g. Air Miles)

# What Policies Are Out There

- There is some discussion as to whether or not you can bequeath your books and music that you keep on line.
- Some people store photos , music and other media on a hard disk .
- Is your ID or account transferable? If not what happens to the data?
- People with Kindles and other on line readers already know that an online books cannot always be shared.

# Facebook Policy



## **Memorializing the account:**

It is our policy to memorialize all deceased users' accounts on the site. When an account is memorialized, only confirmed friends can see the timeline or locate it in Search. The timeline will also no longer appear in the Suggestions section of the Home page. Friends and family can leave posts in remembrance.

In order to protect the privacy of the deceased user, we cannot provide login information for the account to anyone. However, once an account has been memorialized, it is completely secure and cannot be accessed or altered by anyone.

If you need to report a timeline to be memorialized, please [click here](#).

## **Removing the account:**

Verified immediate family members may request the removal of a loved one's account from the site.

# Facebook



- Facebook won't disclose passwords or transfer ownership of an account
- There have been cases where parents wanted access to an account of a child who passed away; those who were successful had to go to court to gain access

# Twitter



- Won't disclose passwords
- Has a process to de activate an account with request from a family member;  
(what if a business is using Twitter?)
- There is now a service that allows a person to “tweet” after death

# Twitter Continued



- You may send us the documentation by fax or mail to the following address:

Twitter, Inc.  
c/o: Trust & Safety  
1355 Market St., Suite 900  
San Francisco, CA 94103  
Fax : 1-415-222-9958

- We conduct all of our communication via email; should we require any other information, we will contact you at the email address you have provided in your request. If you have any questions, you can contact us at: [privacy@twitter.com](mailto:privacy@twitter.com).

Please note: We are unable to provide login information for the account to anyone regardless of his or her relationship to the deceased.

# Email Accounts

- Do they contain important emails or information?
- What about business documents or information?
- Be careful that they are not appropriated by third parties who use them to contact people after the email owner has died
- What is your plan? Should you print out certain documents? Do you want the account deleted?

# Social media accounts- check the terms of use and privacy policies

Linked In --May 13 2013 :

## **Rights to Access, Correct, or Delete Your Information, and Closing Your Account**

- You have a right to (1) access, modify, correct, or delete your personal information controlled by LinkedIn regarding your profile, (2) change or remove your content, and (3) close your account. You can also contact us for any account information which is not on your profile or readily accessible to you. If you close your account, your information will generally be removed from the Service within 24 hours. We generally delete closed account information and will de-identify any logs or other backup information within 30 days of account closure, except as noted below.

# From LinkedIn May 13, 2013



- **Please note:** Information you have shared with others (for example, through InMail, network updates, content sharing, or LinkedIn Groups) or that others have copied may also remain visible after you have closed your account or deleted the information from your own profile. LinkedIn Groups content associated with closed accounts will show an unknown user as the source. In addition, you may not be able to access, correct, or eliminate any information about you that other Members copied or exported out of LinkedIn, because this information may not be in our control. Your public profile may be displayed in search engine results until the search engine refreshes its cache.
- We keep your information for as long as your account is active or as needed. For example, we may keep certain information even after you close your account if it is necessary to comply with our legal obligations, meet regulatory requirements, resolve disputes, prevent fraud and abuse, or enforce this agreement.
- :

# LinkedIn-Form: Verification of Death



## Deceased Member:

### How do I close the account of a deceased LinkedIn member?

- Last Updated: 09/17/2012
- Report Answer Inaccuracies
- Unfortunately, there may be a time when you come across a profile of a deceased colleague, classmate, or connection. If this occurs, you can notify Customer Service that the profile still exists and may need to be removed. To close the account of a deceased LinkedIn member you'll need to submit a Verification of Death form.
- Please complete the Verification of Death form using the link below:
- <https://www.docusign.net/MEMBER/PowerFormSigning.aspx?PowerFormId=91e28b6c-bc93-47ed-8d1e-1f81083529d6>
- Once you have completed the form it will be sent automatically to us for review and you can save a copy for your reference.
- Note: This form requires an email address registered to the deceased member's account. Without this important piece of information, we will not be able to address your request.

# LinkedIn



## Memorializing Accounts

- If we learn that a User is deceased, we may memorialize the User's account. In these cases we may restrict profile access, remove messaging functionality, and close an account if we receive a formal request from the User's next of kin or other proper legal request to do so.

# Accessing a Deceased Person's Gmail Account



- If an individual has passed away and you need access to the contents of his or her email account, in rare cases we may be able to provide the Gmail account content to an authorized representative of the deceased user. We extend our condolences and appreciate your patience and understanding throughout this process.
- At Google, we're keenly aware of the trust users place in us, and we take our responsibility to protect the privacy of people who use Google services very seriously. Any decision to provide the contents of a deceased user's email will be made only after a careful review, and the application to obtain email content is a lengthy process. Before you begin, please understand that Google may be unable to provide the Gmail account content, and sending a request or filing the required documentation does not guarantee that we will be able to assist you. If you are the authorized representative of a deceased user and wish to proceed with an application to obtain the contents of a deceased user's Gmail account, please carefully review the following information regarding our two stage process:

# Part 1-Information Required



- Your full name
- Your physical mailing address
- Your email address
- A photocopy of your government-issued ID or driver's license
- The Gmail address of the deceased user
- The death certificate of the deceased user. If the document is not in English, please provide a certified English translation prepared by a competent translator and notarized
- The following information from an email message that you have received at your email address, from the Gmail address in question:
  - The full header from the email message. See [instructions](#) on how to find headers in Gmail and other webmail email providers. Copy everything from 'Delivered-To:' to 'Content-Type:'
  - The entire content of the message
- Mail or fax this information to:
- Google Inc.  
Gmail User Support - Decedents' Accounts  
c/o Google Custodian of Records  
1600 Amphitheatre Parkway  
Mountain View, CA 94043  
Fax: 650-396-4502

# Part 2



- Upon receipt of this information, Google will review your request and notify you by email as to whether or not we will be able to move beyond Part 1 to the next steps of the process. If we are able to move forward based on our preliminary review, we will send further instructions outlining Part 2. Part 2 will require you to get additional legal process including an order from a U.S. court and/or submitting additional materials.
- Please note that submitting these materials will not guarantee that we will be able to provide Gmail content so we recommend not embarking on Part 2 until you hear back from us regarding Part 1. Because of our concerns for user privacy, if we determine that we cannot provide the Gmail content, we will not be able to share further details about the account or discuss our decision.

# New service from Google

- “Digital Will”-Inactivity Account Manager :
- Users can have their data expunged after 3, 6 or 9 months;
- Can designate trusted contacts to receive data

# Update Legal Documents

- Consider drafting specific clauses for enduring powers of attorney and or wills designating specific persons and giving them specific rights with respect to digital accounts, on line accounts, bank accounts, etc.

# Law is not clear

- In the US 5 states have legislation on the topic to deal with email accounts but not all digital assets
- Law is in a state of flux
- Some states have passed legislation to grant access to parents of children's Facebook accounts
- Sometime there is a conflict between terms of use of the web site and a person's privacy rights

# New Web Sites and Resources

- [Death and Digital legacy.com](#)
- [Legacylocker.com](#)
- [CirrusLegacy.com](#) - your digital legacy secured
- [Murfie.com](#) - store your physical copies
- [Securesafe.com](#)
- [RecordMeNow.org](#)
- [ifldie.net](#) ( Facebook app that let's you record a message)

# Make Sure Your Documents are Legally Correct

- Important documents should be prepared by professionals in your jurisdiction. In Quebec it is a notary or a lawyer. Wills must respect the form of the jurisdiction.
- By way of example a recent decision of the Quebec Superior Court ( Affaire succession Bellemore , September 7, 2012 )held that a will typed on a computer and signed by hand did not constitute a holograph will and was not accepted (2012 QCCS 4283)

# This Was Not Accepted Because it Did Not Follow the Formal Requirements

- 2009 Personal Will
- Denis Bellemore residing at [...], Montreal, Quebec hereby acknowledges the following details.
- 
- All my personal belongings will be given to Sylvie Dussault residing at [...], Montreal, Quebec.
- 
- All my personal financial, benefits and assets will be given to Sylvie Dussault. Any future financial benefits received by the Edward and Marie Bellemore estate in Belle River, Ontario will be forwarded to my children, Jordan, Julian and Mackenzie.
- 
- Any other benefits from UAP Inc. that I will be entitled to will be forwarded to Sylvie Dussault.
- 
- This letter is written by Denis Bellemore and authorized by my notary to be a binding document.
- 
- Denis Bellemore \_\_\_\_\_  
signature manuscrite
- January 5, 2009 \_\_\_\_\_  
date manuscrite »
-

# Questions to Ask

- Do you have a list of all your on line accounts ?
- Do you keep track of the user ID and Passwords?
- What are your back up email accounts to reset a password ?
- Do you know the policies of your on line accounts in the case of death or disability ?

# Information Can Be Locked Away

- If User ID and password information is not available to your trusted advisor, the information can be lost forever .
- In an effort to protect privacy and identity while people are alive, strict rules may prevent access after they have died;
- If your advisors don't have a record of what you have they won't know what to look for or where to look

# Create a Digital Memorandum

- Create a memo to record your digital life and how to access it ;
- In addition to a list of bank accounts and insurance policies it is now important to identify
- Email accounts and passwords.
- Social media accounts
- On line bill payment
- Digital devices and passwords ( smart phones) computers
- Email addresses to recover passwords

# Digital Memoranda

- Leave clear instructions to the people in charge of the estate so they can access the assets and manage the estate;
- Identify if possible if you want your social media site to survive or be cancelled.
- It is important to plan for this during your life time when you can make decisions.
- Personal property extends beyond the movables and what we can see;
- We need to consider our digital foot print so it can be managed as effectively as our papers

# Unclaimed Estates??

- What happens if the estate is unclaimed ?
- Who owns the rights and information ?
- Consider the recent drama over the Kafka letters that were supposed to have been destroyed but were not. The litigation continues.

# Out of sight should not mean out of mind:-Some ideas and solutions

- Start the discussion with your clients so they consider their digital assets when making plans for their estate or when they are not capable of acting
- Some lawyers are drafting specific clauses to give liquidators and executors powers with respect to digital assets.
- Other options are to provide a letter of direction to the executors to advise what should be done with these assets

# Powers of Attorney/Mandate

- **Used with permission of Sharon Nelson .”**
- The following is the language she came up with her attorney for “our wills and Powers of Attorney”.
- **POWERS OF ATTORNEY**
- To give the Agent power over digital assets:
- “Digital Assets. My Agent shall have (i) the power to access, use, and control my digital devices, including but not limited to, desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smart phones, and any similar digital device which currently exists or may exist as technology develops for the purpose of accessing, modifying, deleting, controlling, or transferring my digital assets, and (ii) the power to access, modify, delete, control, and transfer my digital assets, including but not limited to, my emails received, email accounts, digital music, digital photographs, digital videos, software licenses, social network accounts, file sharing accounts, financial accounts, banking accounts, domain registrations, DNS service accounts, web hosting accounts, tax preparation service accounts, online stores, affiliate programs, other online accounts, and similar digital items which currently exist or may exist as technology develops, and (iii) the power to obtain, access, modify, delete, and control my passwords and other electronic credentials associated with my digital devices and digital assets described above.”
- For greater emphasis to banks, include in the provision giving the Agent powers regarding financial accounts:
- “....and to access, modify, delete, control, and transfer my digital financial accounts.”

# Wills

- “My Executor shall have the power to access, handle, distribute, and dispose of my digital assets, and the power to obtain, access, modify, delete, and control my passwords and other electronic credentials associated with my digital devices and digital assets.  
[ALTERNATIVE: I authorize my Executor to engage \_\_\_\_\_  
\_\_\_\_\_ to assist in accessing, handling, distributing, and disposing of my digital assets.] If I have prepared a memorandum, which may be altered by me from time to time, with instructions concerning my digital assets and their access, handling, distribution, and disposition, I direct my Executor and beneficiaries to follow my instructions as outlined in that memorandum. “Digital assets” includes the following:
  - (1) Files stored on my digital devices, including but not limited to, desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smartphones, and any similar digital device which currently exists or may exist as technology develops; and
  - (2) Emails received, email accounts, digital music, digital photographs, digital videos, software licenses, social network accounts, file sharing accounts, financial accounts, banking accounts, domain registrations, DNS service accounts, web hosting accounts, tax preparation service accounts, online stores, affiliate programs, other online accounts, and similar digital items which currently exist or may exist as technology develops, regardless of the ownership of the physical device upon which the digital item is stored.”
  - .
- Used with permission of the author, Sharon Nelson (snelson@ssenseient.com/www.senseintcom; twitter.com/sharonnelsonesq.) She asked that we also thank her attorney.

# Make Sure Not To Lock Up Your Life and Throw Away the Key ( Password)

- Empower your liquidators so they can respect your wishes
- Leave them with the tools and directions to respect your wishes



# Digital Graveyards

- If actions are not taken your family photos and mementos are either lost for ever
- Or made public without oversight or control
- Decide what should remain and in what format



# Spring cleaning – include your digital storage

- Online storage and filing may not be transferable
- Can your online purchases be transferred?
- We used to leave libraries and boxes of records and photos- the shift to e-books, digital music has changed the landscape

# It's a Question of Choice

- There are a plethora of digital web sites and memorial sites
- It is important to control one's digital legacy



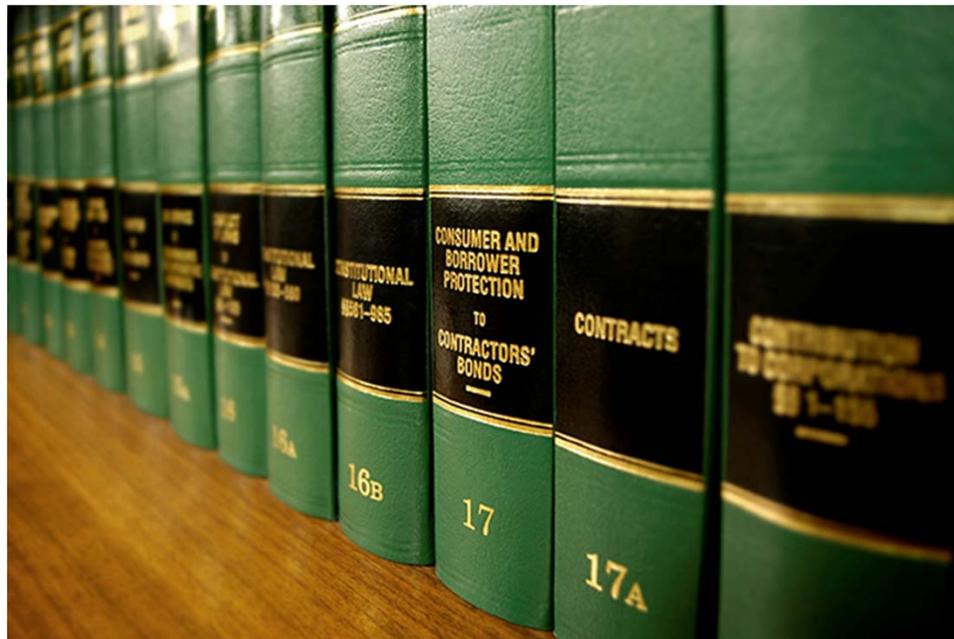
# Questions or Comments

Contact:

Nancy Cleman

[nc@skm.ca](mailto:nc@skm.ca)

514-878-1011 x 249



Thinkstock