

# Price & Farrington's Estate and Tax Planning FastFacts

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Estate, Tax and Family Wealth Planning for Advisors and Clients

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## New World of Estate Planning: The Digital Safety Deposit Box

Let's call her Mary Modern. She lives somewhere in the U.S., but most of her life floats in the cloud. Her e-mail is stored in that vast digital space, bouncing between Yahoo server farms. Her bank statements reside there too, along with her mortgage payments, credit card files, movie rental account, library book list, home videos and hundreds of photos — on Shutterfly, Facebook and her blog. She has only a few hard-copy photos of her 17-month-old daughter.

If Mary's house caught fire, what would she dash in to save? Not much, probably. She would tell you, "All of that important stuff is on line now. That's where our lives are."

**Digital executor.** Which is why Mary Modern recently paid \$29.99 to sign up for a year's access to yet another account in the cloud — one that stores all her passwords and log-in information and, when the worst happens, will be accessible to whomever she designates as **digital executor**. On its website, under serene pictures of clouds against a deep blue sky, the company calls its service "a digital safety deposit box". Mary's backup service, San Francisco-based *Legacy*

*Locker*, is one of a dozen businesses that have sprung up to help denizens of the digital world grapple with the thorny issues raised after your physical being leaves behind only its virtual reality. Experts in the Internet and in estate planning see a cyber crisis brewing because popular Internet services have policies that, barring a court order, forbid accessing or transferring accounts — including recovering money — unless someone has the password.

**Hit by a bus.** This pending crisis affects not only personal lives — the photo site *Flickr* has 40 million members — but also millions of business accounts on such sites as *eBay* and *PayPal* and the virtual community of *Second Life*, which generated \$55 million for users last year. *The bottom line? Despite our increasing reliance on cloud computing — storing all sorts of data online through web applications — very few Internet users have begun to think about what happens to all that data if they get hit by a bus.*

**E-mail from six feet under.** Ten or fifteen years ago, someone could go into your house and find a paper trail if you die. Now the paper trail is online. Not surprisingly, so are the proposed solutions. The dot-coms occupying the new "digital beyond" run the gamut from pure password-storage sites like *Legacy Locker* to such start-ups as *Bcelebrated.com*, which helps users create online memorials that go live after they die and e-mails to be forwarded from the grave. It's now possible to hit "send" from six feet under, on an e-mail in which you also confess to chopping down the cherry tree.

But the e-mails serve another purpose, particularly as relationships stretch as wide as the cloud they float



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on. The traditional rites and legal procedures that follow death are geared to friends and family in the physical world, but businesses are cropping up to also serve the new universe of friends on chat boards or on *Facebook*. How will, say, 700 of your closest friends on *Twitter* find out about your death if you can't log in to tell them?

Back in the day, we never

**Would You Like Us To  
Address Your Group?**



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moved far from home, and people could read about our deaths in the obit column. But now we move frequently and have friends around the country and the world that we connect with on the Internet. We need to reach them somehow.

**Log on to show that you're still alive.** The new sites, with names like *DataInherit*, *Entrustet*, *Parting Wishes*, *VitalLock*, *My Last Email* and *If I Die*, deliver the bad news in novel ways. With *Deathswitch.com*, if users don't respond to regular e-mails to confirm that they are still alive, the site gets increasingly worried about them, sending notes that nearly beg for a reply: "Please log on using the link below to demonstrate that you are still alive." If users don't respond within a set period of time, "postmortem" e-mails stored in their account are delivered. The messages could be basic information, such as e-mail passwords sent to a girlfriend or banking data to relatives — or more emotionally explosive notes that tell a spouse or friend something that couldn't be said during life.

More and more estate planning attorneys are coming to realize that it is increasingly important for someone to

### Valentine's Day One Liners

***"The first anniversary is paper. So on that day, my wife had me served."***

***"My wife and I have been married for twelve years, with time off for good behavior."***

***"On our anniversary, my wife and I went back to the hotel where we had our honeymoon 25 years earlier. It was run down too."***

***"Love conquers all things except poverty and a toothache."***

***"Love is insanity with a collaborator."***

***"Love can turn to hate. Divorce lawyers bank on it."***

know all of this information that our clients have out there, hidden in the clouds.

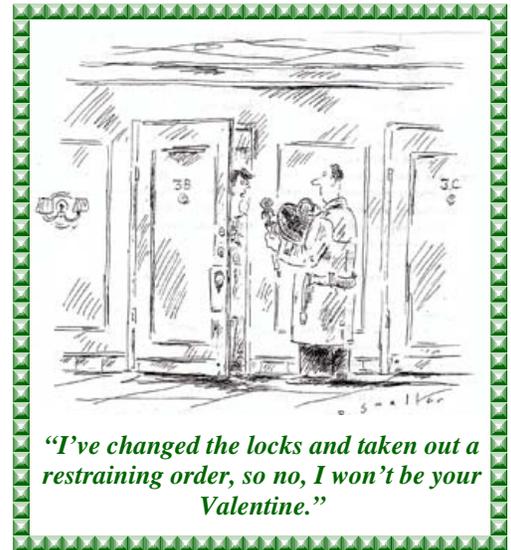
### **Going into memorial mode.**

When a death occurs and the family is scrambling to locate passwords to e-mail accounts and other sites, service providers offer varying degrees of helpfulness. Some, like *Google*, will unlock e-mail, video, photo and shopping accounts if family members have a death certificate and a previous e-mail sent to them by the departed. The process can take a while. *Facebook* will close accounts if enough hoops are jumped through; otherwise, the account goes into "memorial" mode, meaning it's still there but most features are disabled.

Other providers are more stringent. *Second Life* will not transfer an account unless there is a will, court order or other relevant legal documents. *Yahoo*, with 106 million e-mail users, is perhaps the toughest. In a statement the company said, "Internet users who want to be sure their e-mail and other online accounts are accessible to their legal heirs may want to work with their attorneys to plan an offline process for such access as part of their estate planning process."

Similar rules apply to the firm's popular photo-sharing site, *Flickr*. Asked whether pictures would remain online unless the user leaves other instructions in a will or gives the password to someone else, a *Yahoo* spokeswoman said, "Yes, that is correct."

**Legacy Locker.** For many people like our fictional Mary Modern, having loved ones locked out of her accounts is a scary prospect. A month ago, when a friend sent her a link to *Legacy Locker*, she signed up. The site asks for two verifiers who would be contacted to confirm a death. Mary chose her husband and her best friend, who then received e-mails checking to see whether they were willing to "help oversee the distribution of Mary Modern's digital assets." As those e-mails zoomed through the cloud, Mary saw a color-



ful page where she could list her online accounts and name beneficiaries.

The process is no more difficult than signing up for an e-mail account but has an extra dose of security. The site is so encrypted that the company's founder, a 36 year old San Francisco entrepreneur, said even he can't see user information. "I'm the opposite of *Google*," he said. "I know absolutely nothing about my customers." He does know that more than 10,000 have signed up, and he expects many more.

**The bottom line.** We are in an era now where people are going to have to plan wisely for their online assets. Five years ago the term digital assets didn't even make sense. Now it does, in a big way. Our clients' planning is going to have to keep up, and we estate planning attorneys and other advisors will have a responsibility to figure out how best to help them confront this emerging cyber-crisis. ■

