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## Managing Your Online Presence after Death

**By Lauren Keenan Rote**

As we become an increasingly technology-dependent society, so much of what we do is online. Between email, Facebook, photos, music and documents stored online or in the cloud, most of us will have built a considerable online presence when we die. This raises the questions, what should happen to our online assets? How should they be managed?

Traditional estate planning addresses tangible personal property, real estate, bank accounts and even intangible personal property such as stock certificates, but digital assets are not generally included in these distinct asset classes and must be handled more deliberately.

Many online assets can be valued on sentiment alone: family pictures and videos, for example. However, some digital assets also have monetary value and may require additional attention (or even protection) after death.

The solution for many may be as simple as being mindful of including your digital assets in your overall estate plan. Providing a clause in your Will to permit your Executor to have full access and authority to download, print, archive or manage your information, including winding down online services like Facebook, blogs, or email may be sufficient for your Executor to access what they want and to close the accounts that are no longer needed.

In some instances, however, you may not want an account closed right away. Facebook accounts oftentimes serve as a virtual memorial for loved ones who have passed, offering family members solace in a difficult time, but eventually, they do need to be managed.

Ultimately, the privacy policy of the accounts you hold during life will determine what options exist upon death. These policies continue to evolve as people manage more and more of their lives online. Facebook will generally allow for two options: 1) to close an account upon proof of death, or 2) convert the page to a memorial page. Many privacy policies prohibit third-parties from accessing accounts of another and making changes to such an account after death, so it's critical to know these policies and plan accordingly.

Those who maintain a more extensive online presence may wish to create a digital will. Such a document generally addresses the following:

1) Appoints a Digital Asset Executor (hereafter "Digital Executor") to administer your online accounts. The person should be tech-savvy enough to understand what is required to download, save, archive or delete critical information before closing an account. For this reason, the Digital Executor may differ from the Estate Executor. The Digital Executor must also be attentive to any privacy concerns that may exist, including safeguarding your legacy from identity theft (even after death this can be an issue) or from others online who may have malicious intentions.

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2) States clearly what your digital assets are, and how you want them managed. Do you want your Facebook account maintained for a period of time after death? Do you want your email account kept private? If so, you may request that no one read your emails prior to deleting your accounts. Of course if you go this route, be sure that the Executor to your Estate will not need any information found in such email accounts, like banking information for example. If critical information is contained in such an account, make sure that it is available to your Executor through some other avenue.

3) Be aware of the privacy policies of each account you own. Many online service providers have rules as to who can access your accounts after your death. To assist your Digital Executor in carrying out your wishes, provide him or her with your various (up-to-date) passwords. **One caveat**: never provide a list of passwords within your Will, as it becomes public record once probated and this information should be kept private. There are lots of services online that will help you manage online passwords and share them with the people you choose when the time is right.

This area of law is likely to change at a rapid pace as laws and privacy policies continue to adjust to the many legal and ethical questions that continue to arise with regard to digital assets. However, being mindful of your online presence is the first step, and as always in estate planning, a little pre-planning can go a long way to help your Executor(s) administer your estate and ensure that your wishes are carried out.

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## Estate Planning Questions: Naming a Beneficiary to your Accounts

**By Jonathan Kinney**

**Why not just add a child or loved one to your accounts?**

We often see instances where an elderly parent has added the name of a child or other loved one to their bank accounts, CDs or brokerage accounts. Normally the elderly individual is looking for a simple way to allow someone else to help manage their finances. When pressed, we often determine that it was not the intent of the older individual that the account would pass to a single individual, but rather that the person would manage the account and pay bills after death, but not to the exclusion of sharing any remaining funds with other beneficiaries.

**What's wrong with this arrangement?**

There is no legal requirement that a party named as the co-owner of an individual's account use the money in the manner requested by the original account holder. It does raise a potential problem particularly where your intention was to make sure that your last bills and expenses were paid with this account, or that the added account owner would divide the assets of the account with his or her brothers and sisters.

Unless it can be clearly established to the contrary, generally when you add anyone as co-owner to an account, the legal assumption is that you gifted them half of the value of the assets within the account. If the value of one-half of the account is more than the annual exclusion (currently $14,000 per year per beneficiary) there is a requirement that the original owner file a gift tax return. Normally, there are not immediate gift tax consequences associated with naming another individual to an account but there is a technical requirement to file a gift tax return. In our experience, most individuals are not aware of this requirement, and it's actually somewhat unusual to see a gift tax return filed in these circumstances.

There's another issue that could be particularly important when adding the name of another individual to a brokerage account. Basically, when you add the name of another individual to an account, the individual is deemed to be half owner of the account with the same basis in the account as the original account holder; while this may not be a particular problem with bank accounts and CDs since there's no real basis issue with these type of assets, there can be a potential problem with brokerage accounts. Normally, when an individual inherits stocks or brokerage accounts at death, they get a stepped-up basis in the assets (i.e. the

value at the date of the individual's death or six months afterwards). However, if you add an individual's name to the account during your lifetime, the asset is deemed to be gifted and the asset basis is the basis of the individual giving the gift.

As an example of this difference, if Mary has a $100,000 brokerage account and names her only son, John, as a co-owner of the brokerage account, she is effectively giving him one-half of the brokerage account. Let's assume that she has a basis of $40,000 in stocks in the brokerage account. That would mean John's basis in his one-half of the account is $20,000. After Mary's death when he goes to sell the stocks he would have a basis of $20,000 in half of the stocks and $50,000 (assuming the stocks are worth $100,000 at Mary's death). The beneficiary's total basis would be $70,000 instead of $100,000 had he inherited the brokerage account at Mary's death. Effectively, John would potentially be paying as much as 30% of $30,000 in federal and state taxes depending on his income bracket. If he received the brokerage account at the time of his mother's death, there would be no income taxes due when he sold the stocks assuming he sold the stocks at their date of death value.

Another issue to consider when you name a child or another individual beneficiary on any of your accounts is that one half of your account becomes subject to the claims of creditors of that individual. There are two situations you should especially look out for -- divorce and bankruptcy – because in these circumstances either creditors or the estranged spouse could wind up with a claim on part of your assets.

**What's another plan of action?**

If your objective is to simply have somebody help manage your accounts, you should probably consider a durable power of attorney naming that individual with specific authority to manage the account during your lifetime. Most large banks have a form power of attorney limited to the specific purpose of managing a bank account. Under the laws of many states such as Virginia, banks are required to accept durable general powers of attorneys or give specific reasons why they are not accepting them. The reasons to reject a durable power of attorney are very limited.

Another option is to use a Revocable Living Trust and move your assets, particularly bank accounts, brokerage accounts, CDs, etc. into the trust name. You could then name an individual you wanted to assist in managing the funds as a substitute or alternate trustee with the ability to act when you are no longer able to act on your own.

Generally there are better alternatives to naming another individual as the co-owner of an account or as a co-owner of real estate. Most of the rationale stated above as related to bank accounts, CDs and stock accounts also applies to real estate. With real estate you need to be particularly wary of the gift tax consequences of making a transfer of interest in real estate during your lifetime. A better alternative may be to put your property in the trust, prepare a transfer on death or create a pay on death deed that effectively transfers your real estate to your named beneficiaries upon your death.

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## Looking for a New Acronym? Try QLAC

**By Jonathan Kinney**

What's a QLAC? Effectively, it is a Qualified Longevity Annuity Contract that's owned by a traditional IRA or 401K plan.

**Why is this important and what is a "Qualified Longevity Annuity Contract"?**

Longevity annuities provide income starting at a future date. As a number of commentators have pointed out, most retirees are not worried about retirement in their early years because they will have assets in their retirement account, but they're often worried about whether or not their traditional retirement accounts will continue to provide "income" during the later years of retirement. As the TV ad suggests, "what happens if I outlive my retirement income?" Effectively, longevity annuities provide protection in this situation.

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There are a number of variations to the longevity annuity. One of the most common is a plan that starts paying out at a specified age. For example, 80 years old – this type of plan pays the highest payout because the annuity recipient is basically taking the risk themselves that they live until 80 and beyond. The recipient receives funds for as long as she lives beginning at age 80 and beyond; however, if she dies before 80 she will not receive anything. There are, of course, variances to this type of plan since most people are not inherently gamblers. For example, there are longevity annuities that guarantee a lifetime payment regardless of whether you die early. For example, you can be guaranteed a lifetime payment beginning with the year 80 but if you died either before the initial payment or in the fourth year of the payout you'd be eligible for a total of 6 to 10 additional years of annuity payments. This plan is called a life with a 10 year certain policy. Other policies are structured so that if you die before a certain date, one hundred percent of the paid in premium (but not interest on accumulated income) will pass to your beneficiaries. There are any number of variants to these structures. Obviously any of the annuity payments that have a guaranteed payment will pay less on a monthly basis than a policy that requires a beneficiary to live to a certain age before the payout begins.

What's important with the new IRS regulations is that the IRS will allow deferral on the normally required minimum distributions which have to begin at age 70½ . The rules dictate that you can use 25% of the amount in your qualified accounts or $125,000 on longevity annuities, whichever is less. You also cannot designate the income start date beyond age 85.

Effectively what this means is that you don't have to count the funds spent on the Qualified Longevity Annuity as part of your required minimum distribution calculation. Assuming that you're close to the age when you'll have to take out the minimum required distribution from your 401(k) or IRA and further assume that your anticipated balance in your retirement account will be $600,000. Effectively, that means you can take 25% of the amount in your qualified account ($150,000) or $125,000 and purchase a Qualified Longevity Annuity. In this case since 25% of the $600,000 IRA is greater than $125,000 you are limited to $125,000 but for purposes of calculating the minimum required distribution, you use $475,000 for that calculation and not $600,000. You can delay the distribution under the Qualified Annuity up to age 85, rather than 70½. Additionally, a Qualified Annuity can also be structured so that the payments are made over your life and your spouse's life, but again this would affect the monthly payout. This strategy only works if you do not need the required minimum distributions from the IRA or 401(k) plan beginning at 70½.

Longevity annuities work primarily to guarantee that you won't outlive your retirement funds. Longevity Annuities are clearly not for everyone. Like any insurance product they involve commissions and fees. Like any new structured product, our assessment is that choices will be somewhat limited in the beginning but as time goes on we will start seeing options added to the "plain vanilla plans" as the insurance companies figure out what strategies will be most attractive to individuals.

Currently, Longevity Annuities only make up a miniscule part of the annuities market. With changes to permit a QLAC, commentators are expecting Longevity Annuities to make up a much larger share of future annuities. It is also quite possible that QLACs will become popular with younger beneficiaries such as a couple in their 40s that have funds in their IRA and 401(k), but are concerned that they want to provide for additional income beginning years after their initial retirement.

We anticipate that in a few years products will be more variable and better able to fit individuals' needs. One of the nice things about a QLAC is that it's fairly easy to understand. Typically it's a one-time payment up to the maximum of $125,000. It is not anticipated that any annual fees will be charged, although obviously there will be internal fees that will affect income. This is particularly true if the payment is not a guaranteed payment, but a hybrid with a minimum payment with an escalator provision should investment income exceed certain standards. Commentators believe that QLACs will be on the market by the end of 2014.

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