

## SPECIAL REPORT

## MAJORITY OF STATES HAVE NOT ADDRESSED THE ISSUE

# Gap in law, technology leaves digital assets in a lurch

BY LAURA MAZURAK  
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With a gap between federal statutes and new technologies, there's increasing call for states to pass legislation protecting an individual's digital assets.

However, the majority of states have yet to do so, including North Carolina.

In 2013, an estates and trusts bill introduced in the N.C. Senate included a provision for digital assets to be passed on to the grantor's descendants, but the digital accounts section was removed prior to the bill being signed into law.

Eighteen other states have introduced laws to bridge the gap between technology and lagging federal regulations, but the majority of them have yet to pass the digital estate planning provisions into law. A far greater number of states haven't even broached the topic of digital assets in estate law.

Residents of states lacking a digital assets law are then dependent on the policies of service providers, according to Everplan, an online information archival service.

In accordance with the 1986 Stored Communications Act and Computer Fraud and Abuse Act statutes, providers must prioritize a user's privacy above all else – beneficial when protecting digital assets during a user's life, but problematic in death.

"North Carolina is very behind on this," said Vance Parker of Vance Parker Law in Winston-Salem, a firm specializing in estate planning, wills and trusts. "You're going to have to take some extra steps yourself to properly transfer your assets."

Since digital assets don't automatically transfer to a grantor's heir, North Carolinians should take inventory of online accounts with a financial planner or attorney, then provide fiduciaries with account and password information in addition to writing digital accounts into their will.

Some states have taken steps to ensure digital assets are left in the right hands after a death.

In Delaware, the Fiduciary Access to Digital Assets and Digital Accounts Act went into effect in January.

The Delaware law gives fiduciaries access upon death to all digital accounts at the grantor's written request or in the case he or she becomes incapacitated. It covers all existing digital assets, from shopping accounts and social media to email and bank accounts, in addition to all future digital assets that have yet to be invented.

The fiduciaries must send a written request, such as a court order or trust instrument, to the service provid-

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Vance Parker Law in Winston-Salem

er in order to have access to the asset, which can then be deleted, copied or transferred. Delaware's legislation explicitly states

that it recognizes "that an increasing percentage of people's lives are being conducted online and that this has posed challenges after a person dies or becomes incapacitated."

The bill goes on to state that the act "should be construed liberally to allow such access and control, especially when expressly provided for" in writing.

{ UNWRITTEN LAWS - NO. 11 }

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## SPECIAL REPORT

## TWEETING ADIEU

# Social media accounts can linger after death

BY LAURA MAZURAK

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When you die, what do you want to happen to your Facebook, Twitter and LinkedIn accounts?

Should they memorialize your life, linger on indefinitely or would you prefer they be wiped from the digital landscape?

Social media is part of your personal brand while you're alive, and becomes part of your legacy in death, which is why it's critical to make your wishes known to your attorney and family members, especially as social media sites start to provide more and more options to this relatively recent problem.

The best strategy for dealing with social media accounts is to know each site's policy, and then include your preference in your will.

You can also opt to include passwords and account information in estate doc-

uments, which allows your executor to easily remove accounts after your death without submitting requests to the service providers.

While different social media sites have varying policies regarding the accounts of the deceased, no online service provider will release a person's user name and password to another individual, even in the case of death.

Here's what you need to know about three social media providers' policies towards accounts of the deceased:

- **Facebook:** Facebook was one of the first social media platforms to create a protocol for dealing with users' deaths. In 2007 the company introduced the option to memorialize an account.

At the behest of family and friends with proof of death, such as a link to an obituary or other documentation, Facebook will memorialize the account of a deceased person. This means that the account is still visible, with the word

"remembering" shown next to the former user's name. Facebook friends can share memories on the person's Timeline, but the name is no longer searchable for non-friends.

Family members can also opt to remove someone's account altogether. Again, they must provide documented evidence that the person is actually dead and that they are a family member or executor.

In February 2015 Facebook introduced a new legacy contact option: users can designate a Facebook friend to act as the executor of their social media presence. The legacy contact can make one last post, such as funeral information, accept friend requests and change profile and cover photos.

Facebook users can appoint a legacy contact in their security settings, as well as indicate if they would prefer their account to be removed or memorialized after their death.

- **Twitter:** Twitter will deactivate a deceased user's account at the request of an immediate family member or executor. Removal requires a copy of the death certificate and a copy of the family member's ID.

The company first addressed the issue in 2010, and has made policy changes as recently as 2014. Last year Twitter introduced an inactive user name policy to encourage users to log in and use their accounts. If a user hasn't logged in or posted a Tweet for "prolonged" period of time – which Twitter deems six months – an account may be deleted permanently.

- **LinkedIn:** The LinkedIn account of a deceased person can be removed by family members as well as by a coworker or friend. The site asks for a link to an obituary and additional information, such as the last place the person worked, but the removal process doesn't require the same level of documentation as Facebook or Twitter.