



Michael Lahti -- Steve O'Neill -- Mia Lahti



## Lahti, Lahti & O'Neill, LLC

Estate Planning and Elder Law

One Richmond Square – Suite 303N  
Providence, Rhode Island 02906

Telephone: (401) 331-0808 Fax: (401) 223-5115

www.llo-law.com

New Bedford Office  
651 Orchard Street, Suite 304  
New Bedford, MA 02744  
(508) 992-8677

Cape Cod Office  
72 Route 28, Suite 5  
West Harwich, MA 02671  
(508) 430-8677

Providing Peace of Mind Since 1976

*Estate Planning Solutions*

*Fall 2012*

### CONTENTS OF THIS ISSUE

A New Estate Planning Frontier .....	1
Estate Planning And Elder Law In The News .....	2
An Interview With Steve O'Neill .....	4

### A New Estate Planning Frontier:

#### Securing “Digital Assets” During Life, in Case of Incapacity, and After Death

by Stephen T. O'Neill

Personal and Business e-mail. Personal and Business websites. Online Bank Accounts. Online Securities Accounts. Online Credit Card Accounts. Online Bill Payment. Online Shopping Accounts. Online Entertainment Accounts. Online Social Networking. Online (“Cloud”) Storage of Documents and Media. Online Giving. Online Health Care Portals. The list goes on.

For many if not most of us, our digital lives have mushroomed exponentially over the past decade. Take an Inventory – it’s breathtaking. No, we really mean it – TAKE AN INVENTORY!

What will become of this computerized caboodle when we die? When we become incapacitated? How do we best protect it while we’re alive? How do we create a secure chain of custody and a plan of disposition for all this digitalia?

This subject is just beginning to be ingested by Estate Planners and their clients. We’re doing our best to stay at the vanguard of the learning curve, and we want our clients and colleagues to be there too.

#### What Are Digital Assets?

The two main categories are (1) any online account that requires a username and password and (2) any files stored digitally on a computer, mobile phone, server, local DVD or CD-ROM or at online storage sites.

And there are two main types of digital files to consider: (a) client-created files, including scanned financial files, photos, videos, contacts, business documents and intellectual property; and (b) client-purchased files, such as music, videos and e-books.

## Who Has Access to Your Online Accounts?

If you are the only person who has access to your online account, then when you die or become incapacitated, you may have left behind a digital disaster. This comes about as a result of the rights of the online company. These rights were established under the online company's Terms of Service (TOS), a.k.a. that small print we never read. The most important concerns here are:

- ▶ The TOS almost never grants the personal representative access to the online account.
- ▶ Without access to financial accounts, the personal representative may not be able to carry out the terms of the will, trust or power of attorney.
- ▶ Without access to e-mail accounts and websites, the personal representative may not become aware of ongoing financial obligations and online-only account statements.

## Steps You Should Take

The TOS of some online companies allows them to delete the account following death after a passage of time. Also, the personal representative needs to have access to digital assets before beneficiaries, however well-intentioned, attempt to access accounts without proper administration.

To deal with such concerns, we recommend at a minimum making a list of digital assets which includes the wishes for disposition of each such account in the event of incapacity or death. In creating such a list, be extremely careful with regard to setting forth usernames and passwords without encryption or other security. And of course make sure that someone, including a backup someone, knows where the list is kept.

For security reasons, and also because maintaining a list can be a daunting task, we strongly recommend using an online digital estate planning service such as LegacyLocker or SecureSafe. The former seems

particularly user-friendly and adapted to the needs of estate planning clients.

We also strongly recommend the book, *Your Digital Afterlife: When Facebook, Flickr and Twitter Are Your Estate, What's Your Legacy?* By Evan Carroll and John Romano, particularly the e-book version, which allows you to link directly to helpful websites. Don't be misled by the narrowness of its subtitle; it's very comprehensive.

---

## Estate Planning and Elder Law In the News by Mia Lahti

The attorneys at LLO often clip news articles relating to estate planning and elder law and share them with each other. Here are a few that caught my eye and that I'd like to share with you:

- **Consumer Reports** September 2012 issue had an article entitled "Legal DIY sites no match for a pro." (Mike and I are regular readers of Consumer Reports, and refer to it often before buying something new). In the article, the CR investigators evaluated legal websites that can help you create your own will, power of attorney, and other important legal documents. CR recruited three law professors to test the services and evaluate the resulting documents.

In the area of wills and powers of attorney, the services they looked at were Rocket Lawyer, LegalZoom, and Quicken WillMaker Plus. The "verdict" was that of the three websites, WillMaker Plus was "competent, though far from ideal, for drawing up a simple will." But the reviewing expert advised that consumers consult a lawyer for more complex situations. Although the sites can offer basic legal advice, consumers are better off consulting a lawyer.

- **The Wall Street Journal** had an article on June 11, 2012 entitled "A New Look at Living Wills." The WSJ article examines whether living wills that are often simplistic are enough to communicate your wishes. It notes that living wills that are

available online typically are vague. The author suggests that individuals not rely primarily on a living will to communicate wishes, but that it is important to appoint a health-care agent. It is also important to talk to your family and your health-care agent about your preferences.

The article concludes that there are several ways in which you can convey your wishes, including a list of instructions, a formal living will, and conversations with family members or a trusted person. The importance of having these kinds of discussions so that your decision-maker can make the decision you would if you could was also the subject of a Boston Globe article.

- **The Boston Globe** included an article on August 29, 2012 entitled “A push to encourage end-of-life discussions”. The article notes that most Americans fail to discuss their final wishes with regard to death and dying before it’s too late. However, there are a growing number of groups emerging, such as The Conversation Project, that encourage “open and honest discussions among families and friends about how they want to live life at the end, so that their wishes will be followed.” With the growing number of baby boomers who will deal with decision-making for their parents, it’s important to have meaningful conversations about end-of-life decisions.
- **And, lastly, a bit of recommended reading:** Check out a website that Steve O’Neill found called “ElderCarelink.com”. Recently they featured an article on “Assessing senior housing: 6 points to hit.”

---

### Why Estate Planning?

According to an industry trends survey of estate planners conducted by WealthCounsel, one of the most common reasons clients engage in estate planning is to spare their family members and heirs the chaos and conflict that often occurs after their death. Another common reason that consumers engage in planning is to protect their children from mismanaging their inheritance, or to shield their children’s inheritance from creditors.

## Email Addresses?

*We’re updating our email address list.  
If you have a new email address,  
or if you never gave it to us originally,  
simply send an email with your name to  
Rose@LLO-Law.com*

## Request a Speaker

*Lahti, Lahti & O’Neill will be happy  
to conduct complimentary Estate Planning  
& Elder Law educational workshops and  
seminars for professional management  
organizations, retired professional groups,  
financial advisor firms and senior support  
groups. To arrange an educational seminar or  
workshop for a group of 25 or more people,  
email or call us at (401) 331-0808.*

## Introductions

*Lahti, Lahti & O’Neill is always grateful to  
receive referrals from our clients and professional  
colleagues. If you know of anyone interested in  
our estate planning or elder law services, please  
have them contact us for a free consultation.*

*Pursuant to U.S. Treasury Department Regulations, we  
are required to advise you that, unless otherwise expressly  
indicated, any federal tax advice contained in this  
communication is not intended or written to be used for, and  
may not be used for, the purpose of (i) avoiding tax-related  
penalties under the Internal Revenue Code or (ii) promoting,  
marketing or recommending to another party any tax-related  
matters addressed herein.*

*This Newsletter should not be construed as legal advice but  
rather as general guidance on matters as to which you may  
wish to consult with a qualified professional advisor.*



## **An Interview With Steve O'Neill**

*Interviewed By  
Brian McCarthy*

### **1. You started your law practice on Wall Street. How did you wind up in Rhode Island?**

Although my wife and I were native New Yorkers, we concluded in 1976 that New York City was not the best environment to raise and educate our children. A large Providence law firm was looking for attorneys who specialized in estate planning and retirement plans. I specialized in both, and so we relocated.

### **2. Has estate planning changed very much over the years?**

There has been an unending flow of significant estate planning legislation from 1976 through the present. But really the biggest change has been in technology. Over that same time frame we've gone from law books and typewriters to computerized and online and "cloud-based" research, document preparation, accounting and communication. What has not changed, however, at least in our practice, is the importance of personal communication with our clients and colleagues.

### **3. What are the reasons you merged your law practice with Lahti & Lahti, P.C. in 2010?**

I realized that I couldn't continue to work at a feverish pace forever, and the solution was to associate with younger attorneys who shared my expertise and ideals. I found that in Michael and Mia Lahti.

### **4. How does Lahti, Lahti & O'Neill, LLC differ from other law firms in Providence, New Bedford and Cape Cod?**

We believe that we distinguish ourselves from our competitors through a combination of qualities: breadth and depth of expertise; attention to detail; frequency of personal communication with clients and colleagues; coverage of Rhode Island, Massachusetts and Florida law; and last but not least, our downright

friendliness. That's why over the years, our friends have become our clients and our clients have become our friends.

### **5. What have you enjoyed the most about practicing estate planning law? Enjoyed the least?**

What have I enjoyed the most? It's really a draw between two items. First, the intellectual challenge -- every client situation differs and thus calls for a different legal solution. Second, interaction with so many different and interesting people, all of whom share a trait: success.

What I've enjoyed the least is that the practice of law has diverted me from my first career choice: surf and ski bum.

### **6. What advice are you giving your clients now that 2012 is drawing to a close?**

It's really case-by-case, but generally, in view of the numerous changes in the law over the last decade and the certainty of more change in 2013, clients should reread our last several newsletters and our 2012 White Paper (all available on our website), and if at that point they have any doubts about the soundness of their estate plan, they should call us to schedule a personally tailored update consultation.

### **7. What does the future hold for Steve O'Neill?**

Ideally a long, healthy and active life shared with my amazing wife, my three incredible children and my one (and counting) delightful grandchild. And from a professional point of view, the opportunity to continue to interact with my many very nice clients and professional colleagues for many years to come.

### **8. Now that you have more free time, how do you use it?**

These days I am usually in the Providence office Tuesdays through Thursdays and enjoy four-day weekends as well as 4 to 6 weeks of annual vacation. I spend my leisure time reading, traveling, cycling, hiking, and hanging out with my immediate family, my extended family, and our circle of friends.

*Brian McCarthy is an independent marketing consultant*