

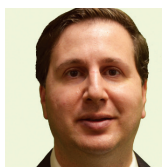
of the trust estate, including, but not limited to, emails, documents, images, audio, video, software licenses, domain registrations, and similar digital files, regardless of the ownership of the physical device upon which the digital asset is stored; to access, modify, delete, control, transfer and otherwise deal with, any digital accounts that comprise a portion of the trust estate, including, but not limited to, email accounts, social network accounts, social media accounts, file sharing accounts, financial management accounts, domain registration accounts, domain name service accounts, web hosting accounts, tax preparation service accounts, online stores, affiliate programs, and other online accounts; provided, however, that the trustee shall have no duty or obligation to review any electronic or computer equipment, and the trustee's judgment as to the actions to take or not take in regard shall not be subject to review.

2. Discuss with clients the need for them to identify and

make a list of digital assets (and to email the planner the list periodically).

3. Discuss with clients who will have access to the passwords. It shouldn't be the attorney.
4. Mention that a plan should be put in place to destroy certain digital information, if the client believes it worthwhile.
5. Digital assets on USB and similar storage devices need to be part of the digital item list. I tend to think of USB drives as additional clutter, but if they're catalogued and stored together (each one identified), they can actually reduce clutter.

The authors conclude that this is an area in its infancy and will require more thought. That's the truth. Digital planning is burgeoning. We're in the first inning of a long game as to how to correctly plan for these assets, and the authors are pointing us in the right direction.



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ARTICLE: "Memento Mori: Death and Wills," 14 *Wyoming L. Rev.* 211 (2014)

**W**hile the process of estate planning should, by its very nature, include the contemplation of our mortality and personal legacy, it often doesn't. In fact, despite modern society's general fascination with death and affinity for all things macabre—like zombies and vampires—the personal estate-planning process and documents, such as wills, often are designed to avoid the direct mention of death. **This**

**fascinating article delves deeply into society's changing feelings throughout history regarding the topic of death and our personal reflections when facing it.** Moreover, the article advocates a greater emphasis on properly contemplating, reflecting on and embracing the concepts of death and our personal legacies during the estate-planning process, while using candid language regarding death, which will, in turn, make the

estate-planning process more of a transformative and genuine experience.

### Memento Mori

“Memento mori” is a Latin term that means “remember you must die.”<sup>1</sup> The history of this phrase can be traced to Ancient Rome, but its use blossomed in the late Middle Ages and early Renaissance. The concept of death during these periods felt very close and real to society, as deadly plagues were rampant and the field of anatomy was developing with skulls and skeletons prompting fascination and contemplation. Memento mori was often evocatively expressed in art, music, science, religion and literature.

Furthermore, before the 20th century, which brought decreased infant mortality rates, longer life expectancies, the development of modern medicine and the hospital system, death was simply a reality of life and not a dreaded topic. People died at home, and the corpse was often kept there for viewing and final respects. There was a deep and direct personal connection to death, and memento mori was widespread.

Estate-planning documents also reflected the times and directly contemplated death and the personal legacy. Wills were called “vessels of truth” in Ancient Rome and weren’t just transfer documents. They provided “a final accounting of the testator’s likes and dislikes and reveal[ed] the essence of his [or her] character.”<sup>2</sup> In Medieval Europe, wills were guided and governed by the Church, and declarations such as, “I commend my soul to the creator,” as well as other affirmations of religious beliefs, were prevalent in the documents.<sup>3</sup> Gifts of penance or gratitude to the Church often followed statements of confession. Even after wills weren’t the exclusive domain of the Church, a similar focus on contemplation of death remained in the documents.

### Avoiding the Topic

Today, we embrace death and ghoulish themes, but usually in movies and comic books, where it’s a fantasy and not personal. In real life, it’s just the opposite. We either avoid the topic of death all together or make our relationship with death impersonal both within general society and often in the estate-planning process and documents. For example, we

use the term “life insurance” (instead of “death insurance”), draft personal documents with certain terms in the third person, such as with “settlor,” “grantor,” and “testator” (instead of “I”) and avoid the direct mention of death and detailed instructions on burial in the documents. The author suggests that the testator would be much more introspective about his past, present and future with candid language that references memento mori.

### Thought Provoking Piece

This excellent and progressive piece is thought provoking, both for practitioners and for our clients as to how to make the estate-planning documents and process much more of a reflective and profound experience. It also contains many fascinating examples throughout history, and like most of us, I was drawn to the macabre topic (perhaps because it was general and not about my own demise). My minor critiques are that, at times, I felt the article was a little disorganized in its flow and structure, though certainly well written and researched with outstanding content and lots of historic references and examples of memento mori. Also, there are very good reasons memento mori is often avoided in estate planning and documents—namely because it spooks many people who may avoid planning and signing documents all together if death was a greater focus. So, many people already delay or avoid estate planning because they don’t want to contemplate their own ends. I highly recommend reading this article because it deals with an intriguing topic that can enlighten our and our clients’ thinking regarding death and our personal legacies.

### Endnotes

1. Elizabeth Heimbach, *Latin Everywhere, Everyday: A Latin Phrase Workbook* 40 (Bolchazy-Charducci Publishers, Inc. 2004).
2. Susanna L. Blumenthal, “The Deviance of the Will: Policing the Bounds of Testamentary Freedom in Nineteenth Century America,” 119 *Harv. L. Rev.* 959, 966 (2006).
3. Michael McMahon Sheehan, *The Will in Medieval England: From the Conversion of Anglo-Saxons to the End of the Thirteenth Century* 120 et seq. (Toronto Pontifical Inst. Of Mediaeval Stud. 1963). For an exploration of the pious provisions of a will executed during the English Reformation, see John Craig and Caroline Litzenberger, “Wills as Religious Propaganda: The Testament of William Tracy,” 44 *J. Of Ecclesiastical Hist.* 415, 423-25 (July 1993).