

Law Impacts Estate Planning for Digital Property



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Estate Planning

There was a time in the recent past where people took photographs with cameras and printed them to create photo albums. Now that idea seems old fashioned. Today photos are primarily taken on our phones, sent via text messages, or posted to Facebook or Shutterfly accounts. But what happens when the holder of these accounts dies or becomes incapacitated? Can anyone access these accounts and photos? This question relates not just to online photos but all digital assets and accounts. Who controls your Facebook, Gmail, Shutterfly, PayPal, digital games/music and other online accounts or content stored on your computers or other digital devices upon your death or incapacity?

As technology evolves so does our concept of what may be considered "property." Wisconsin law has been recently updated to take these changes into account. On March 31, 2016, Governor Walker signed into law Assembly Bill 695 as Act 300 which is now Chapter 711 of Wisconsin Statutes titled "Digital Property." The Act establishes provisions related to a fiduciary's right to access digital property. Fiduciaries are people appointed to manage our property upon death or incapacity. Digital assets include documents, photographs, email and social media accounts. Fiduciaries are often prevented from accessing digital assets by password protection or restrictive terms of service. Digital property may have monetary or sentimental value and may present privacy concerns. The goal of Act 300 is to provide legal authority for fiduciaries to manage digital property in accordance with an individual's estate plan and to simultaneously protect an individual's private communications from disclosure.

The Act creates a three-tiered system to address directions regarding disclosure of digital assets to a fiduciary. First priority is given to an online tool as provided by a custodian of the digital asset. Examples of online tools are Google's Inactive Account Manager and Facebook's Legacy Contact. If no instructions are provided in an online tool, then directions may be established in a will, trust, power of attorney or other governing instrument. If neither a governing instrument nor online tool provide direction, then the terms of service governing the digital assets apply to the disclosure of the digital assets to a fiduciary. If the terms of service do not address fiduciary access, the Act provides default rules regarding access.

The new statute provides a tool for attorneys to assist you regarding your digital assets and accounts. Contact the estate planning attorneys at Rohde Dales to discuss whether your estate plan should be updated to incorporate your digital assets.

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