

Estate Planning for Your Digital Property

Article

June 2, 2017

Does your YouTube station with tutorials teaching the perfect contouring makeup technique have a million subscribers and significant advertising revenue? Probably not. Do you store music, documents, or photos on the Cloud? Possibly. Do you conduct online banking? Probably. Do you have a Facebook, Instagram, Google, Yahoo, or Twitter account? Most likely. You might not think that you have much “digital property,” but the vast majority of people now have digital property in one or more forms. As a personal asset, your digital property should be addressed as a part of your overall estate plan.

The Wisconsin Digital Property Act (the “Act”) went into effect in 2016. It governs the disclosure of the digital property and access to the digital devices of a deceased or incapacitated person. In general, the Act provides certain agents and fiduciaries with access to your digital property and digital devices.

Prior to the passage of the Act, access to digital property and devices was a gray area as a result of technology outpacing the law. There were several unfortunate scenarios that brought negative attention to this area of the law, which may have contributed to the laws finally being updated. For example, there have been several cases of teen suicides, including a 15-year old Virginia boy, where the families attempted – unsuccessfully – to access or shut down the decedent’s Facebook page. The negative publicity caused Facebook to create a tool where the family can request to shut down or “memorialize” a person’s page. In another case, Apple insisted that a 72-year old Canadian woman obtain a court order to unlock her deceased husband’s iPad.

Under the Act, the term “digital property” is defined to mean an electronic record in which a person has a right or interest. Examples of digital property include:

- E-mail accounts
- Social media accounts (e.g. Facebook, LinkedIn, Twitter, Instagram, YouTube)
- Cloud storage accounts (e.g. Dropbox, Shutterfly, Google Drive)
- Online financial accounts

Digital property does not include the underlying property itself. For example, your online bank account would be your digital property, but the actual money in the account does not constitute digital property.

PROFESSIONALS

Jacqueline L. Messler
Partner

RELATED SERVICES

Corporate & Securities

Trusts, Estates & Succession
Planning

Digital devices are devices that store digital property, including computers, tablets, mobile phones, and flash drives.

The Act governs who may access your digital property and digital devices in case of your death or incapacity, and sets a priority for who is given access. First, if you have given access to a person in an online tool (such as Facebook Legacy Contact or Google Inactive Account), that person will have access. Second, if your estate planning documents provide access to your agent, Personal Representative, or Trustee, those people will have access to your digital property and accounts. Third priority is given to those with access under the terms of service (where you click "I agree" but probably do not actually read). Fourth priority is given to those with access under the Act, including agents under a power of attorney, the Personal Representative of your estate, and the Trustee of a trust that has digital property.

Based on the passage of the Act, there are several steps you should take to ensure your digital property and digital devices will be accessible to your agents and fiduciaries in case of your death or incapacity:

1. Take advantage of online tools, such as Google Inactive Account Manager and Facebook Legacy Contact.
2. Ensure that your estate planning documents provide access to your agents and fiduciaries. If your documents were executed more than a couple of years ago, the documents may not include the authority for your agents and fiduciaries to access your digital property and devices.
3. Even if your documents are up to date, you must give thought to how your agents and fiduciaries will actually exercise the authority granted. You should consider the best way to provide information to your agent without unduly compromising the security of your accounts. For example, leaving a full list of your accounts, the user identifications, passwords, and answers to security questions in an unsecured place may not be the best idea. However, you might decide to write that list, keep it in your home safe, and let your agents know where the document is kept and how to access it.

The Act is a good start to ensuring your agents and fiduciaries will have access to your digital property and devices. By taking advantage of the permissions granted in the Act, by organizing your digital property, and by ensuring your agents and fiduciaries have the information they need to access your digital property when appropriate, you can avoid frustration and delays in the administration of your affairs upon your death or incapacity.

Estate Planning for Your Digital Property