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21st Century Estate Planning: Planning for Your Digital Assets

In today's society, nearly everyone has some form of digital presence. From email, to Facebook, to online banking, a large part of our personal and financial lives are online. These modern conveniences make it easier to manage our lives and stay connected with the ones we love. However, do you know what will happen to these "digital assets" if something happens to you? What happens to your Facebook and Twitter accounts? What happens to all your family photos stored on photo-sharing websites like Shutterfly? Or what if all your bills are sent electronically to your email account? Will someone have access to that account so your bills can get paid? If you haven't made specific provisions for these types of digital assets, it is likely that your family members will be blocked from accessing them after your death, or that some of them will be deleted.

I. What are Digital Assets?

Put simply, digital assets are all records that are electronic. This includes digital pictures and videos, documents and spreadsheets, email, virtual currency (ex. Bitcoin), social or professional networking accounts (ex. Facebook, Twitter, LinkedIn), online stock trading accounts, domain names, etc.

II. What happens to your digital assets when you die?

It depends. For assets such as pictures, videos, and documents that are stored on your personal computers, so long as someone is able to gain access to your computers, those assets can be preserved.

For assets like networking sites and email accounts, what happens to these assets when you die is dictated by the terms of service agreement ("TOSA") you signed when you created the account. Right now, some of you may be saying to yourself, "I never signed any agreement!" Unfortunately, you likely did, but did not realize it. This is because at the time you signed up for the account, a box that contained pages worth of legalese popped up and you were asked whether you agreed to accept all those legal provisions. Like most people, you scrolled to the bottom and clicked "Accept" without reading it and moved on to finish creating your account. That box with all the legalese was the TOSA, and buried somewhere in all that text was a description of what happens to your account when you die.

But don't worry if you didn't read the TOSA, you're not alone! Hardly anyone does. While as an attorney, it makes me cringe to sign something without reading it, I realize that this is something we all do when it comes to creating these types of accounts. The good news is that the Connecticut legislature is aware that not everyone reads these TOSAs. For that reason, they have enacted legislation designed to help you dictate who will have access and control over all your digital assets, regardless of whether or not you have read the TOSAs.

III. Uniform Fiduciary Access to Digital Assets Act

The legislation enacted by the Connecticut legislature is called the Uniform Fiduciary Access to Digital Assets Act, or "UFADAA" for short. UFADAA sets forth the rules for who will have access to your digital assets when you die or when you have become incapacitated. The extent of your fiduciary's (i.e. executor, agent under power of attorney, trustee, etc.) access to these accounts depends on what plans you put in place now.

Under the statute, the best thing you can do is to make use of any online tools made available by the account provider directing access of your accounts. For example, Facebook has a feature entitled a "Legacy Contact". This feature allows you to appoint a person to have limited access to your Facebook page after you die. Similarly, Google has an "inactive account manager" feature which also allows you to appoint someone to have limited access to your Google accounts (Gmail and otherwise) if your account has been inactive for an extended period of time, presumably due to your death. By making use of these features and appointing someone to have access to these accounts, those account providers are required to grant access to the individuals you have appointed.

If there is no online tool, the next best thing is to provide specific directions in your estate planning documents (Will, Trust, Power of Attorney, etc.). These don't have to specifically reference each and every account you own, but must make it clear that you intend for your fiduciary to have access to all of your digital assets.

If there is no online tool and you do not provide specific directions in your estate planning documents, then the TOSAs will govern what happens to your digital assets. You do not want to rely on these because most TOSAs state that when you pass away, your accounts are deleted and any documents, pictures, videos, or any other information stored in these accounts will be lost forever.

IV. So what do I do now?

Plan! Use the online tools. Update your estate planning documents to provide specific directions permitting your fiduciaries access to your digital assets. By speaking with one of our knowledgeable estate planning attorneys, we can ensure your fiduciaries are able to access and preserve your digital assets in accordance with your wishes.

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