

Estate Planning in the Digital Age

Presented by:

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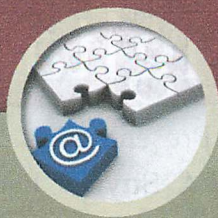
What is a Digital Asset?



“Digital asset” is a record that is electronic. The term does not include an underlying asset or liability unless the asset or liability is itself a record that is electronic. *UFADAA*

- **Personal**
email accounts
data storage
online gaming
- **Social Media**
Facebook
Twitter
Instagram
- **Financial**
bank accounts
sales/purchasing accounts
online currency (ex. bitcoins)
- **Business**
websites
blogs
domain names

Relevance to Estate Planning and Administration



- **Practical Considerations:** ability of fiduciary to identify, protect, value, and transfer assets and to ascertain and oversee expenses and liabilities
- **Legal Considerations:** federal laws, state laws, terms of service agreements, case law



Federal Laws



- **Computer Fraud and Abuse Act (18 USC §1030):** provides civil and criminal penalties for intentionally accessing a computer without authorized access or exceeding authorized access
- **Stored Communications Act (18 USC §2701 et seq):** prohibits electronic communication service providers from knowingly divulging the contents of any communication electronically stored by that service (except to law enforcement)
- **The Copyright Act of 1976, as amended (Title 17):** protects the original works of authors in a fixed medium (registration is not required)

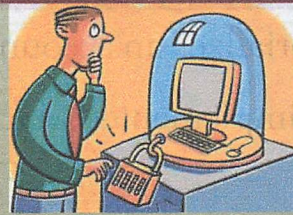
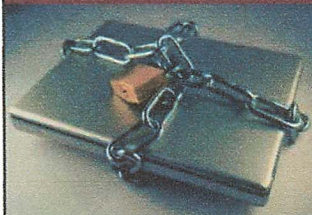
Uniform Fiduciary Access to Digital Assets Act

from the National Conference of Commissioners on Uniform State Laws



- ◆ Enacted in 2014
- ◆ Purpose is to “vest fiduciaries with the authority to access, control, or copy digital assets and accounts”
- ◆ Provides authority to personal representatives of decedents’ estates, conservators for protected persons, agents acting pursuant to a power of attorney, and trustees

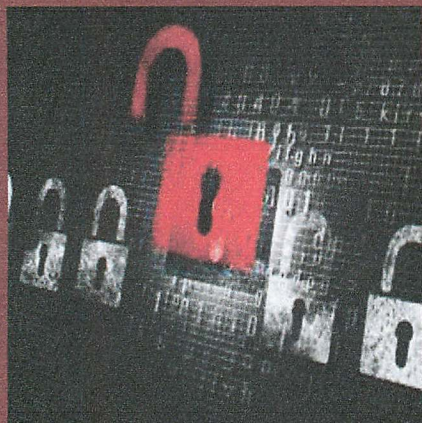
Proposed Maryland Law



Estates and Trusts Article 7-401(EE) (FAILED IN 2013 LEGISLATIVE SESSION)

A PERSONAL REPRESENTATIVE MAY TAKE CONTROL OF, CONDUCT, CONTINUE, OR TERMINATE AN ACCOUNT OF THE DECEDENT ON A SOCIAL NETWORKING WEB SITE, MICROBLOGGING OR SHORT MESSAGE SERVICE WEB SITE, OR ELECTRONIC MAIL SERVICE WEB SITE.

Existing State Laws



- Nevada Revised Statutes Chapter 143
- Virginia Code § 64.2-110
- Connecticut Statutes § 45a-334a
- Rhode Island Gen. Laws Chapter 33-27
- Indiana Code § 29-1-13-1.1
- Idaho Statutes § 15-3-715(28)
- Oklahoma Statutes § 58-269
- Delaware HB 345 (1/15)



Terms of Service Agreements (TOSAs)

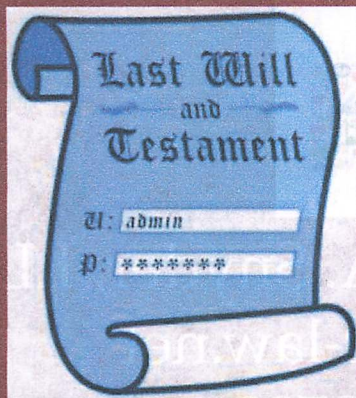
- **Facebook** – memorializes an account
- **Gmail** – recently implemented inactive account manager
- **LinkedIn** – deactivates account after death
- **Microsoft** – content can transfer to next of kin via DVD
- **Shutterfly** – allows access only with a court order
- **Twitter** – deactivates account after death
- **Yahoo!** – non-transferable and terminates upon death

Case Law and Public Disputes



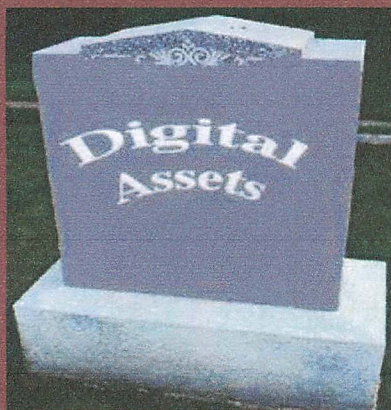
- Ajemian v. Yahoo!, Inc.
- United States v. Nosal
- In re Ellsworth
- Loren Williams
- Anthony Cannata
- Eric Rash
- Bruce Willis

How to Incorporate Digital Assets in an Estate Plan



- Create and maintain a digital inventory
- Give authority to fiduciaries
- Prepare an instruction letter to fiduciaries
- Review TOSAs and authorize access
- Consider placing digital assets in trusts or LLCs

How to Administer Estates with Digital Assets



- ① Identify digital assets
- ② Ascertain transferability of digital assets
- ③ Procure digital assets
- ④ Value digital assets and report them on estate inventories and tax returns
- ⑤ Protect estate

THE END

I hope you



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