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REPORT FROM COUNSEL JANUARY 2014 ISSUE

DIGITAL ASSETS — WHAT HAPPENS TO THEM IF YOU ARE DISABLED OR DIE?

If you are “on-line” in any capacity, you have digital assets. If you become disabled or die, your Agent under your Power of Attorney or your Executor/Trustee will be in charge of dealing with those assets.

Digital Assets Defined

While digital assets are personal property, no accepted definition of a digital asset currently exists. These assets can exist in many places. A digital asset can be an email account and its archived emails, text messages, social media sites and your posts to those sites, online accounts of many types for your assets including bank accounts and brokerage accounts, on-line shopping sites and on-line backups of your computer hard drive to list a few potential digital assets.

Not a Digital Asset

Some items that you may think of as a digital asset in reality are not. E-book reader books, movies you downloaded as well as your I-Tune collection are not digital assets. You do not own the underlying work. You purchased a license to use the work, perhaps for all of your life, but that license expires when you die.

Keep Track of Your Digital Assets — Make an Inventory

Begin with an inventory of your digital devices - desktop computer, laptop computer, hard drive storage devices and USB drives.

Next, move to an inventory of your email accounts, social media accounts, on-line banking, and other bill paying accounts. See the Sample Digital Assets Memo on the law firm website for a list of digital assets that you may have. Help your Agent or fiduciary keep track of your user name and passwords as well as your security question(s).

Let your Agent or fiduciary know if you use a program like RoboForm to store your passwords or whether you store passwords with an on-line service.

Update Your Documents

Your General Durable Financial Power of Attorney, your Last Will and Testament or Your Revocable Trust should be updated to allow your Agent or fiduciary to take control of your digital assets.

There's A Uniform Law for That

The National Conference of Commissioners on Uniform State Laws has a draft Act to address the problems with digital assets for Conservators, Agents under a Power of Attorney, Executors and Trustees — The Fiduciary Access to Digital Assets Act. The Act is in draft form in 2013 and a final Act is planned for release in 2014. Once the final Act is released, the individual state legislatures are able to consider whether to enact the Act in the state.

Because this is an important and rapidly developing area of the law, I will monitor developments in Virginia for discussion in future newsletters.

If you find yourself charged with administering a Power of Attorney, Estate or Trust with digital assets and need assistance, please call me.

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We appreciate your referrals!

Happy New Year!!!

