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Planning and Digital Assets

Until recently, bank statements were filed in cabinets, photos stored in family photo albums, records or CDs were stacked next to the stereo system, and books sat on a shelf. At death, these assets were divided among the family, typically as directed in an informal memorandum of wishes. Today, people also maintain and access all sorts of valuable information on their computers and through online personal or professional accounts. For example, it is now common practice to bank and manage your finances entirely online, prepare and retain tax returns electronically, share and access important documents using hosting services such as Dropbox, save digital photos online through websites such as Shutterfly, and manage music libraries using programs such as iTunes. Advanced planning for digital assets not only helps maintain a person's life story, but may also help to avoid identity theft and significant financial and reputational losses.

What happens to those so-called "digital assets" when the account owner is incapacitated or dies? The answer typically lies in the fine print of the contract that you accept (and likely don't read) when the account is opened. What may come as a shock is that under many such contracts the person who opens the account does not own the digital assets, and access to them can be totally lost when the person who opened the account dies.

In addition, Federal and state laws currently prohibit unauthorized access of a protected computer and may also prohibit others from accessing online accounts, the contractual terms of which often restrict access to the account holder alone in any event. In light of this, states are beginning to enact laws that would allow certain designated people to access the digital assets of a deceased person. Still, the law regarding access to, and ownership of, digital assets after death remains uncertain. Given all of this, what should you do?

First, keep a detailed hard copy list of all important accounts or online services that you use. Include account numbers, passwords and answers to security questions. Leave this information in a secure place where the people you would want to have access to these accounts and services (and only those people!) can find it. Be sure to update your list regularly to ensure that changes in usernames or passwords are reflected. Where possible, you should also consider storing truly important items on a computer or hard drive that you keep at home.

You may also want to think about whether there are any digital assets to which you want to prohibit access or limit access to certain individuals, such as personal e-mail accounts. In such instances, it would be prudent to direct your Personal Representative to delete such accounts. Lastly, continue to review the settings and privacy options regarding your online accounts, as the service providers begin to address this issue.

Estate and Gift Tax Update

Each year, the federal estate and gift tax exemption (i.e. the amount that can pass free of federal estate/gift tax) is adjusted for inflation. For 2015, the exemption amount will be $5,430,000 (up from $5,340,000 in 2014). The gift tax annual exclusion will remain at $14,000 per person, per donee.

The Massachusetts estate tax filing threshold will remain at $1,000,000. There is no gift tax in Massachusetts.

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ATTORNEYS AT LAW
70 WALNUT STREET
WELLESLEY, MA 02481

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One of the largest estate planning firms in New England, our attorneys have been recognized for their exceptional experience in the field. The firm carries the highest professional rating in the national Martindale-Hubbell Law Directory and is listed in the Bar Register of Preeminent Lawyers. Many individual attorneys are listed in the Best Lawyers in America and New England, Massachusetts and Rhode Island Super Lawyer lists.

Please feel free to contact the firm if you would like to discuss the matters highlighted in this newsletter, or any other legal matters.

Gilmore Rees & Carlson PC • (781) 431-9788, (508) 520-2200 or (401) 272-5400 • www.grcpc.com
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