



1414 Main Street, One Monarch Place · Springfield, MA 01144-1900
Telephone 413-733-3111 · Fax 413-734-3910 · E-Mail: dwpm@dwpm.com

Point of View

A Quarterly Newsletter

July, 2015

ESTATE PLANNING: PROTECTING YOUR DIGITAL ASSETS

When taking inventory of property, most people focus on the tangible, material items they own, such as their house, car, clothing, jewelry, and photographs. Property, however, is not limited solely to these types of possessions. As people have become more reliant on technology, more aspects of their personal lives are being shared online. For example, it is just as easy to post vacation photos to Facebook as it is to print copies, and to “tweet” the latest personal updates rather than calling family and friends. Likewise, it is more convenient to finish Christmas shopping on Amazon, instead of braving the local mall during the busy holiday season.

All of this electronic information makes up a person’s “digital assets” and, just like material belongings, people accumulate various digital assets during

their lives. Digital assets include, for example, blog posts; social media accounts (like Facebook, Twitter, LinkedIn, Tumblr); email accounts; photos, videos, and communications shared or stored electronically; and financial accounts (such as PayPal or Amazon).

It is simple enough to share and store information electronically, but accessing these digital assets after incapacity or death becomes much more difficult. Although the personal representative of an estate is charged with collecting and administering a deceased person’s assets, at this time Massachusetts laws do not give the personal representative power to access a decedent’s online accounts. In fact, only a handful of states have enacted statutes authorizing fiduciaries to access a decedent’s electronic

information and to terminate online accounts.

In many cases—in part because fiduciaries lack authority to access digital assets—the service-provider agreement (which the user agreed to when creating the account or sharing the information) controls who is authorized to access online accounts and, ultimately, what happens to them. For a variety of reasons, including privacy laws, some service-provider agreements are stringent and provide only for the termination of the account upon verification of the user's death. Yahoo!, for example, will remove a deceased user's account after receiving verification of death, but explicitly refuses to provide access to the accounts. Because access to the user's accounts are not allowed, it would be difficult to retrieve and save information, including photographs, video, letters, or other posts, which will eventually be deleted when the account is removed by the service provider.

On the other hand, some service providers have developed mechanisms that enable a deceased user's family to keep the account active or to retrieve information from the user's online accounts. In 2013, Google began to offer a solution called the "inactive account manager," which allows a user to elect what will happen to their data once the account has been inactive for a designated period of time, by either having all data deleted or sending it to a nominated individual. Most recently, in February 2015, Facebook added a new feature that allows users to designate a "legacy contact" who can manage the user's account after they pass away. Once notified that the user has

died, Facebook will memorialize the account, and the legacy contact will be able to post on the timeline, respond to new friend requests, and update the user's profile photo. Like Google's inactive account manager, Facebook users may even give the legacy contact permission to download an archive of the photos and posts they shared on Facebook.

The inability to access digital assets may result in a significant loss—particularly when these assets, if they had existed in physical form, could have been collected by the fiduciary and easily distributed to family and friends. Unless someone is able to access these accounts directly, and until Massachusetts establishes a law that gives fiduciaries the power to access and manage digital assets, the disposition of digital assets is based primarily on the service-provider agreement.

We suggest that you prepare a detailed inventory of your digital assets that includes website and online account information, user names and passwords, access information, and instructions specifying how the account should be handled after your death or incapacity. You should also review the terms and conditions applicable to each website with which you have an account or maintain digital assets. Most importantly, contact an attorney who is aware of the nuances of digital assets and is able to advise you of your options to assist you with your estate planning needs. We would appreciate the opportunity to assist you with these issues.

Angelina P. Stafford, Esq.
July, 2015

The Point of View published by Doherty, Wallace, Pillsbury and Murphy is a service to clients and other friends. The information contained in this publication should not be construed as legal advice. Should further analysis or explanation of this subject matter be required, please contact Attorney Stafford or the lawyer with whom you normally consult at Doherty, Wallace, Pillsbury and Murphy. The invitation to contact is not a solicitation for legal work under the laws of any

jurisdiction. Other editions of the Point of View published by Doherty, Wallace, Pillsbury and Murphy can be found at www.dwpm.com. If you wish to update your contact details with the firm please call (413) 733-3111.

Angelina P. Stafford is an Associate Attorney at Doherty, Wallace, Pillsbury and Murphy. Attorney Stafford is admitted to the bar in Massachusetts and Connecticut, and her practice encompasses all areas of business law and taxation. She specializes in estate planning, estate administration, and probate litigation.

*This publication may be considered advertising under the rules
of the Massachusetts Supreme Judicial Court.*
