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“Tip of the Month”

Digital Estate Planning

Estate planning arranges for the transfer of assets in anticipation of death. Assets are typically categorized as either real or personal property; real being real estate and personal being everything else. The technological advancements of the past decade have brought about the need to plan for a third category of property: the digital estate.

The first step is to identify all of your digital assets; your email accounts, blogs, online backup programs, file sharing accounts, financial accounts, iTunes libraries, software licenses, social media profiles, business websites, etc. Compile a complete and accurate list of all such assets and make the list available for administration once you’re gone. It’s equally important to identify all the usernames and passwords. Otherwise, administration of your digital estate will be futile.

What should be done with your digital assets after you are gone will depend on the assets themselves. While some digital assets may be worthy of distribution to named beneficiaries, there are others you might prefer to delete, erase, or terminate.

Therefore, you might want to name a special executor to administer your digital estate in accordance with your particular wishes. These duties and responsibilities might include gathering up, protecting and preserving these digital assets, and distributing, maintaining, or destroying the digital assets in accordance with the directions set out in the digital estate plan. A digital executor might also be responsible for paying existing and future debts associated with some of the digital assets. Your digital executor should be someone you trust to administer and distribute your digital property.

Once you have created your digital estate plan, it is important that you store it in a safe and accessible location, such as your lawyer’s office, or maybe in external or online (cloud) storage. No matter where you choose to keep your digital estate plan, be sure to inform your digital executor.

Whether you are able to formalize your digital estate plan in a legally binding and enforceable document may depend on the state where you reside. To date, there are no federal laws or regulations specific to digital estate plans. However, the Uniform Law Commission recently drafted and introduced into legislation the Fiduciary Access to Digital Assets Act, which would allow executors, trustees, or a fiduciary appointed by the court, complete access to a deceased’s digital assets.

As of 2015, nineteen states including New Hampshire have adopted laws designed to protect digital assets and to allow limited access by family members and guardians when a property owner dies or becomes disabled. Effective January 1, 2014, New Hampshire RSA 553:12-b, “Executor or Administrator; Social Media Accounts,” provides that “[t]he executor or administrator of an estate shall have the power, where otherwise authorized, to take control of, conduct, continue, or terminate any accounts of a deceased person on any social networking website, any microblogging or short message service website, or any e-mail service website.”

If you need help with you estate planning, the estate planning attorneys at Mesmer & Deleault are ready to help. Call us today at 668-1971, or contact us by email at mailbox @ biz-patlaw.com.

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