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Estate Planning for Digital Assets

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Do you have a personal laptop computer, iPad, iPhone or other personal electronic device requiring an access password? Who, besides you, has that information? If something happens to you, how will your information be retrieved?

If you maintain an active online banking, brokerage, e-mail, social media, or gaming account that requires a username, password or other information for access, who knows what these accounts are and how to access them if you can't?

While technology can simplify our lives while we're living, it can complicate things significantly when we become ill, incapacitated, or die. The applicable laws are anything but settled. That is why it is essential to plan for and document your wishes about access to, and disposition of, your digital assets.

If you want to be assured that *your* choices about who has access to and control of your digital assets in the event of your illness, disability, or death are honored, you need to take the following steps:

- **Identify your digital assets.** The term "digital assets" generally refers to all of your digital property and electronic communications, including: any kind of digital file, such as documents, images, audio, video, multimedia information, online account or personal property whether stored on a server, computer or other electronic device (e.g., desktop, laptop computer, tablet, storage device, mobile telephone, smartphone, etc.), or "in the cloud." Examples of these include PayPal and eBay storefronts; music or movie sites such as Apple, Amazon or Google Play; and digital wallets such as Starbucks.
- **Create a digital asset inventory.** Include all of your devices and accounts, numbers, usernames, passwords; PINs, security questions and answers; information about whether the accounts have monetary value; and any special instructions. For security purposes, you may wish to keep or store some inventory information separately. For example, make a list of accounts

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and numbers, and a separate, related list of the access information for those accounts. As passwords and electronic accounts will change from time to time, keep your inventory current and review it annually, at the very least.

When your digital asset inventory is complete, safeguard the information. Perhaps you are comfortable entrusting the inventory to a family member or prospective fiduciary. If your information is more complex, or involves business assets, you may want to explore a secure online password manager, such as Dashlane, LastPass, PasswordBox, SecureSafe, etc.* Some services provide secure sharing and access by designated “emergency contacts.”

- **Document your wishes concerning access to your digital assets.** The rights of your attorney-in-fact (the agent designated under a power of attorney), conservator, executor or trustee to access, manage and dispose of your digital assets are not entirely clear. Although the executor or administrator of a Connecticut decedent’s estate has legal authority to access or obtain copies of a decedent’s “electronic mail account,” multiple digital options have emerged since the statute went into effect a decade ago.

Most online accounts are contractual license arrangements that control who (other than you) may access your account, and under what circumstances. There are as many different policies as there are online account providers. For example, Facebook does not allow anyone other than a designated “legacy contact” (designated through the user’s security settings) to access a deceased user’s Facebook page – even if that person has the password to do so. Given the uncertainties under current law, your estate planning documents should ensure that only the people you choose have access to your digital information, and that your choice is documented in your power of attorney, Will and trust agreement, as appropriate.

- **Document your wishes concerning the disposition of your digital assets.** When you are no longer able to manage your digital assets should the file or account be accessible to family and friends, particularly if there is personal material (e.g., photos, writings) associated with the account? Should the account be cancelled?

Some forms of digital assets have monetary value (e.g., online banking or brokerage accounts) which can be transferred when accessed. Others hold inherent financial value that can be exchanged or transferred, e.g., a domain name, iTunes account or PayPal credit balance. Other assets may exist only in digital form, for example, photographs, recipes and manuscripts, and have tremendous sentimental or family historical value.

A traditional Will or revocable trust agreement may provide the means of directing the disposition of many digital assets, particularly those with monetary value. Another tool is a “digital asset trust” which is created to hold title to the electronic account and govern who may have access to what information, and when.

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As the rate of electronic growth significantly outpaces the related law, it is imperative that you take the necessary steps to provide access to your digital assets, if necessary, and provide directions to give effect to your wishes with respect to your digital assets. For further information on this topic, and others related to “digital afterlife,” you may enjoy a visit to www.thedigitalbeyond.com.

To discuss how digital assets may affect your estate plan, or if you would like a copy of our Digital Asset Inventory form, please contact a member of our Trusts and Estates Department.

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