



BUYNAK LAW FIRM

WHO HAS RIGHTS TO YOUR DIGITAL PROPERTY AFTER YOUR DEATH OR INCAPACITY?

(Estate Planning Advisory 2009-09)

Accessing online passwords and digital property after one's death or incapacity is critical in an age where everything is now "in the computer." It is important to designate someone to have access to our accounts and to act in our behalf to continue, alter, or stop payments or other financial information. This is a necessity for everyone who uses the internet, pays bills electronically or has authorized automatic withdrawals from bank accounts. This memorandum is a brief discussion of the need to address access to our financial information and accounts, web pages, social networking accounts and blogs, and domain names. If you have concerns, you should discuss your personal situation with an attorney. Our representation is only undertaken through a written engagement letter and not by distribution of this advisory.

What is Digital Property? Digital property includes any data stored on your computer or on CDs, DVDs, memory cards, floppy disks, tapes or other media, email or Internet accounts and other rights that exist in the digital world, including intellectual property rights such as trademarks, copyrights, domain names, online sales accounts, financial records, video games, blogs, or social networking accounts such as MySpace, Facebook, LinkedIn, or Twitter.

According to recent surveys in the United States, 91% of us use email, 71% buy something online, 68% make travel reservations online, 55% now bank online and 35% use an online social networking site¹.

Internet accounts are governed by contracts between an individual and the service provider who allows access to their web site or use of the online activities. We all have seen the agreements to access and account use which we must check the box saying we have read and agreed to the terms of usage, though doubtfully few of us actually read the agreement before checking the box that allows us access rights. The problem arises for family members, agents or executors when they must deal with an individual's incapacity or death and they find they cannot find out information about a person's digital property because they do not know the user identification or password that will allow access. Since many people pay their bills by e-mail, online bank accounts, telephone transfers, Quicken or Microsoft Money, problems arise for someone who takes on the responsibility for a friend or loved one that has been in an accident or has an illness

¹ Generations Online in 2009, Pew Internet & American Life Project, 1/28/09,
<http://www.pewinternet.org/Reports/2009/Generations-Online-in-2009.aspx>

that prevents him or her from taking care of finances. After a death, each online account provider sets the requirements to allow access to accounts by family members or others.

Dealing with a Death or Incapacity. Typically, family members begin to deal with an individual's incapacity or death by sorting through records in the person's home including their checkbook register, bank and brokerage account statements, credit card bills, utility bills, medical bills, loan statements and tax returns and other similar documents. For those individuals who have stopped getting paper bills and are now taking care of finances online, many records are missing since they exist only in the person's computer. By attempting to log on to a person's computer to read email or check the saved bookmarks in a person's internet files, some information may be obtained, but it usually requires knowledge of a user ID and password or that stops the effort. Many of the online accounts require a death certificate, probate letters or other verification information before you can gain access to account information so that bills can be paid and information obtained for preparation of income or estate tax returns.

Account ID and Password List. In the best case scenario, the individual has planned ahead and provided a list of accounts, passwords and other key information about their digital property. Locating the list may be a challenge and the best option is to keep a written list stored in a sealed envelope along with the individual's power of attorney and estate planning documents. A written list naturally creates a security and privacy risk, so an option may be to store it in a safe location or with your attorney until the time it is needed. The main drawback of a written list is that it is more difficult to update and keep current as we are frequently adding new accounts or changing passwords, but the option always exists that you can email it to your attorney to update your records whenever it changes, or do it on a regular basis, such as every month, quarterly or annually.

Software or Internet Password Services. Other options include purchasing software that serve as password managers or use internet based services that manage accounts and passwords. Some accounts have the ability to notify family members or agents you designate to have access upon incapacity or death². Before using these services, you must evaluate the cost and whether you trust these online companies to keep your important data secure and private, as breaches are always a possibility. AssetLock and Legacy Locker can store electronic copies of a power of attorney, health care directive, will, trust, deed, insurance policy or other important documents. The individual will select key people who can unlock the information at the appropriate time. Deathswitch takes a proactive approach by contacting an individual on a regular basis to make sure the individual is still alive and not incapacitated and if there is no response within a prearranged time limit, they send an automatic email message with the individual's important information to designated individuals. While these services may be valuable to you, it is likely that this is something your attorney will do at no charge. Our firm checks with estate planning clients every three years to see if estate planning documents are all current based on a person's goals. If you haven't reviewed your estate planning documents in the past two years, it may be wise to get them out and make sure that they still reflect your desires and if not, make amendments now while you are able to do so.

² AssetLock, www.assetlock.net; Legacy Locker, www.legacylocker.com; Deathswitch, www.deathswitch.com.

Form Digital List. A good practice to implement now is use of a form such as the one attached, to list all your current accounts and access information. Provide this list to your estate planning attorney, since there may be some reluctance to give the information to a successor trustee/beneficiary who could use the information to gain access prematurely. Consider completing the form and if you have any questions, consult with your attorney.

As always, you should be sure that additional legislation has not been enacted or court decisions rendered, that would change the above advisements. This Memorandum is neither exhaustive nor is it tailored to your specific situation. You should discuss your individual situation with us or your own attorney.

Lana J. Clark
Business, Estate & Trust Attorney

This Advisory is one of a series of business, estate planning, trust administration, real estate and tax advisories prepared by the attorneys at Buynak Law. Should you have further questions regarding the information provided in this Advisory, please contact the author at the number listed above.

Buynak Law Firm provides legal services to individuals, business entities and nonprofit organizations from entity formation and start up, through day-to-day operations and exit strategies including estate planning, trust administration and post-death probates and tax planning.

DIGITAL PROPERTY INFORMATION

Name: _____

Social Security No.: _____ Date of Birth: _____

LIST ALL BANK, BROKERAGE AND OTHER ONLINE ACCOUNTS WITH USER ID, PASSWORDS AND OTHER KEY INFO:

ACCOUNT PROVIDER _____ INTERNET ADDRESS: _____

USER ID: _____ PASSWORD: _____ ACCOUNT NO. _____

KEY INFO: _____

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ACCOUNT PROVIDER _____ INTERNET ADDRESS: _____

USER ID: _____ PASSWORD: _____ ACCOUNT NO. _____

KEY INFO: _____

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KEY INFO: _____

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ACCOUNT PROVIDER _____ INTERNET ADDRESS: _____

USER ID: _____ PASSWORD: _____ ACCOUNT NO. _____

KEY INFO: _____

ENROLLED AUTOMATIC PAYMENT ACCOUNTS:

ACCOUNT PROVIDER _____ INTERNET ADDRESS: _____

USER ID: _____ PASSWORD: _____ ACCOUNT NO. _____

KEY INFO: _____

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ACCOUNT PROVIDER _____ INTERNET ADDRESS: _____

USER ID: _____ PASSWORD: _____ ACCOUNT NO. _____

KEY INFO: _____

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ACCOUNT PROVIDER _____ INTERNET ADDRESS: _____

USER ID: _____ PASSWORD: _____ ACCOUNT NO. _____

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KEY INFO: _____

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ACCOUNT PROVIDER _____ INTERNET ADDRESS: _____

USER ID: _____ PASSWORD: _____ ACCOUNT NO. _____

KEY INFO: _____

Authorized Representative for Access to Accounts in the event of Death or Incapacity:

Name: _____ Phone: _____

Address: _____

City: _____ State: _____ Zip: _____

E-mail Address: _____

Alternate Representative:

Name: _____ Phone: _____

Address: _____

City: _____ State: _____ Zip: _____

E-mail Address: _____

Date: _____ Signature: _____ 0 _____