RECENT CONNECTICUT LEGISLATION IMPACTS ESTATE PLANNING

Digital Age Calls For Fiduciary Access To Digital Assets

Today, many of us do not receive monthly bank statements or bills in the mail anymore. Rather, we receive notifications via email and access that information online. If something were to happen to us, who would know of those accounts? Even if someone knew of the accounts, would they be able to access them online? In addition, many of us have other online accounts which no one would be able to access if something happened to us, such as a blog or a domain that we own; digital currencies; accounts with iTunes, Amazon, LinkedIn, Twitter or Facebook; cloud-based photo storage; voicemail messages; and reward programs and credit card points. Some of these accounts have significant value while others have sentimental value.

Connecticut has a new statute known as the Revised Uniform Fiduciary Access to Digital Assets Act ("RUFADAA") which authorizes your appointed fiduciaries (executor, trustee or agent under a power of attorney) to access your digital assets and accounts after you die or become incompetent if you have given them prior consent. The custodian of the account has some discretion over how much access it will allow, whether full access, partial access, or a copy of a record of the digital asset. However, a fiduciary who has not been authorized by an account holder will be able to access only the "from" and "to" lines of emails but have no other access to digital accounts. If the account holder does not want the fiduciary to be able to access even the "from" and "to" lines of emails, then the account holder needs to prohibit anyone from having any access.

We recommend that you sign a consent form giving your fiduciaries access to your online accounts and also complete an inventory of the names of your online accounts, usernames and passwords. We have prepared forms that may be accessed via the comprehensive version of this article on our website at http://brodywilk.com/wp-content/uploads/2016/11/article-digital-assets.online.version.1128.pdf. If you have informally given your passwords to family members already, it is still a good idea to sign a consent form since they may be technically violating a service provider's terms of service agreement which prohibits access by third parties. Also, please be aware that due to encryption, a fiduciary may not be able to gain access to certain devices or accounts unless you have given him or her your password (*e.g.,* iPhones and iCloud accounts). If there are too many failed attempts at passwords, the contents may be permanently erased.

It is important to be aware that certain online account providers may have their own online means for you to give consent or deny consent to access your account. For example, Google and Facebook give you the ability to name someone who can oversee your account in the event of death, incapacity or inactivity. If you give/deny consent through this method, it will override any document you sign to the contrary.

As covered in the second part of this article, Connecticut has a new Power of Attorney ("POA") law. To comply with the statute, we have prepared a new POA form and have included within it an optional power that gives the agent authority over digital assets. We recommend that you sign a new POA that includes a digital assets component when you next update your estate plan. In addition, if you wish to limit access to sensitive online

information to a specific individual rather than all of your fiduciaries, we can name a "digital agent" or "digital executor." Given today's heavy reliance on the Internet to manage personal and business affairs, it is now critical to plan for the preservation of valuable digital assets so they are not lost forever after death or incapacity.

New Power Of Attorney Law Offers Greater Protection And Functionality

Connecticut adopted a new Power of Attorney law which took effect on October 1, 2016. A POA is a document in which you as the "principal" can name one or more persons as your "agent" to make financial and other decisions for you. The new law does not pertain to health care powers of attorney. The new law addresses such issues as:

- duties of an agent;
- powers given by the principal to his agent;
- acceptance of the POA by third parties; and
- termination of an agent's authority and replacement with a successor agent.

The law provides a form which may be used. Most provisions may be customized as desired to override certain default provisions and presumptions. The back page of the form is titled "Important Information For Agent." It explains the agent's duties, termination of his authority and liability.

We have prepared a new POA form based on the statutory form. If you already have a POA, it will remain valid. However, if you are updating your estate planning documents, we recommend that you update your POA to use the new form. Our form provides that the agent's authority begins once the principal signs the form. The agent's authority terminates at the principal's death (unless it terminates for another reason such as the agent's incapacity). A copy of a POA is as valid as an original. The form includes a list of general powers which are explained in detail in the statute, but it also includes new additional powers which your agent may have only if you initial each one, such as the power to make gifts for tax planning or other reasons.

One of the goals of the new law is to make it easier for POAs to be accepted by banks and other institutions, while also protecting individuals from agents who may wish to take advantage of them. In the past, banks often did not accept POAs that they deemed to be too old. However, if the principal was already incompetent, then it was too late for him or her to sign a new POA. In addition, banks often required their client to sign the bank's own POA form. There are new procedures in place which will allow a validly executed POA to be accepted more readily.

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