



36 Bingham Avenue
Rumson, New Jersey 07760
732-945-5178
www.DespoLawGroup.com

By: William A. Despo, Esq.
Bill@WDespolaw.com

PERSONAL PLANNING UPDATE- 9/18/17

It is Time To Protect our Assets in this Digital Age?

Have you ever thought about who would control your digital assets if something should happen to you? Digital property such as: email, social media, computer files, web domains, online banking and other internet based accounts are just as important as other tangible assets.

On September 13, 2017, New Jersey Assembly Bill A-3433, otherwise known as the Uniform Fiduciary Access to Digital Assets Act was signed into law. This New Jersey Act will allow fiduciaries to manage digital property. However, it restricts a fiduciary access electronic communications including social media, text messages and email unless the original user consented to it in a Power of Attorney, Will, Trust or other record.

Digital assets is defined as an electronic record in which an individual has a right or interest. The Act will enable a fiduciary to gain access to the content of a user's electronic communications by express consent by the user in their Will, Power of Attorney, Trust Agreement, or similar writing, or by Court Order. Such authorized persons may include an executor under a will, an agent named under a living will or appointed by the court, a trustee under a trust or a guardian.

The fiduciary is subject to maintain a duty of care, confidentiality and loyalty of the user's digital assets. Under this Act, fiduciaries for digital assets are subject to the same fiduciary duties that normally apply to tangible assets and governed by other law. A fiduciary is required to send a request such as a letter of appointment, court order or certification of trust to the custodian to gain access to any digital assets. This Bill does not apply to digital assets of an employer used by an employee.

The use of technology and social media is part of our daily lives. The adoption of the New Jersey Uniform Fiduciary Access to Digital Assets Act is a positive step to protect our digital assets. Having a trusted fiduciary named to manage these accounts is imperative to protect yourself and potentially your family.

Suggestions:

- Review terms for your online accounts;
- Create an inventory of all your digital assets;
- Create and/or update your will;
- Create/Update a Power of Attorney that deals with digital asset; and
- Guardians should review court orders for digital assets provision.