

## Estate Planning for Digital Assets

- What happens to your on-line assets when you go off-line?

Your digital world may include:

- Family Photos
- Bank/Investment Records
- Passwords/Answers to Security Questions
- Credit Cards/Bill Payments
- Airline Miles
- E-mail
- Videogame Characters
- Tax Records

- How will your personal representative locate these assets?
- Does your personal representative have the complete knowledge to access your accounts, or should you name a digital personal representative as well?
- Do you want your on-line social media accounts cancelled immediately or do you have a special recorded message to be sent to your friends or enemies?

There are now digital services that allow you to control this information after your death. These services include:

- Legacy Locker <http://legacylocker.com/>
- Data Inherit <http://www.securesafe.com/en/features/inheritance.html>
- Entrustet <http://www.securesafe.com/en/>
- SecureSafe <http://www.securesafe.com/en/>
- Great Goodbye <http://greatgoodbye.com/>

Indiana is one of a few states that has a law allowing personal representatives to access electronic information after death.

### **IC29-1-13-1.1**

#### **Electronically stored documents of deceased**

Sec. 1.1.(a) As used in this section, “custodian” means any person who electronically stores the documents or information of another person

(b) A custodian shall provide to the personal representative of the estate of a deceased person who was domiciled in Indiana at the time of the person's death, access to or copies of any documents or information of the deceased person stored electronically by the custodian upon receipt by the custodian of:

- (1) a written request for access or copies made by the personal representative, accompanied by a copy of the death certificate and a certified copy of the personal representative's letters testamentary; or
- (2) an order of a court having probate jurisdiction of the deceased person's estate.

(c) A custodian may not destroy or dispose of the electronically stored documents or information of the deceased person for two (2) years after the custodian received a request or order under subsection (b).

(d) Nothing in this section shall be construed to require a custodian to disclose any information:

- (1) in violation of any applicable federal law; or
- (2) to which the deceased person would not have been permitted access in the ordinary course of business by the custodian.

The National Conference of Commissioners on Uniform State Laws has a committee working on a draft of a bill about rights of a fiduciary to manage and distribute digital assets, copy or delete digital assets, and access digital assets.

Does your attorney-in-fact have the right to access your digital information?

Consider adding wording such as the following to your power of attorney documents.

**Digital Assets.** My Attorney-In-Fact shall have (i) the power to access, use, and control my digital device, including, but not limited to, desktops, laptops, peripherals, storage devices, mobile telephones, smart phones, and any similar device which currently exists or exists in the future as technology develops for the purpose of accessing, modifying, deleting, controlling or transferring my digital assets, and (ii) the power to access, modify, delete, control, and transfer my digital assets, including, but not limited to, any e-mails, e-mail accounts, digital music, digital photographs, digital videos, software licenses, social network accounts, file sharing accounts, financial accounts, domain registrations, web hosting accounts,

tax preparation service accounts, online stores, affiliate programs, other online programs, including frequent flyer and other bonus programs, and similar digital items which currently exist or exist in the future as technology develops.

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