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Client Bulletin



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Ohio Adopts Revised Uniform Access to Digital Assets Act

In House Bill 432, the Ohio General Assembly adopted, and Governor Kasich signed, effective April 6, 2017, Ohio's codification, in Ohio Revised Code Chapter 2317 of the Revised Uniform Access to Digital Assets Act promulgated by the Commissioners on Uniform State Law. Ohio had not adopted the initial Uniform Access to Digital Assets Act.

Essentially, Ohio Revised Chapter 2317 is intended to provide access by attorneys-in-fact (agents) under a general power of attorney, executors or administrators of a decedent's estate (irrespective of when the decedent died), a guardian of a ward, a trustee of a trust (irrespective of when the trust was created) or a custodian (which means a person or entity that carries, maintains, processes, receives or stores a digital asset, i.e. Facebook, Outlook) if the user resided in Ohio at the time of the user's death, but expressly does not apply to the digital assets of an employer that the employee used in the ordinary course of the employer's business. However, a custodian (i.e., Facebook) can use an online tool (a statement to "click on") by which the user directs the custodian to disclose or not to disclose to a designated recipient (by name or title) some or all of the user's digital assets, including the contents of electronic communications (i.e., e-mails, text messages, tweets). If the online tool used by the custodian allows the user to modify or delete at any and all times, using an online tool, a prior direction to allow disclosure to an executor or administrator, et al., that last direction overrides a contrary direction in a will, power of attorney, trust, or any other record. However, if the online tool is not used by the user to give a direction or if there is not an online tool available, the user may allow or prohibit, as the user desires, in a will, trust, power of attorney, or other record, disclosure to the executor, administrator, attorney-in-fact or other fiduciary some or all, as selected by the user, of the user's digital assets, including the content of electronic communications (i.e., e-mail, texts, tweets) sent or received by the user. R.C. 2137.03 expressly provides that a user's direction, whether in an online tool, a will, a trust, a power of attorney, or other record, overrides a contrary provision in a terms-of-service agreement which does not require the user to act affirmatively and distinctly from the user's normal "click on" agreement to the custodian's terms of service. It is expressly provided that the Act does not change the rights of either the user or the custodian under the terms-of-service agreement to access and use the digital assets of the user.

The Act provides discretion for a custodian whether to grant a) full access, b) only access sufficient for the executor, et al. to perform the duties that the executor, et al., is charged to perform, or c) a copy of any record in the digital asset that, on the date the request for disclosure is received, the user could have accessed if the user were alive, not incompetent, etc. However, this discretion is overridden by the directions the user directed in an online tool. A custodian is not required to disclose a digital asset that the user, before death, incompetency, etc., has deleted, unless, again, the terms of the online tool used by the user provides differently.

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A provision in the Act as to deceased users provides that unless the deceased user has prohibited disclosure of digital assets or a court rules against disclosure, a custodian of digital assets shall disclose to the executor or administrator a catalog/blog of electronic communications sent or received by the user and other digital assets, but NOT the contents of electronic communications, providing that the executor or administrator gives the custodian the statutorily required documentation consisting of a written request, copy of a death certificate, evidence of the authority (appointment) of the person making the request, and other information that the statute permits the custodian to request.

If a power of attorney expressly grants an agent/attorney in fact authority over the content of electronic communications sent or received by the principal (the person granting the power of attorney), the agent/attorney-in-fact can obtain the content of electronic communications by providing the documentation that the applicable statute (Ohio Rev. Code 2137.09) permits a custodian to require of the agent/attorney-in-fact.

There are multiple other provisions of the Act that pertain to other specific situations/relationships but those outlined above are the ones that will most often come into play. The Act also imposes duties, including confidentiality, on an executor, et al., who obtains/accesses digital assets.

Changes to “My Social Security” Online Accounts

Beginning June 10, 2017, the Social Security Administration is adding an additional security layer beyond user name and password. Users of My Social Security will have to register a cell phone number or an e-mail address for the website to use to send a one-time security code each time during logging in. When a user of a My Social Security online account enters his/her user name and password, the user will receive a text or an e-mail, based upon what the user previously registered, with a one-time security code to enter into the appropriate location on the My Social Security web page.

Notice

This bulletin provides general information and is not legal advice. Please contact us if you need legal advice.

If you have friends or associates who you think would enjoy receiving a copy of this Client Bulletin, please feel free to forward it on. Thank you.

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