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JEFFREY BURR
ESTATE PLANNING & PROBATE ATTORNEYS

CLIENT FOCUS

PLANNING FOR DIGITAL ASSETS

More and more estates these days include digital assets in two main categories: devices and accounts. Typically, both devices and accounts have controlled access that requires a password. You might only have a handful of devices that require passwords, such as a smartphone, home computer, laptop, tablet, and a home security system. It might surprise you the number and variety of accounts that you hold if you were to count them. Here's a starting list: online banking (brick & mortar banks and online-only banks), e-mail accounts, social media (Facebook, Twitter, Instagram, LinkedIn), online shopping and their related consumer credit accounts (Amazon, Ebay, retail store websites), life insurance, investment accounts, online photo storage or cloud backup services, blogs and websites that you manage, photo or video sharing websites (YouTube, Vimeo, Flickr), and media purchasing sites such as Google-Play, AmazonPrime, and iTunes.

Many of these accounts may contain information that you would like to pass on to the beneficiaries of your estate. This could include the transfer of wealth from an online investment account, to sharing photos and videos from your life, to enjoying music, movies, and TV shows that you have purchased online which are stored in the cloud.

The great question is this: If you were to pass away, would those who are named to handle your affairs be able to access these devices and accounts? Unfortunately, in many cases the answer is "No" unless careful preparation is made. The law is trying to keep up with technological progress, but there is no clear and reliable guarantee that your Executor or Successor Trustee will be able to access your digital assets through the operation of law. Additionally, a court order won't do much good to unlock your smartphone or laptop if nobody knows the password. In fact, your online accounts may be inaccessible by your Executor even with a court order, depending upon each account's terms of service agreement.

So, what's the solution? A homemade solution might include storing your account ID's and passwords somewhere safe, yet accessible, when you are gone. You could use a password protected file on your computer, so long as you provide the password to the file and to your computer to your Executor. There are online services and applications that can be used to store your password information. This can be helpful even during life to keep track of your various and often related or derivative passwords. However, many of these solutions involve giving another person access to your accounts, and may, in fact,

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be illegal under federal statutes such as the Computer Fraud and Abuse Act.* Many states are working on passing laws to provide for Executor access to devices and online accounts without violating federal law, but it may be a few years before this is figured out.

**A crime not likely to be prosecuted unless you are a malicious and evil hacker wanted by law enforcement.*

Our firm will soon be unveiling an online document and information storage service for our clients with Everplans. [www.everplans.com] This service has demonstrated to be an intuitive and secure location to save not only passwords and instructions for digital assets, but also a service to store and access information and instructions for many elements of your life, including estate planning documents, degrees and certifications, instructions for your pets, religious affiliation, and instructions on your funeral or memorial service. **B**

NEVADA LLCs THAT OWN CALIFORNIA PROPERTY

If you own California property in a Nevada limited liability company or LLC, and you are not particularly concerned about liability protection with respect to that property, either because you have sufficient insurance coverage or because the property does not generate inherent liability, you should talk with your attorney about possibly updating your plan and eliminating the Nevada LLC. California charges an annual tax for the "privilege of doing business"

in California. Currently, that tax is \$800 per year. The tax is applicable to most LLCs, as California has adopted a liberal definition of "doing business," which includes merely being organized in California or owning property in California valued at more than \$50,000. In addition to the tax mentioned above, Nevada LLCs must register in California, the cost of which is \$70, file an initial and biennial Statement of Information, the cost of which is \$20 per filing, and have a California registered agent, the cost of which varies. These fees are in addition to Nevada's annual fees for maintaining an LLC, which total \$350, unless we are serving as your registered agent, in which case the annual fees would total \$575.

Instead of maintaining a Nevada LLC to own California property, you could transfer the California property to your trust and save the fees mentioned above (\$1,150 plus, annually). Please contact an attorney at our offices to discuss your options in this regard. **B**

LLC OPERATING AGREEMENT

THIS AGREEMENT made this ____ day of _____, 20____, by
and between _____, hereinafter
"Employee" of _____, hereinafter
"Corporation".

WITNESSETH:

WHEREAS, the parties believe it is in their best interest to unanimously agree to terms below related to the operation, management and control of the Corporation in order to achieve harmonious balance and direction.

NOW THEREFORE, the parties agree to the following:

1. The Shareholders agree to maintain "S" status of the Corporation for federal tax purposes throughout a period of five (5) years from the date hereof unless seventy-five percent (75%) of outstanding stock of the Corporation is voted in such a manner as to consent to the revocation of such status.
2. The parties hereto agree to execute a Buy-Sell Agreement between and mutually acceptable by the parties.
3. For a period of five (5) years from the date of this Agreement, the Shareholders as Directors shall, unless one is either no longer a Shareholder, or unable or unwilling to perform, vote for the following officers:

Pre-Planning Your Funeral

-by JEFF BURR

A difficult and sometimes uncomfortable topic for us to discuss with a client is the need to pre-plan his or her funeral. Why? Because we all feel immortal in one way or another and sometimes feel that if we discuss it, it may happen sooner rather than later.

Because of the many years I have practiced estate planning, I have a strong conviction of the need for all of us to take care of our funeral and burial arrangements long before that eventual day.

When a close loved one passes, if they have properly planned their estate through a trust, it is a simple procedure to install the successor trustee(s) and to access and deal with trust property. On the other hand, planning the funeral and burial of a loved one has to be handled immediately and urgently. This process, although often guided by a skilled and reputable funeral home, is a very difficult and emotional experience. The family has to decide on many other things, the casket, funeral program, headstone, burial plot, etc.

This was the position my siblings and I were in with the passing of my father because he had not pre-planned. The personnel at Palm/Dignity Memorial were wonderful, but it was still a very difficult and uncomfortable situation for us.

Let me contrast our experience with that of our Marketing Coordinator, Sandy Simpson.

This is Sandy's story:

My father died of ALS (Lou Gehrig's Disease). If anyone knows anything about this disease, it is a horrible way to die. The last month with my Father was so painful, stressful and full of confusion. Planning a funeral after his passing was so overwhelming with the grief I was experiencing. Fortunately, my protective father, as he had always done in the past, had already taken care of absolutely everything. He had pre-planned. He never wanted me or my sister to ever have to go through the stress of making these types of decisions during an already stressful time. I smiled for a moment knowing my father, even after his passing, was still taking care of us girls. You never really understand the importance of pre-planning, or the impact it will have on your loved ones until you experience it for yourself. I will always be grateful to my father for "taking care of his girls" right down to the end.

We too had a wonderful father and I blame myself more than him for not guiding him to pre-plan. Please take the time to pre-plan. It will provide so much comfort and peace to your family. Today, with mortuary companies such as Palm/Dignity Memorial, Davis, and Bunker, your plan is portable and can be arranged at any location in the U.S. Please give us a call today if you would like more information on pre-planning. **B**



Working and Giving Together: The Benefits of Family Philanthropy

No matter the net worth of a family, practicing or starting a tradition of charitable giving can strengthen family ties, enable family members of all ages to experience the joy of giving, and create a legacy of philanthropy that lasts for generations.

Most Americans recognize the value of family giving. According to the 2000 Cone/Roper Raising Charitable Children Survey, 85% of the respondents said they believe children should be introduced to philanthropy at an early age, and that parents play a key role in getting kids involved. 96% of respondents agreed that parents' charitable giving and volunteer

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activities are good ways to teach children about helping others. The diverse benefits enjoyed by families who give together, be it a gift of time or money, are diverse and include:

- ◆ Solidifying family values
- ◆ Keeping family members grounded as they see challenges faced by others
- ◆ Enabling families to grow closer by working together towards a common goal
- ◆ Enjoying an increase in general happiness
- ◆ According to a recent study from the Lilly School of Philanthropy at Indiana University, children who perform acts of kindness experience increased wellbeing, popularity and acceptance among peers, which leads to better classroom behavior and higher academic achievement.

Ancillary to the above benefits, families who are philanthropic-minded can also enjoy income, gift, and estate tax savings as they pursue their charitable endeavors. Popular devices, or "vehicles," to facilitate family giving include private foundations, family foundations, donor advised funds, charitable trusts, and even outright gifts. Each of these vehicles can be utilized in conjunction with an estate plan to maximize the benefits of family giving.

To discuss how you and your family might implement charitable giving in your legacy, give the attorneys at JEFFREY BURR a call. *B*



contact us

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