

Fowler White Burnett Alert



New Florida Law Facilitates Access to and Management of a Person's "Digital Estate" After Death

A new Florida law facilitates access to and succession of a person's "digital assets" (that is, electronic records that may include photos stored on online servers, email and online bank accounts) through appointed fiduciaries in the familiar estate planning documents of wills, trusts and powers of attorney.

The "Florida Fiduciary Access to Digital Assets Act" (the "Act") takes effect July 1, 2016, but is retroactive and applies to existing estate planning documents. It facilitates access to certain types of digital assets of an individual to the personal representative of an estate, trustee of a trust, attorney-in-fact designated under a power of attorney and court-appointed guardian. Existing federal laws outside of the estate planning context had previously made it difficult for anyone other than the account holder to access digital assets.

The Act permits an internet service provider (a "custodian") to provide to a fiduciary a "catalog of electronic communication," for example, a listing of emails sent and received by an individual, including the subject line and time and date, but not the "content of an electronic communication," such as the email message or photo itself. In order for "content" to be provided in absence of a court order, the individual must expressly authorize the release of such information in an appropriate document, such as a will or a trust, or by using an "online tool" offered by certain custodians such as Facebook and Google.

Fowler White Burnett
www.fowler-white.com

Miami | Fort Lauderdale |
West Palm Beach



[Leticia Vega](#)
Shareholder,
[Trusts & Estates](#)



Additionally, individuals have the power to modify a fiduciary's access to digital assets in his or her estate planning documents. For example, one could permit a fiduciary to access a social media or photo-sharing site as to allow the fiduciary to download and preserve online photos, or access the content of email messages, which could contain information valuable to a lawsuit or helpful in the search for assets.

While the Act is certainly new and has not been heavily tested, it is generally seen as a welcomed development that can facilitate the administration and management of one's estate in this new digital age.

Recommendations:

- Maintain an inventory of your digital assets, complete with passwords
- Properly designate a person to manage your digital assets
- Explore using "online tools," such as those provided by Facebook and Google, to designate individuals who may access your account
- Consider modifying your estate planning documents as needed to meet your objectives - you may seek to broaden the powers to your fiduciaries that are provided by the Act or appoint a separate tech-friendly person to manage your digital assets

Please Note: This summary is for general informational purposes only, is not legal advice and does not present a detailed or complete presentation of the Florida Fiduciary Access to Digital Assets Act. Each case is unique and requires a careful analysis by one's advisor of the specific facts and circumstances in order to arrive to appropriate advice.



[Alyssa Razook Wan](#)
Attorney at Law,
[Trusts & Estates](#)



Learn more about our
[Trusts & Estates](#)
[Practice Group](#)

Alternative Dispute Resolution | Appellate | Aviation | Bankruptcy, Creditors' Rights & Business Restructuring
Commercial Litigation | Corporate | Environmental & Land Use | Family | Health Care | Immigration |
Insurance
Intellectual Property | International | Labor & Employment | Maritime | Medial Malpractice
Products Liability & Toxic Torts | Real Estate | Securities Litigation & Arbitration | Tax | Trusts & Estates

The materials contained within this client alert do not constitute legal advice and are intended for informational purposes only. These materials are not intended to be an advertisement and any unauthorized use of the materials is at the user's risk. Reproduction, distribution, republication and retransmission of any materials contained within are prohibited without the express written consent of Fowler White Burnett, P.A.

Fowler White Burnett, 1395 Brickell Avenue, 14th Floor, Miami, FL 33131