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BLOG

California Law Clarifies Disposition of Decedents' Digital Assets

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California Governor Jerry Brown (D) recently signed legislation (AB 691) setting forth rules governing the disposition of "digital assets" to a surviving fiduciary. Digital assets are defined as the communications and information contained in a person's social media accounts, blogs, e-mail accounts, and websites—assets not typically contemplated in estate planning. The law, which will take effect January 1, 2017, establishes a three-part hierarchy for determining whether a someone may access a decedent's online accounts.

The decedent's instructions within an online platform will take priority above all else. For example, if a Facebook user designates a "legacy contact" (i.e., a fiduciary) through Facebook's preferences section, that fiduciary will gain access to the user's account upon the user's death. If a decedent did not make fiduciary delegations through the online tool, however, second priority will be given to any elections made in the decedent's will. And if the will is silent on transfer of digital assets, third priority goes to the terms of service for each particular online tool. For example, if a Facebook user did not appoint a legacy contact and did not include terms in a will, then California probate courts will look to Facebook's terms of service in determining whether a fiduciary is entitled access to the decedent user's account.

California is not alone in enacting legislation on the disposition of digital assets. Nineteen other states have enacted versions of the uniform Fiduciary Access to Digital Assets Act.

TIP: Operators of platforms where users can create digital assets should be aware of these state laws, and think about how they will address access requests.

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