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Is Your Estate Plan Ready for the Future?

The end of the year is approaching quickly. For many of us, year-end is a time to review things that have happened in the past year, and make plans for changes in the New Year. So now might be a good time to reflect on your estate plan, and to get it up to date and ready for the future.

Your estate plan may need to be updated due to changes in your personal situation that have recently occurred.

Recent changes in Michigan law have occurred that you may now want to consider in your estate plan. Some things you may want to consider:

- Have you purchased or sold assets that are part of your estate plan? Changes in assets can affect your estate distribution. If you have a revocable trust as part of your plan, asset changes need to be properly included in your trust funding.
- Have you reconsidered how you want your estate distributed after your death? You will want your estate plan to reflect your current desires so that they may be carried out according to your wishes.
- Have there been births or deaths among your loved ones? Quite often, people want to include newly born grandchildren in their estate plans. And if heirs you have named in your estate plan have died, you may want to change how your estate is distributed.
- If you are active online or in social media, you will want to be sure that your online pictures, postings, and other information are included in your estate plan according to your wishes and in line with new



Michigan law regarding digital assets. More on this new law in the article below.

- Do you own firearms? Update your estate plan to comply with new Michigan law so that your firearms can legally be bequeathed or sold after your death.
- Do you have a loved one who needs your support for a disability or for special needs? You may want to create a Special Needs Trust as part of your estate plan, to help him or her after you are gone.
- Do you have a beloved pet that you want to provide for after you are gone? You may wish to add a Pet Trust to your estate plan.

As a Worry Prevention Plan member, you are entitled to an annual Estate Plan Review at no charge. We will go over your estate plan with you and help identify changes needed that will bring your estate plan in line with your current wishes. We will also update your trust's asset list once a year at no charge. If changes to your estate plan are minor, we will make them at no charge. For major changes, such as a complete restatement of your revocable trust, adding a special needs trust or a pet trust, or creating a Medicaid Plan, you will receive a



15% discount from our regular fees for these services. And if it has been three years or more since you have updated your Powers of Attorney, we will do them for you, as a Worry Prevention Plan member, at no charge.

If your estate plan is in need of a review and update, call us at 810-229-0220 to schedule your appointment.

Nancy Nawrocki

The New Michigan Fiduciary Access to Digital Assets Act – and How It Can Affect You

From a blog by Adam Zuwerink of West Michigan Law, P.C.

Michigan recently passed the “Fiduciary Access to Digital Assets Act,” which became effective on June 27, 2016. The new law is a much needed update to match Michigan estate planning rules with the realities of our digital and electronic lives.



It used to be that when a parent passed away, or needed help with financial matters, their children would simply sort through their paper files in a desk, home safe, or safety deposit box. But now that our

personal and financial accounts have moved online and in the cloud, it has become increasingly difficult for your power of attorney or personal representative to gain access to your financial assets, or even things like your pictures stored on your smartphone.

A lot of companies were simply not providing your legal fiduciary with access to your online accounts, which led to frustration from family members unable to close out their loved one’s accounts after passing. In response, many states have passed new laws that provide your estate plan fiduciary (personal representative, power of attorney, successor trustee, etc.) with the same rights to your digital assets as your personal property and tangible financial assets.

Below are frequently asked questions about how the new Michigan Fiduciary Access to Digital Assets Act will operate as part of your estate plan:

What is considered a digital asset?

A digital asset means “an electronic record in which the user has a right or interest.” Common examples include your email account, your brokerage account, your social media accounts, or anything stored in the cloud, such as iCloud or Dropbox.

Specifically excluded from this law are any digital assets of an employer used by an employee in the ordinary course of business – which means that if you use your work email for personal business, your fiduciary may not be able to access your account after your passing.

What is a digital custodian?

A digital custodian means “a person that carries, maintains, processes, receives, or stores a digital asset of a user.” In other words, the companies that control access to the electronic systems where your digital assets are stored, such as Microsoft, Apple, Facebook, etc.

Who can request your digital assets from a digital custodian?

The new law names the following 4 categories of people who can legally request access to your digital assets:

1. A fiduciary acting under your will or power of attorney
2. A personal representative acting for your probate estate
3. A trustee acting under a trust of which you are the grantor
4. A court-appointed conservator for your affairs

But it is possible for you to override access to your digital account by the above persons if the digital custodian uses an online tool for you to designate a person with authority to access your account. For example, if Facebook allows you to name a legacy contact who has the right of access to your profile after your death, that designation would override your personal representative or trustee.

What is needed for a digital custodian to disclose your digital assets?

In order for the fiduciary to receive your digital assets, the following items must be provided to the digital custodian:

- A written request for disclosure
- A copy of your death certificate (if applicable)
- A copy of your personal representative’s letters of authority, or a copy of your power of attorney or certificate of trust that grants authority to your fiduciary
- In addition, the digital custodian may also require any of the following information when applicable:
 - A unique account identifier assigned by the custodian to identify your account
 - Evidence linking the account to you (such as an email referencing your account with the custodian)
 - An affidavit stating disclosure of your digital assets is necessary to administer your estate
 - A finding of the court that disclosure is necessary to administer your estate

How long does a digital custodian have to respond to a disclosure request?

A digital custodian must comply to a request for disclosure, or termination of an account, with 56 days. If the custodian does not respond within 56 days, your fiduciary has the right to obtain a court order directing compliance.

How is the disclosure made by a digital custodian to a digital asset fiduciary?

The digital custodian has discretion to disclose your digital assets to a fiduciary in any of 3 ways:

- Grant your fiduciary full access to your account.
- Grant your fiduciary partial access to your account sufficient to perform the required duties (for example, providing access to only view your brokerage account statements, not make any trades).
- Provide a copy of a digital asset that the user could have accessed if they were alive (for example, forwarding the picture files stored in a cloud account).

In addition, the digital custodian may charge a reasonable fee for the cost of disclosing your digital assets, and the custodian is not required to disclose any assets that were deleted by you prior to the fiduciary's request.

What are the legal duties of your digital asset fiduciary?

The same legal duties that apply to management of your tangible personal property and financial assets apply to management of your digital assets, including the duty of care, duty of loyalty, and duty of confidentiality.

And the law specifically says that your fiduciary's power cannot be used to impersonate you. For example, no one is allowed to post things in your social media accounts pretending to be you.

This is a brief overview of how the new Michigan Fiduciary Access to Digital Assets Act will operate. If you are interested in learning more about how to incorporate access to your digital assets as part of a comprehensive estate plan, please contact the Nawrocki Center.

Fake Tax Bill Offers Clues to Avoid Future IRS Scams

(From AARP Blog – Money Talk, posted September 30, 2016. Link to the article:

<http://blog.aarp.org/2016/09/30/fake-tax-bill-offers-clues-to-avoid-future-irs-scams/>)

IRS impostors have a new scam: fake emails that claim to contain a tax bill related to the Affordable Care Act.

This latest scheme, which triggered a warning from the Internal Revenue Service late last week, contains a “payment link” in the email itself and an attachment for a fake CP2000 notice for tax year 2015. CP2000 notices are intended to inform tax filers that the IRS has received information from a third party that doesn't match the income numbers reported on the payers' tax return.

Unlike some previous IRS email scams, this one is absent of typos and grammatical errors and convincingly mimics the style and wording of legitimate agency correspondence.

But it offers some clues to help potential victims avoid this scam and other (inevitable) IRS-impostor and Uncle Sham schemes:

1. The IRS and other federal agencies, including Medicare and the Social Security Administration, don't initiate contact with citizens through email, telephone, text message or social media — only through U.S. mail. Swindlers posing as IRS agents have already netted at least \$47 million over three years in what continues to be a top scam: live and automated phone calls that threaten arrest, lawsuits and other penalties unless a supposed tax debt is immediately paid. The latest targets in this widespread ploy are those with college loans, who are told they owe a nonexistent federal student tax.
2. In this scheme, con artists request that checks and money orders be paid to “I.R.S.” But payment of federal tax bills should be made to the United States Treasury. With checks to “IRS,” fraudsters can more easily tweak those letters in their favor to cash the check, such as writing a phony name like “I.R. Smith.”
3. In other swindles, including the widespread calling scam, government impostors demand payment by prepaid debit card or iTunes and other gift cards. The real agency doesn't require taxpayers to use a specific payment method, and it “reminds taxpayers that any request to settle a tax bill by putting money on any form of gift card is a clear indication of a scam.”
4. The fake email with the CP2000 notice appears to be issued from an IRS processing center in Austin, Texas, with zip code 78761. Although the agency does have a processing center in that city, its zip code is 73301. The fake email also lists a toll-free 800 number that is associated with sporadic reports of calling scams.

Take-home message: Whenever you get notice from a government agency, take a few minutes to search the internet for the cited address and phone number to ensure they're legit. The actual IRS assistance phone numbers are 800-829-1040 for individual taxpayers and 800-829-4933 for businesses; agency field offices use local area codes.

**Now Available from the Nawrocki Center:
Michigan Nursing Home Guide – 2016 Edition**



The Michigan Nursing Home Guide provides a concise listing of nursing homes which accept Medicare and Medicaid patients in the Detroit Metro area, Ann

Arbor, Flint, Lansing, and Livingston County, Michigan. This listing is sorted by county and by city within the county, and provides important information about each nursing home including up-to-date quality ratings from the US

Department of Health and Human Services
Centers for Medicare and Medicaid Services.

The Guide also includes important information on:

- How to find the right nursing home;
- How to get good care there;
- How to pay for it without going broke;
- Medicaid planning and division of assets.

The 2016 Edition of the Michigan Nursing Home Guide is available in a convenient bound booklet or as an Adobe PDF file which can be saved to a computer, I-pad, or other digital device.

To get your copy, call the Nawrocki Center office at 810-229-0220.