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Client Alert

Computer Conundrums Baffle Executors

Computer Files Can Raise Estate Issues

Consider the problem confronting an executor who finds the decedent's computer containing tax and financial data that are crucial for the administration of the estate and the location of assets. The files are password protected and he has no clue as to the password or username needed for access. In a recent case, the deceased used Quicken and other financial programs to keep track of assets, income and tax matters. The deceased was sensitive to computer viruses, worms and other identity theft issues so he judiciously use passwords to protect his personal files. His caution led to the problem faced by his executor, when no one else knew the passwords. Even when computer files are not password protected, an executor may be faced with years of accumulated personal correspondence, emails and possibly embarrassing material on the deceased's computer with no direction from the deceased as to the disposition of these files.

Then there was the case of Uncle Jeff. He spent the past five years traveling around the world and taking digital photos. He was also the unofficial family photographer at weddings, bar mitzvahs and graduations. His photos filled the massive hard drive on his home computer. After his death, his executor examined the computer but was unaware that thousands of these family images were filed in a "miscellaneous" folder. The executor thought the prudent thing was to completely erase the hard drive before donating the computer to a local charity. When the family subsequently learned of this error, it was too late.

Such is the difficulty of dealing with computers, data and files of a digital age at a time when much estate planning and administration is still operating by the rules of an analog world.

The Computer is a Combination of Tangible & Intangible Assets

If a will disposes of "tangible personal property" to John and the balance of the estate to Sally, who will own the data on the computer? The computer is a "tangible" which John will claim, while the data is an "intangible," possibly belonging to Sally. Without guidance from the deceased, the executor is faced with difficult choices and little precedent to rely upon. In many cases, an executor will save and distribute data to one person and erase the hard drive before delivering the computer to another. Direction from the deceased is the most sensible way to avoid a contest and -- perhaps -- an unintended outcome.

Confidential Work Files on Home Computers

Often, work-related confidential data is kept on a home computer. If this is password protected, unless someone other than the deceased has the password, the information belonging to the employer cannot be accessed. Services that claim to be able to crack open such files are quick to admit that the success rate is not high and even unsuccessful attempts can be very expensive. Even more disturbing is the potential for liability to the estate or the executor for disposing of a computer containing sensitive or proprietary information which could fall into the wrong hands.

Be Prudent

The bottom line: talk to your attorney about the disposition of your computer and the data and files it contains. Make sure that someone has your usernames and passwords or place them in a safe or vault in a "do not open until death" envelope. Even AOL will refuse access to your stored emails and other data without the correct username and password. If you have stored digital photos or a draft of the Great American Novel, make sure there is clear direction as to the disposition of these after your death. This is clearly one area in which a little planning and foresight goes a long way.

If you have any questions concerning any of this, please do not hesitate to contact us.

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