

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 29

(Senator Klausmeier, *et al.*)

Judicial Proceedings

Estates and Trusts - Personal Representative - Administration of Internet-Based
Accounts

This bill authorizes a personal representative to, except as validly limited by the will or by an order of court, take control of, conduct, continue, or terminate an account of the decedent on a social networking website, microblogging or short message service website, or electronic mail service website.

Fiscal Summary

State Effect: The bill does not directly affect State finances or operations.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: A personal representative is a fiduciary and has the responsibility of settling and distributing a deceased person's estate. A personal representative may act pursuant to the terms of the will and other authority, including various powers specified in statute. Those specified powers include the power to (1) hold and receive assets; (2) deposit funds; (3) satisfy charitable pledges; (4) pay claims and taxes; (5) insure property; (6) sell or exercise stock rights; (7) sell, purchase, or encumber property; (8) borrow money; (9) pay encumbrances; (10) continue an unincorporated business or venture; (11) perform contracts; (12) prosecute or defend litigation; (13) and others. Maryland statute, however, does not specifically address a personal representative's authority with respect to digital accounts of the decedent such as those identified in the bill.

Background: A 2012 discussion draft of a uniform law on fiduciary access to digital assets that is being worked on by the Uniform Law Commission states, in its introduction, that “[a]s the number of digital assets held by the average person increases, questions surrounding the disposition of these assets upon the individual’s death or incapacity are becoming more common.” With respect to social networking sites, a June 2012 article in the North Carolina Law Review points out multiple considerations that can be relevant to the disposition of a deceased person’s account: (1) privacy interests of the deceased individual; (2) that sites can hold collections of photographs and other intellectual property; (3) that the content of an individual’s account can be important to the individual’s family and friends; and (4) that historical records of the future will likely depend more and more on digital archives.

The disposition of digital accounts of deceased persons is largely unregulated, however. Only a small number of states have enacted legislation related to digital accounts of deceased persons (Connecticut, Idaho, Indiana, Oklahoma, and Rhode Island). Some digital service providers have explicit policies governing the handling of a deceased person’s account, but others do not. The policies of those that do have explicit policies vary and can be restrictive, in at least some cases, in terms of the options that are available after a person’s death.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Register of Wills; Uniform Law Commission; Jason Mazzone, *Facebook’s Afterlife*, 90 N.C. L. Rev. 1643 (June 2012); Department of Legislative Services

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mc/kdm

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510