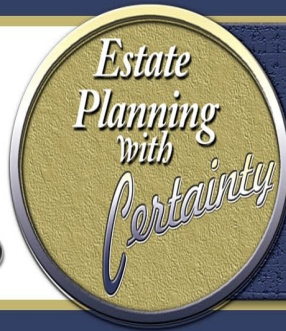


**BROOKS
&
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DIGITAL ASSETS

The New Frontier of Estate Planning

We now journey into that area where "no man has gone before.... the world of digital assets." What are they and why should we be concerned about them?

In our day to day lives, the term "digital assets" is most commonly used to refer to things with sentimental or very little monetary value - the stuff we have stored on our computers and our online accounts, such as family photo albums, music, websites and other online property. These of course are "digital assets," but the term means much more. FaceBook, LinkedIn, Twitter, Flickr, Shutterfly and You Tube accounts, webhosting accounts, tax preparation service accounts, financial companies and bank accounts, online store accounts and also IRS and New York State tax related accounts are all included. What about information stored on your tablets or smartphone? They too are "digital assets."

Most banks and other financial institutions do a good job of archiving account statements online and many are now charging customers for paper statements. This gives rise to more people maintaining their information at the bank or other companies' websites, rather than having paper statements in their desk drawer. Now consider the traditional method for tracking down assets after someone has passed on: going through the decedent's desk, filing cabinets and checking the mail. With more companies going green, there will be fewer account statements arriving in the mail, which means that it is extremely likely that important assets will be missed. This is why keeping track of digital assets is so important and why every estate plan should be improved to give someone through a Power of Attorney and powers clauses in Wills and Trusts the authority to access digital accounts, remove the contents and close the accounts as appropriate. Of course, giving an agent/fiduciary the power to do so will be worthless if the agent/fiduciary does not know the account exists or does not have the account name and password to access the asset. In the fast paced days we live in, coupled with increased technology to help us manage our lives, it is becoming increasingly important to be sure that the asset information is stored in some secure location and a person's agent/fiduciary knows where it is. When we ask someone to be an agent or fiduciary for us, let us not burden him or her with unnecessary work in trying to identify, locate and access our digital assets.

On the other side of the coin, we must be aware of what digital assets we have and how these will be passed on to our beneficiaries. If we make a general bequest of "personal property" to a beneficiary or beneficiaries, that will certainly include our hardware (computers, laptops, tablets and smartphones) but do we also want the digital assets contained on that hardware to go to those same persons? And what about the family photo album that is backed up into the cloud? Who will get those?

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**Merry Christmas &
Happy New Year
from all of us at
Brooks & Brooks, LLP**

**Teddar, Kameron,
Judy, Val, Lauren,
Mary & Amber**

Digital Assets - cont'd

SO, WHAT DO WE DO? A proactive planning approach would suggest that we provide for digital assets in our estate plan documents. Defining and bequeathing these assets are, of course, essential. Additionally, we should give sufficient authority in our legal documents for our fiduciaries to be able to handle these types of assets. Additional provisions in our Trusts, Wills and Powers of Attorney will be necessary to be sure we have this issue covered.

Additionally, we may want to select one person as the fiduciary for most assets, but appoint a different person, perhaps more tech savvy, to be the fiduciary to handle digital assets. It does not help to have a fiduciary named to handle these things if they are not up to the task.

We at Brooks & Brooks have modified our Trust and Will forms, as well as our Power of Attorney to give fiduciaries additional powers to handle these new assets.

**Affordable Health Care Act
Surprises Unveiled**

With all of the problems associated with the roll out of the Patient Protection and Affordable Health Care Act, commonly called "Obamacare," not much attention has been paid to the new taxes that are imbedded in the Act. If the new law stays relatively intact as it becomes effective, Americans will be faced with more taxes slated to begin in 2014. We very likely will not see the word "tax" anywhere on our insurance premium bill, because the tax will not be collected at the consumer level.

These new taxes will be paid by the insurance companies to the federal government and then included in the amount of our monthly or quarterly premium bills. The following is a list of some of the new taxes that we discovered by reviewing the rate application for one insurance company to the New York State Department of Financial Services:

- Contribution to Federal Transitional Reinsurance Program - \$5.25 per member per month (expected to raise \$25 billion over three years)
- Patient Centered Outcomes Research Fee - \$2.00 per member per year
- Risk adjustment user fee - \$.096 per member per year
- Health Insurance Tax - 1.05% of premiums
- Exchange user fee - 0% of premium for 2014 (assumed to be 0.85% for 2015)

The above taxes are applied to the premium the insurance companies determine they must charge for health insurance, as approved by the various states insurance departments. Unless the law is changed in this regard, every individual or family coverage policy holder will be paying this tax as part of their monthly insurance premium; unless of course a policy holder is able to obtain an insurance policy with no premium, which is certainly possible under the new law. Effectively, these insurance premium taxes are to be used in major part to fund the subsidies to policy holders who cannot afford to pay the regular premiums for their coverage.

As we have seen recently, because of the requirements of the Affordable Health Care Act, our health insurance premiums are likely to rise substantially and will, beginning in 2014, be subject to the new Obamacare taxes. This will have the effect of compounding the problem.

"Unless we make Christmas an occasion to share our blessings, all the snow in Alaska won't make it 'white'" - Bing Crosby