



GARRETT HEMANN ROBERTSON PC.

VIRTUAL ASSETS

By: Theresa M. Wade and Nikki Simerly



This article describes a new category of assets that an individual or business may own, and the difficulties that these assets present in transferring them upon incapacity, business succession or death.

“Virtual assets” are those assets relating to the internet, including banking records, social networks, electronic mail, digital images including photographs, drawings and plans, and the computerized back-up to all information stored at any time on a computer hard drive.

Virtual assets are “intangible assets” under Oregon law, but may have substantial value. For example, the domain name for your business is an important asset that a buyer would wish to obtain in any sale, and that the business would wish to retain in business succession from one generation of owners to another. Other types of assets have no monetary value, but have substantial family, historical or sentimental value. This category would include digital photographs and email correspondence. Still other types of assets have substantial personal information included in them, that you would not normally wish to make available to others. This may include online banking and bill paying accounts, health records, and payroll information.

Some of these assets are transferrable (either as a result of sale, gift, incapacity or death) while other assets cannot be transferred. All of these assets are password protected and, in the event of incapacity or death, many businesses, families and estates lack sufficient information to access the accounts or obtain the contents. The following is a summary of some of the more common online accounts, and the current process by which those accounts can be accessed or transferred:

Yahoo! Mail - will not allow access to an owner’s account without a specific court order. When subscribing to Yahoo’s service, you acknowledge that there is no right of survivorship and that the account cannot be transferred.

Hotmail – Hotmail will allow access of an incapacitated or deceased person’s account, but only after receiving information from the “next of kin”, who will then be given a data DVD but cannot access the account directly. Generally, the *contents* of inactive accounts are deleted after nine (9) months of inactivity and the account itself is deleted after an additional three (3) months of inactivity.

Gmail – Gmail, operated by Google, rarely allows access, even to an authorized representative of a deceased user. Google may accept a court order for that access.

MySpace – MySpace will allow the "next of kin" or executor of the estate to remove or preserve the deceased user's profile page. However, there is no access to the profile itself or to change the information previously entered. However, if a person has access to the email account tied to the user's profile, the password can be recovered for easier access.

Facebook – Facebook will transfer a user’s site into “memorial status” upon notification of death. However, editing the account after death is prohibited. Immediate family members or an executor may submit a special request to completely remove the profile and all associated content.





GARRETT HEMANN ROBERTSON P.C.

Twitter – A person authorized by a deceased user's estate, or a verified immediate family member, may apply to Twitter to have the deceased user's account deactivated. However, no one is permitted access to the account itself.

YouTube – YouTube has no document or process for accessing or deleting the account of an incapacitated or deceased user.

Websites – A Website domain name is registered to an individual, and is a transferrable asset. The transfer is controlled by the provider, and the process for transfer will vary from each provider.

It is recommended that a complete list of the virtual assets owned or accessed by an individual or company is maintained and updated regularly. A separate list should be maintained, and made available to a trusted family member or representative, reflecting the user name and password for each of those assets. This information is often maintained with an individual's estate plan documents, or placed in a safe deposit box, for access only upon the incapacity or death of the owner. Absent user name and password information, it becomes increasingly difficult for business associates, family or representatives to manage an incapacitated or deceased person's estate and ensure that bills are being paid when due (but not more than the amount due), notices and claim rights are preserved, and business or personal information is recovered.

If you would like help preserving your own virtual assets, or to discuss other business succession and estate planning needs, please contact Theresa M. Wade at Garrett Hemann Roberson P.C. at twade@ghrlawyers.com or at 503-581-1501.

