



Trust and Estate Planning News and Updates

The Good News, Updates, and Important Information From Your Friends at **Unruh, Turner, Burke & Frees.**

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Do Your Will and Power of Attorney Cover Digital Assets?

By Whitney P. O'Reilly, JD, LLM

Most of us have some sort of digital life. Digital Assets include personal email accounts, online financial accounts, frequent flyer/hotel rewards and social media accounts (where we often store videos, photos & other important memories), even frequent flyer mile accounts!



But up until recently, the law wasn't up to date and it was unclear on who has the authority to deal with these financial and emotional assets. However, we're now seeing some courts and legislators dealing with this issue.

For example, in *Ajemian v. Yahoo* (478 Mass, 169 (2017)), the Massachusetts Supreme Judicial Court addressed whether the personal representative of a decedent's estate had a right to access the decedent's personal email account managed by Yahoo.

When John Ajemian died, his brother and sister were appointed as the personal representatives (the "executors") of his estate and sought to access to his Yahoo account. Yahoo agreed to turn over certain limited information to them when presented with a court order, but refused to provide them unfettered access to the account. John's siblings claimed that as personal representatives of the estate, they were entitled to access the email account because it was an asset of the estate.

Yahoo claimed that it was prohibited from permitting access to the account under the Federal Stored Communications Act (the SCA) and, it wasn't obligated to allow them access under the terms of service (TOS) that John agreed to when opening the account. *Article Continued on Page 3*

Fall and Holiday Recipes | The cooler weather of the fall and winter will soon arrive. We wanted to share some of our favorite comfort food and holiday recipes that we hope you'll make over and over!

If you haven't yet made Dave's homemade mac and cheese, you have to try it! Here is a link to the recipe: <http://bit.ly/Davesrecipe>

If you crave grilled cheese at this time of year, check out our yummy breakfast, lunch, dinner and dessert ideas! <http://bit.ly/UTBFGrilledCheese>

See Page 2 for more...

FALL 2018

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- If You Store Pictures On Social Media You Might Need A Planning Update
- Get The \$397 Trustee Manual For Free When You Book A Family Meeting
- Need an Elder Law Home Visit?

Why is Doug looking so happy? Find out on Page 3!



Complimentary Attorney Call In Hours: Mark Your Calendar for October 24, 2018

Have a quick question about your estate plan, elder law, being an executor or trustee, and/or changes in the estate or inheritance tax laws? We've set aside time on Wednesday October 24th as a bonus for our existing clients. This time is limited and is on a first come/first served basis.

You will have up to ten minutes of free attorney time but note that charges may apply if you need formal legal representation or help. You will never be charged unless you agree to the fee in advance.

CLIENT BONUS CALL IN HOURS:
Wednesday, Oct 24 from 1:30 pm to 3:00 pm.
Dial 610-933-8069 to get your free call.
This is an exclusive UTBF client benefit.

Recipes *(Continued from Page 1)*

Our Thanksgiving recipe blog received a lot of attention when we posted it last year and we wanted to share a link to it once again in case you missed it the first time: <http://bit.ly/UTBFThanksgiving>.

Our holiday blog has been updated, surprise everyone with a new recipe! <http://bit.ly/UTBFHoliday2018>

Finally, don't miss our homemade soup blog which includes client and staff favorites:
<http://bit.ly/utbfsoup>



Scam Alert by Lisa Snyder | Scammers never let up, they call at all times of the day and night to catch you off guard. If you are looking for relief from these calls, there is a free service for landlines (but \$1.99/month for cell phones) <https://www.nomorobo.com>. It's not a scam, I have used Nomorobo on my landline for years. The phone rings once and the call goes away. It's so much less disruptive than waiting for the unidentified caller to go to voicemail. Not every telephone company participates, but it's worth taking the time to see if you're eligible. Suspicious that it's a free service? In their words, here's how they can offer this free service: **"While the Nomorobo Landline service is free for consumers, businesses and public safety organizations pay to license our data. For consumers, robocalls are annoying. But, for businesses it costs them real money. And, for EMS systems (like 911), it could be a matter of life and death. These are the people that don't mind paying for the service and using it directly in their telephone equipment."**

If you did not initiate the call, do not reveal any personal information, especially if the caller can't verify your account information to you. If you have gotten a call regarding "an important government debt" or to claim winnings in a sweepstakes and they require payment using gift cards – it's a scam. If a caller claiming to be your grandchild in trouble or an IRS agent planning to send the police to your house, do not give them any information. Insist they give you a number to call back while you verify their story. Exercise caution with unknown callers at all times.

Back By Popular Demand: Trustee Seminar at Phoenixville Federal |

It's important to know your role, as well as how and when to start to act as a trustee. Our first joint seminar with Phoenixville Federal's Trust Department sold out with over 50 registered attendees. We've decided to host a second event in hopes reaching those of you that weren't able to come that day.

Even if you haven't already been named as a trustee, you might find this seminar interesting and it might help you decide if you are ready, willing and able to take on this job, if approached by a friend or family member.

The seminar will be held at on Wednesday, September 26th at 10:30 am at the Phoenixville Federal Conference Center located at 564 Nutt Road in Phoenixville. RSVP to Phoenixville Federal at (610) 935-8304.

The UTBF Trustee manual for Revocable Living Trusts is now ready for purchase. Please call Lisa or Tammy at (610) 933-8069 to purchase yours for \$197.

Digital Assets *(Continued from Page 1)* | The court determined that the SCA didn't prohibit Yahoo from disclosing John's emails. The SCA allows disclosure with the "lawful consent" of the originator. The court also decided that a personal representative of the estate could lawfully consent to the disclosure under the SCA and concluded that Congress intended for lawful consent to encompass certain forms of implicit consent. It also noted that the general purposes of the SCA were to prevent unauthorized access by law enforcement and private parties, not personal representatives of estates working to manage estate assets.

As a result, Yahoo couldn't claim that it was prohibited from providing access. In addition, there was no resolution as to whether the TOS allowed Yahoo to refuse to grant access.

In the end, it all worked out. However, you should plan ahead and make sure your documents cover digital assets.

Do You Know What Your Email Terms of Service Say?

The case acknowledges that John's email account is an estate asset of which the personal representatives may seek access and control. While the SCA doesn't preclude a personal representative from accessing the account, it isn't clear if the fine print relating to the email account in this case would give Yahoo authority to prevent access.

So, what can you do?

Review procedures for each of your accounts that have a user name and password to find out their policy for owners who become disabled, or die. Make a list of your digital assets with all the access information, and store it where it can be located and used by your Power of Attorney agent or executor.

And while state law on digital assets is evolving (and the interplay with federal law is very complicated), your Will should include provisions that authorize fiduciaries to handle digital assets. It is important to discuss this with your estate attorney as some individuals may not want to give family members access to certain digital assets, such as emails, following their death.

If it's been more than 5 years since you last updated your estate planning documents, it's probably a good idea to have them reviewed. For a complimentary consultation, please call 610.933.8069.

Main Line Today Top Lawyers Edition Honors UTBF in August 2018 Issue



We are pleased to announce that David Frees, Doug Kaune and Whitney O'Reilly who make up our Trusts and Estates section of Unruh, Turner, Burke & Frees, were all named as 2018 "Top Lawyers" by Main Line Today. (August 2018 issue).

In addition, every UTBF Partner was named to the 2018 list, seventeen lawyers total! To read more go to <http://bit.ly/UTBFTopLawyers>.

Dave, Doug and Whitney are able to confidently refer you to fellow UTBF colleagues if you need assistance with forming a business, zoning or other matters that they would not normally handle.

This publication is intended to educate the general public about estate and trust planning. It is not intended to be legal advice. Every case is different. Before acting on any information in this newsletter, please seek and retain an attorney.

Fun Movie Trivia

The movies are full of make believe, but some movie magic can be even more extraordinary – and in some cases downright bizarre – than most people are even aware. The famous sketch of a nude Kate Winslet in *Titanic* was actually drawn not by her co-star, Leonardo DiCaprio but by director James Cameron. Nor was the actress actually nude; instead Winslet was wearing a bathing suit at the time.

The shocking scene in *Pulp Fiction* in which John Travolta appears to slam a needle into the chest of an overdosing Uma Thurman was actually shot in reverse, meaning that Travolta was actually pulling a pre-rigged needle out of her in the scene.

Action icon Sean Connery began to lose his hair young (at the age of just 17 years old), meaning he was wearing a toupee even in the very first James Bond movie, 1962's *Dr. No*.

The sound of the raptors communicating with one another in the original *Jurassic Park* is actually the noise made by mating tortoises, with goose hisses and horse breathing also being used in some of their scenes!

Coming Soon in UTBF News & Updates

- End of Year Planning & Gifting Checklist
- Be Prepared – A Checklist for Survivors

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**Time doesn't take away from friendship,
nor does separation.**

- Tennessee Williams

Do You Store Family Videos, Photos or Other Important and Sentimental Information On Facebook®, Instagram® or in Your Email Accounts? Do You Have Frequent Flyer Miles or Hotel VIP Membership Accounts with Real Value? They May All Be At Risk!

If you have one or more of these accounts, you own what the law calls “digital assets” and we now see a growing number of cases and problems across the United States and in our own backyard where family agents (using old powers of attorney) and executors are “locked out” of these assets because they lack clarity of their digital powers or the terms of use of the social media, email or other account will not give them access when a family member is incapacitated or has passed away. NOTE: For more on this problem and what happens to digital assets see Whitney’s article about them on page one of the newsletter.

In fact, families have lost access to emails, photos and videos, scanned images and more when a loved one became incapacitated or has died. In some cases, they have recovered these assets but only after expensive litigation. In other cases they have simply lost access to or the use of these accounts.

So, what should you do to protect these valuable assets, family history and resources? In other words, does this matter to you?

Answer:

For most of our clients we’ve been incorporating “digital asset” provisions in wills, trusts, and powers of attorney to help with this problem since 2010 (and in some cases even before). But, the world has changed, the laws have changed, and we now store more and more online and through social media. More wealth is also being accumulated in digital assets such as membership points. In short, if you haven’t had a will, trust and power of attorney update since 2012 and if you do have these types of assets, it might be time to do a major upgrade on your estate planning so that in the event of your incapacity or death, those assets aren’t lost to your heirs or become nearly impossible to recover.

What to do next: If you have “digital assets” and haven’t updated your will since 2012 then call to find out how to get an update and review appointment for free (there are only a limited number before the end of 2018) and they will fill up within weeks.

Call 610-933-8069 and ask for Lisa or Tammy and tell them that you want the UTBF Digital Assets Planning Update. There is no charge for the call or the initial review.

Are You Or A Loved Incapacitated Or “Too Ill To Travel” But You Still Want To Know How To Protect Your House And Assets From A Nursing Home – Even If You’ve Been Told “It’s Too Late” And You’re Afraid Of “Giving Up Control?”

There really are numerous ways to protect assets from being spent (without any benefit) on nursing home care. But, there are many misconceptions about what you legally can and cannot do. Make an innocent mistake and you or a your loved one could be disqualified from Medicare and still lose those valuable assets. And the costs of assisted living and nursing home care are incredible (at one popular local facility the costs exceed \$500.00 per day).

So, it can be done, but this area of the law is complicated...by design. The government has made it so complicated that most of Pennsylvanians just give up and then they spend down their assets and go into a nursing home without any reserves or assets protected for their heirs.

So, to help you to find out what you can and cannot do, we’ve created a simple system.

For \$250.00 you can get a full nursing home asset protection diagnostic session with one of our experienced elder law attorneys. If you decide to move forward on one or more techniques then it’s free – we’ll just apply it to your flat fees that we set with you in advance.

Not able to travel? Please call for the details on our Elder Law Mobile appointments.... where we come to you!

Because this process is very time intensive for the lawyers, we can only offer 4 elder law appointments for October and November. To reserve yours: Call 610-933-8069 and ask for an Elder Law Strategy Session or a Home Visit Elder Law Appointment.

If you’re worried about a parent or grandparent & nursing home costs, you’ll want these 3 strategy filled reports, call the office 610-933-8069 or go to <http://bit.ly/ELReports>

Are You A Trustee or Executor? Do You Want Your Own Trustees and Executors To Know What They’re Doing And To Hit The Ground Running? To Be Informed Consumers Of Legal And Accounting Services and To Avoid Missing Deadlines and Getting Hit With Interest and Tax Penalties?

If so, hopefully you’ve joined us at our Trustee Seminars. However, if you’ve missed them, call Lisa or Tammy to be added to the waiting list for the winter UTBF Executor and Trustee Seminar. The seminar is free for our clients. There is no obligation to call and save your spot. When you do, you’ll be the first to get notice of the date and location. The last two events sold out so call now.

Call 610-933-8069 to be on the list! There is no cost or obligation.