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KLEIN, THORPE & JENKINS, LTD.  
Attorneys at Law

## Wealth & Succession Planning Group

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### *Keeping Our Clients Informed on Wealth and Succession Planning Issues*

For any questions or comments you might have regarding this newsletter or any other wealth and succession planning concerns, please feel free to contact:



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This newsletter is not to be construed as legal advice or a legal opinion under any circumstance. The contents are solely intended for general informative purposes, and the readers of this newsletter are strongly urged to contact their attorney with regard to any concepts discussed herein.

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### Digital Assets Act – New for 2016

If something should ever happen to you, what will become of all your information stored on your electronic devices and online accounts? Without allowing fiduciaries access to these devices and accounts, how will they be able to effectively perform their fiduciary duties?

Effective August 12, 2016, the Illinois Revised Uniform Fiduciary Access to Digital Assets Act (“the Act”) allows fiduciaries who manage your estate during your incapacity or death to obtain access to your digital assets and electronic records. The Act however does not cover physical access to the underlining assets associated with your digital assets, such as the actual funds of your online bank accounts.

Digital assets are all your electronic records and communications stored on your computer, cell phone, tablet, music player, eBook, and any other digital medium such as your email, social media, cloud storage, and online financial accounts.

Pursuant to the Act, your expressed consent is required in your Will, Trust, Power of Attorney, or other estate plan document to allow your fiduciaries access to the content of your digital assets. If no action is taken, the Act’s default rules apply. These rules allow your fiduciaries access to a catalog listing of your digital assets, but not its underlining content.

In our opinion, only allowing your fiduciaries access to a catalog listing of your digital assets may deprive them of the information necessary to fully perform their fiduciary duties. As such, we have revised our practice to expressly provide fiduciaries with access to the content of digital assets. If your documents were executed before the passage of the Act, you may want to contact your attorney to determine whether your estate plan documents need to be amended.

In the alternative, if you do not want the Act’s default rules to apply, you must expressly state to deny your fiduciaries access to a catalog listing of your digital assets in your estate plan document.

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The Act references terms of service agreements you may have with custodians of your electronic records. We are of the opinion that most custodians do not reference fiduciary access in their service agreements, or have the option to allow fiduciary access designation. In order to make sure your terms of service agreements are not contrary to your estate plan, it is prudent to review all of your terms of service agreements you may have with custodians of your electronic records.

If you have any questions or concerns regarding updating your existing estate plan documents, or obtaining new estate plan documents, please let us know, and we would be happy to assist you.