

The Owl on with life



may 2016

The goal of this newsletter is to encourage people who are growing older to keep on with the business of living. We want the experience of growing older to focus on achieving and maintaining a quality of life that is enjoyable and desirable.

If you know of a family member or friend who would like estate planning services, please consider referring them to Beth A. Swagman, PLLC.

Legislature Passes Fiduciary Access to Digital Assets Act.

The Michigan Legislature passed Public Act No. 59 in March 2016. The Act, to take effect on June 27, 2016, permits a fiduciary access to a person's digital assets. The Act is commonly known as FADA which stands for *fiduciary access to digital assets*.

The fiduciaries who may obtain access to digital assets are diverse and are listed in the Act. Fiduciaries include a court appoint conservator; a full or partial guardian; a special fiduciary or special conservator appointed in a probate proceeding on behalf of a protected person; personal representative or successor personal representative for an estate; fiduciary agent or its successor appointed in a power of attorney document; or trustee or successor trustee appointed under a trust agreement. Because a fiduciary FADA can include a fiduciary agent

or a personal representative, access may be granted while the account owner of the digital assets is alive or deceased. In effect, the fiduciary may have access to digital assets while the owner is a live, but unable to manage his affairs, including digital assets, or the owner has appointed a fiduciary to manage the digital assets upon the owner's death.

Digital asset is defined under the Act to mean an electronic record in which a user has a right or interest. The Act goes on to define electronic as technology having electrical, digital, magnetic, wireless,



optical, electromagnetic, or similar capabilities. Asset is intended to mean data, text, images, videos, sounds, codes, computer programs, software, databases, and the like.

Digital assets covers many social media and networking activities such as email accounts, Linked-In, Facebook, Twitter accounts, and many other similar accounts and assets.

(cont. on page 2)

Swagman Estate Planning and Elder Law Services

- Wills • Trusts • Probate Services • Durable Power of Attorney for Finances & Health Care
- Guardianship and Conservatorship • Long Term Care and Medicaid Planning
- Accredited Attorney for Veterans Benefits

Beth A. Swagman, PLLC

Legislature Passes Fiduciary Access to Digital Assets Act. *(continued...)*

An important exception to the Act. FADA does not apply to the digital asset of any employer used by an employee in the ordinary course of business.

Here are a few of features of the Act.

A user (person with an account with a digital custodian) may use an online tool to direct the digital custodian to disclose or not to disclose to a designated recipient (fiduciary) some or all of the user's digital assets (including the contents of electronic communication). The user's use of an online tool overrides a contrary direction given by the user in a will, trust, power of attorney document, or other record.

If a user has not used an online tool or the digital custodian does not offer an online tool, the user may allow or prohibit in a will, trust, power of attorney document or other record disclosure to a fiduciary of some or all of the user's digital assets (including the contents of electronic communication).

A user's direction under a will, trust,

power of attorney document or other record overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively or distinctly from the user's assent to the terms-of-service agreement.

The Act does not impair or change the right of a digital custodian or of a user under the terms-of-service agreement to access and use digital assets of the user.

The digital custodian may at its sole discretion grant a fiduciary full access or partial access, and the digital custodian may assess a reasonable administrative fee for the cost of disclosing digital assets. The digital custodian is not required to disclose to the fiduciary a digital asset that was previously deleted by the owner.

What should I do? Individuals with a will, trust, or power of attorney document may wish to include digital assets as another category for which the fiduciary is given authority to act. An amendment to a will, trust, or power of



attorney should be sufficient to permit this authority. In some situations, however, the individual may wish to reconsider whether the appointed fiduciary, personal representative, or trustee is the best person to exercise this authority.

As with all things electronic, users should be aware that permission to disclose digital assets means disclosing to the designated fiduciary the user's account information, username, address, account subscriber or account identifier information. How and when the user chooses to disclose this information to the fiduciary is as important as is which accounts such disclosures might involve.

THIS ISN'T OUR PARENTS' SENIOR CENTER!

Today's senior centers offer a wide variety of activities and events to help people 50 years + stay active, healthy, and socially connected.

While these activities may not be available at every senior center, you will be amazed at what is currently offered at centers in Kent County: meals on wheels;

fitness programs and exercise equipment; coffee shops; computer labs with internet access; games from bingo (of course!) to bridge to billiards; transportation services; in-home recreational therapy; professional services by audiologists, financial advisors and attorneys; as well as newsletters to keep you informed of neighborhood happenings and events.

Senior centers are open Monday through Saturday and hours vary by location. Kent County is proud to offer senior centers in downtown Grand Rapids, Grandville, Lowell, Sparta, in Walker at the Firehouse, and in Wyoming.

Drop in and check out what's happening in a senior center near you!

Beth A. Swagman, PLLC

4403 Cascade Road SE, Grand Rapids, MI 49546 beth.swagman@comcast.net 616.323.3443 swagmanestateplanning.com