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**Gerald M. Morello, Jr., Esq.**  
PRESIDENT, MANAGING PARTNER  
MORELLO LAW GROUP, P.C.

#### EDUCATION

B.S.A., with High Honors in Finance and Managerial Economics, University of Michigan – Dearborn; J.D., Higgins Scholar and Notre Dame Law School Scholar, Notre Dame Law School; M.B.A., with Honors, University of Notre Dame Graduate Business School.

#### AREAS OF PRACTICE

Estate Planning; Tax Planning; Wills; Trusts and Estates; Probate and Trust Administration; Business Law; and Business Planning.

#### CAREER

Mr. Morello has personally developed or supervised over 7,500 Estate Plans over the past twenty-three years. He is a frequent speaker on estate and business planning; selected as Downriver's Estate and Business Planning Attorney; selected as one of Detroit's top estate planning lawyers by DBusiness; awarded the Five Star Estate Planning Attorney in 2014, 2015, 2016 and 2017; and awarded the Martindale-Hubbell Client Distinction Award in 2015; and he was awarded the 2016 Northville Record People's Choice Award for Best Attorney.



**Ryan J. Plantrich, Esq.**  
ASSOCIATE  
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#### EDUCATION

B.A. in Biology, Albion College; J.D., Wayne State University Law School with Honors.

#### AREAS OF PRACTICE

Estate Planning, Wills, Trusts and Estates, Business Planning, Commercial Contracts and Transactions, Tax Planning, and Probate and Trust Administration.

#### CAREER

Mr. Plantrich's academic accomplishments in law school include being a Dean's Scholar award recipient, earning two Silver Key academic achievement awards, and serving as a Senior Member of the Moot Court team and President of Wayne Law's Federal Bar Association – Student Chapter. While attending law school, Mr. Plantrich was a Judicial Intern for Magistrate Judge Mark A. Randon at the United States District Court for the Eastern District of Michigan. He is a member of the Membership Committee for the State Bar of Michigan's Probate & Estate Planning Section and a member of the American Bar Association Section of Real Property, Trust and Estate Law.

# MONEY

## Estate Planning for Digital Assets

Morello Law Group, P.C. | 1800 Biddle Ave., Wyandotte | 734-281-6464

by Gerald M. Morello, Jr. Esq. and Ryan J. Plantrich, Esq.

*Having a comprehensive estate plan in place is vital in maximizing your assets, ensuring the private and efficient transfer of property to your beneficiaries, and giving you the peace of mind that your wishes will be carried out and your family provided for after your passing. However, does your estate plan adequately account for your digital assets? The answer may surprise you.*

*Recent changes in Michigan law allow you to determine how you would like your digital assets to be accessed and managed, but only if you express such intent in your estate planning or other documents. If you do not currently have an estate plan in place, now is an excellent time to create one. If you have an existing estate plan, we advise speaking with an experienced estate planning attorney to make sure your plan adequately addresses these important, but often overlooked, assets.*

### WHAT ARE DIGITAL ASSETS, AND WHY ARE THEY IMPORTANT?

“Digital Assets” generally encompass any electronic information or record in which you have a right or interest. Such assets include, but are not limited to: e-mail, online banking information, business or personal websites, social media, and blogs, just to name a few.

For some clients, these Digital Assets can have significant value. Online rewards, frequent flyer miles, BitCoin, and other similar assets can have a monetary value in and of themselves. Digital Assets and intellectual property used by companies, blogs, news websites, and the like can drive income production for the owner. Other Digital Assets may have sentimental value (e.g. pictures, correspondence, etc.), or may help your Trustee and/or Personal Representative (or other “Fiduciary”) identify other previously-unknown assets or accounts

upon your passing (e.g. e-mailed bank/investment statements, etc.).

Conversely, some Digital Assets can be of an extremely personal, or potentially embarrassing, nature. In these cases, you may desire to take additional steps, or give additional direction, to ensure that these particular assets are restricted or destroyed upon your passing.

### THE LAW REGARDING DIGITAL ASSETS

Both Michigan and Federal law, including the Stored Communications Act and the Computer Fraud and Abuse Act, prevent unauthorized access to your digital assets. Under certain circumstances, the repercussions of such unauthorized access can be severe. However, until recently, the applicable statutes did not specifically identify how a user authorizes another to access his/her Digital Assets, nor did they require that the person and/or entity that stores Digital Assets on your behalf (the “Digital Custodian”) disclose or permit access to such Digital Assets.

To provide a method in which an individual can authorize or restrict authorization to Digital Assets, Michigan passed the Michigan Fiduciary Access to Digital Assets Act (“FADAA”), effective as of June 2016. Please note, FADAA draws an important distinction between two general categories of digital assets: (1) the “Catalogue” of electronic communications, including information such as the sender/recipient of an electronic communication, the date/time of such communication, and the electronic address/other metadata of the person; and (2) the

“Content” of electronic communication, including information regarding the substance or meaning of a Digital Asset. This distinction will be important throughout the remainder of this article.

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#### **DEFAULT POSITION OF FIDUCIARIES AND DIGITAL ASSETS**

FADAA contains many statutory defaults regarding what a Fiduciary can and cannot do with Digital Assets. These statutory defaults govern unless contrary to the intent expressed in an estate planning or other document.

For Digital Assets that are held by a Digital Custodian (e.g. Google, Facebook, etc.), a Fiduciary may request that the Digital Custodian close a digital account of a user, or request the Catalogue of the deceased user's Digital Assets. Express written authorization is typically required to access any Content.

For Digital Assets not held by a Digital Custodian (including Digital Assets on personal computer hard drives, CDs, flash drives, and other physical storage media) a Fiduciary with authority over the property of a decedent (either a Personal Representative or a Trustee, depending on how the property is held) has the right to access such Digital Assets of the decedent (including Content) provided that such asset is not subject to a contrary provision in an applicable terms-of-service agreement.

#### **ESTATE PLANNING OPTIONS FOR DIGITAL ASSETS**

FADAA also provides the ability to change the default provisions discussed above, to either further allow or further prohibit access, provided that proper authorization is given by the user. The following documents, in the following order of priority, take precedent in determining the user's intent: (1) an "Online Tool" agreement specific to the individual digital custodian; (2) a will, trust, power of attorney, or other document; then (3) the terms of the applicable Digital Custodian's term-of-service agreement.

Do you know what provisions are contained in the term-of-service agreement of each of your Digital Custodians? Regardless, the ability to change the default treatment for Digital Assets is a very valuable tool and should be addressed in any estate planning discussion. As you can see, the default provisions seem to find an unappealing middle ground that may not match the wishes of individuals who either want to completely allow, or completely restrict, access to their Digital Assets after they pass.

The planning possibilities for Digital Assets are myriad and must be discussed in detail to determine what provisions are necessary to effectuate your wishes. However, consider the illustrative example of an individual who wishes to grant his/her Fiduciary broad access to the majority of his/her Digital Assets (so that the Fiduciary can capitalize on these assets, use them to track down other assets, etc.) but has certain other accounts that he/she prefers to be kept private (e.g. online dating, certain e-mail accounts, etc.). Such individual could grant broad authority to the Fiduciary regarding Digital Assets in his/her estate planning documents, but only if specific written authorization is included. Then such user could restrict access on other specific accounts through the use of an Online Tool Agreement with the specific Digital Custodian.

Lastly, such authorization is only effective if your Fiduciary knows how to find and access your Digital Assets, and you may be reluctant to keep of copy of all of your online accounts, usernames, and passwords in one place. Again, many options are available, but one option is to create two spreadsheets, one with websites and usernames (to keep in your estate planning binder), and one to contain the associated passwords (with a number or letter code to link the two).

*If you would like further information, or to schedule an appointment to discuss your current estate planning needs, please contact Morello Law Group, P.C. at 734-281-6464 or [morellolawgroup.com](http://morellolawgroup.com)*