

### ***Planning Ahead***



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## **Password Protected**

Since I last wrote about estate planning for “digital” assets, California has passed a new law, effective on January 1, 2017.

The new law gives rights of access to a deceased person’s digital assets, such as email or pictures kept in an online account. But there is an important distinction between content (for example an entire email) and a catalogue of electronic communications (for example a list of emails sent or received with the date, time and email address of sender or recipient, but not the content of any particular email.)

If the service provider, for example Google, has an “online tool” that can be used to give directions for how Gmail should be handled in the event of death, then with certain exceptions, the decedent’s directions will be followed. Any future changes to directions should also be made using the online tool.

If there is no online tool, or the decedent didn’t use an available online tool, then the service provider will only provide the content of electronic communications (the entire email) if the decedent so directed in a Will or Trust. Otherwise, the service provider will provide only a catalogue of electronic communications sent or received by the decedent - not the actual emails.

Most importantly, if the direction is contained in a Trust, the service provider can require only a simple Certification of Trust. But if the direction is contained in a Will (not a Trust), the service provider can require other documents and possibly even a Court Order.

Take-Away: When it comes to digital assets, you should have a Trust and the Trust must contain directions for disclosure of digital assets.

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