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Wisconsin Digital Property Act

On March 30, 2016, Governor Scott Walker signed the Wisconsin Digital Property Act into law. The provisions of the Wisconsin Digital Property Act took effect on April 1, 2016 and are contained in Chapter 711 of the Wisconsin Statutes.

Based on the Revised Uniform Fiduciary Access to Digital Assets Act, Wisconsin's Act enables an individual to authorize access to his or her digital property by a fiduciary such as a personal representative of an estate, a trustee of a trust, or an attorney-in-fact under a power of attorney.

Under the Act, an individual must affirmatively consent to authorize a fiduciary's broadest access to digital property. The default provisions of the Act grant a fiduciary access to digital property unless fiduciary access is restricted by an account provider's terms of service agreement. An individual may override such restrictions via a direction in an estate planning instrument or an "online tool" offered by an account provider. To provide the broadest access to digital property, an individual must affirmatively authorize a fiduciary or designated recipient to access the content of electronic communications (for example, the text and subject line of an email message). Otherwise, a fiduciary may only access a catalog of electronic communications (a log of messages sent and received without any of the content).

The Act also details procedures for fiduciaries to gain access to digital property, provides methods by which account providers may disclose digital property, and sets forth the scope of fiduciary duty and authority with respect to digital property.

In order to provide their fiduciaries with access to digital property, individuals may wish to update their estate planning instruments to grant access or utilize online tools offered by a limited number of providers. Individuals must decide whether they want to restrict access or to authorize access, a decision which should be made after considering the nature and value of digital property as well as personal privacy preferences.

The information contained herein is based on a summary of legal principles. It is not to be construed as legal advice. Individuals should consult with legal counsel before taking any action based on these principles to ensure their applicability in a given situation.