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Estate Planning Lessons Learned From the Tragic Death of Anthony Bourdain

Once again, the death of a celebrity reminds us of the importance of thoughtful and comprehensive estate planning. Anthony Bourdain was an American celebrity chef, author, travel documentarian, and television personality. His death by suicide was certainly tragic but, shortly after the event, the media reported that he and his wife were separated, not divorced, and that his estranged wife was still named as the executor of his will and that she is a beneficiary of his estate.

Generally married individuals leave their estate to their spouse and appoint their spouse as executor under the will, trustee of any trusts and agent on the healthcare proxy and power of attorney. But, when one is separating, this may not be ideal. Thus, for example, a person in the throws of a divorce may not want their estranged

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Why Your Estate Plan Should Include Digital Assets

Many of us have digital lives. We use the internet regularly and have come to rely on it. It seems that almost everything is available at a mouse click. But as more of our personal and financial data is stored online, it is important to consider who will have access to all of our digital assets.

What are digital assets? Anything that is in electronic form. Generally speaking, this includes our personal, social media, financial and business digital assets. More particularly, it includes the bank and investment accounts that we access online, the bills we pay online, photographs and videos we

store in the cloud or on our cell phones, tablets or computers, emails, word processing documents, Facebook, Twitter and other social media accounts, LinkedIn, Paypal, customer databases,

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A Parting Gift to Your Family: Plan Your Own Funeral

Grieving family members are usually not in the best state of mind to be making financial decisions. This is exactly what they must do when a loved one dies. It's easy to let emotions, and costs, get out of control.

Currently, although this may change, funerals are not something that we can shop for online. Very few funeral homes post their price lists online. While this makes it hard to compare costs, it also means that family members must

visit the funeral home and sit down with a funeral director. During these meetings, they are reluctant to discuss costs and are painfully surprised by the result — and, often, embarrassed to ask to change their selections.

In New York, many people prearrange and even *prefund* their funerals. They recognize that this is smart financial planning and also provides emotional relief to their loved ones. New Yorkers benefit from the strictest and most

comprehensive funeral “preneed” laws in the country. Under New York law, once selections have been made, costs are established at current prices and a contract is prepared. Payment is deposited in an interest bearing escrow account insured by the FDIC. The monies remain in the individual’s name and, if the account is left intact, the monies deposited, plus the interest earned, will be accepted as full payment for the services specified regardless of the costs at the time of the funeral. Pre-payment protects against rising fees and inflation. Under such a plan, you have the right to use any funeral home that you choose and you may also change your selection at any time and for any reason.

There are many advantages to this. First, it allows individuals the opportunity to make unhurried, informed decisions. Every detail can be specified: the casket and other merchandise, the type and content of the funeral and/or memorial service, the number of days or hours of visitation, the stationery items, the monument, transportation, etc. Loved ones are assured that the arrangements reflect your true wishes. It is comforting to know that money has been set aside for these arrangements. It is also an integral part of Medicaid planning as Medicaid applicants are allowed to set aside money to fully fund arrangements of their choosing before their funds are exhausted.

Planning in advance is one of the best things you can do for your loved ones. This will allow your loved ones to focus on grieving — and on one another.



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spouse to make health care decisions in an emergency or to access their financial accounts!

If the marriage is dissolving, it is not uncommon to want to remove the estranged spouse from appointments and designations created during the marriage. Divorces are not typically finalized overnight. Once a divorce is final, New York law provides that the former spouse cannot enforce certain dispositions of property or serve in a fiduciary or representative capacity. But what does one do in the

meantime? There may be months or even years during which the estate plan is “in limbo.” If one dies or becomes incapacitated before the divorce is finalized, the estranged spouse could be the beneficiary and/or decision-maker.

If you are in the process of divorcing a spouse, you may wish to consider updating your estate plan. At Berwitz and DiTata LLP, we can review your documents with you and recommend the changes that would be prudent during the pendency of your divorce action.



Why Your Estate Plan Should Include Digital Assets

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client/patient medical records, frequent flyer mileage accounts, apps on our devices, cryptocurrency, domain names, blogs and online gaming accounts. The value of these assets is not limited to their monetary value. They may have a sentimental value, such as our photos and videos that we no longer print. Digital copies of these are irreplaceable. But who has access to all of these accounts if we become incapacitated or die?

Almost all of us have installed programs on our computers or applications (“apps”) on our cell phones. With each installation we create a new online account and are asked to acknowledge our consent to the terms of service (TOS)

created by the supplier, which virtually no one reads. Yet, until recently, it was the TOS which set the parameters for others to access our digital assets. Most of the TOS are draconian. Not only do they limit access to the accounts to the account holder, but they almost always *prohibit* disclosure of our passwords or account information to others.

As more and more of our lives are stored online and “in the cloud,” the access to and protection of our digital assets becomes increasingly important. It is critical that special arrangements for our digital assets be made in advance. In September 2016, New York enacted Section 13-A of the Estates,

Powers and Trusts Law to address the excessive limitations contained in the TOS. By law, we can now empower an agent, executor and/or trustee to access our digital information. We can give them passwords to accounts and access to stored documents and information on hard drives. The agent requires our usernames and passwords but this might not be enough as certain vendor service agreements deny access to manage, distribute, copy, delete or close accounts to anyone other than the user. Often, the agent is required to have express authorization from the user before they are granted access to the content of digital assets.

Certain password managers maintain records of online accounts and passwords in a digital vault. These accounts can be established in advance in order to

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provide access to a particular representative or agent at the happening of a specific event, like death or incapacity. We can also make it easier for our agents and our heirs by creating a list of our digital assets. To do this we should review the policies for each account, social media platform and bank-security level financial portal then compile the information and store it in a safe place where our agent can later access it.

Clients who retain Berwitz & DiTata LLP for estate planning

receive the benefit of the special provisions we include in our wills, trusts and powers of attorney to address digital assets. We assist our clients in granting authority to the executor, trustee and agent to marshal and protect digital assets during our lives and after our death. This is just one more compelling reason to have us review your documents and ensure they contain these protections. Help us to help you. Contact Berwitz & DiTata LLP as soon as possible.

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