

COLOMBO KITCHIN

Legal news

ADDRESSING THE LEGAL NEEDS OF INDIVIDUALS AND BUSINESSES IN OUR COMMUNITY

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Estate Planning in the Digital Age

Author: Charlotte-Anne Alexander, Attorney at Law



Like many people, I store a large list of contacts in my phone. And emails. And photos. For better or worse, how many of us even recall more than a few phone numbers or email addresses any longer? Why bother, when all that information is organized in our phones, right? Now consider how accessible that important information is if our phones are password protected, and we become incapacitated or worse, and *nobody knows the password*.

In years past, we stored our vital personal and financial information in desk drawers, boxes and filing cabinets. Mail was delivered to mailboxes and photos were maintained in albums. While some of that still is true today, we are trending toward using the Internet to communicate and store more of our information.

Consider the wealth of information we have in our computers, or in multiple computers and tablets. We may also have important information stored in CDs, flash drives and backup tapes. There may be dozens of user names/logins and passwords associated with these digital accounts.

Many of us have gone “paperless.” We pay our bills online, receive financial statements and investment summaries via email and have PayPal accounts. And while that may simplify our lives and make our homes and offices tidier, it may also make it difficult for Attorneys- in-Fact, Executors, Trustees and other fiduciaries to locate our important financial documents and competently manage our finances.

An essential part of modern estate planning involves understanding that our online presence may outlive our physical presence. Executors aren’t merely sorting through physical items (mail, contents of filing cabinets, safe deposit boxes) to determine the extent of our estates, but rather much of the most valuable information concerning our estates is found online. As we expand our digital reach to encompass a broad range of

financial transactions, social activities, creative endeavors and more, the management of digital assets and online accounts following death or incapacity becomes crucial.

What are Digital Assets? Consider the following examples:

Digital Assets
Content stored on tablets, phones and computers
Email accounts, online accounts
Social Media accounts
Electronic medical records
Electronic financial records
Documents stored in the cloud
Web sites, domains or blogs
Digital intellectual property

At present, there is no uniform federal law that governs access to digital assets when a person

becomes incapacitated or dies. Only a handful of states—not including North Carolina—have enacted statutes governing digital assets, though many states are presently considering such legislation.

The following are some steps to take to manage your Digital Estate:

- (1) **Create a detailed inventory of all devices on which digital information may be stored, along with all passwords, logins, user names and security codes.** Consider computers, cellular phones, tablets, CDs, DVDs, digital cameras, flash drives and other backup devices. For each device, detail what is contained on it, such as accounts--whether business or personal--along with associated logins and passwords. As this information changes over time, be sure to keep the list updated. If you have not yet begun this process, it may be daunting, but consider the frustrating alternative if someone has no idea where you store important information, cannot access financial accounts and has no idea of logins or passwords. *(Continued)*

Employer

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In light of increased lawsuits against employers for violations under the Fair Credit Reporting Act (“FCRA”), every employer should ensure it is performing employment background checks correctly. **This law covers both credit and criminal background checks.** A successful claim can recover statutory damages between \$100 and \$1000 per violation, attorney’s fees, and costs, punitive damages as well as actual damages to the employee.

An employer must have written authorization and disclosure from a job applicant or employee prior to conducting an employment background check. **The authorization and disclosure must stand alone**, and cannot be combined with other forms or hidden within the job application. Many employers get the authorization and disclosure requirement wrong. Waiver forms or liability disclaimers cannot be added to the authorization form.

Another essential requirement of the FCRA is the adverse action notification. The Adverse Action is a **two-step process** that must be followed strictly. Many employers get tripped up

Background Checks Revisited

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by skipping one or even **both** steps: **Step one, the “pre-adverse action” notice** is sent to the applicant prior to making a “no hire” decision based on the background check. You have to provide the applicant with a notice, send a copy of the report, and attach a Summary of Rights under the FCRA. **Step two, the “adverse action” notice**, is sent *after* the final decision has been made and must contain information on how to dispute the background check.

Colombo Kitchin can provide you with the proper authorization and disclosure forms as well as proper adverse action notices. If you would like an evaluation of your employment background process, please contact our firm. We will be glad to help.



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Estate Planning in the Digital Age

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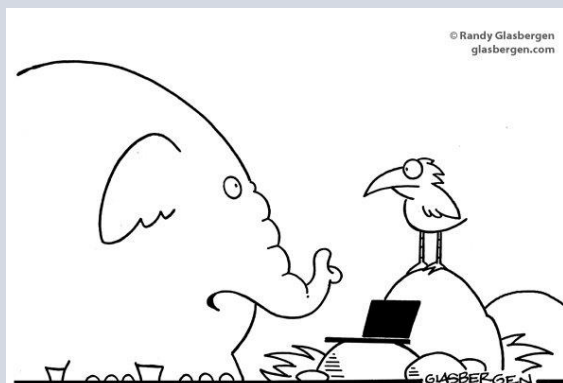
Some may opt to maintain an actual notebook or folder containing this information. However, if you are uncomfortable that this vital list could be stolen, misplaced or destroyed, then consider using an online password manager such as LastPass (www.lastpass.com), 1Password (www.agilebits.com/onepassword) or PasswordBox (www.passwordbox.com). Many of these sites are relatively new and privacy concerns certainly exist, as these storage providers may be a prime target of identity thieves.

Whether you choose a physical file for your digital information or use an online password management program, be sure that someone you trust (partner/spouse, close friend, family member) knows that you have this information listed and where to locate it.

- (2) **Consider the best person to retrieve and manage your online information and assets.** In making decisions about Executors, Guardians, Trustees, Attorneys-in-Fact and other fiduciaries, especially those who will be tasked with financial management, it may be wise to consider whether the person you designate is computer savvy enough to manage and close online accounts. You may even consider whether you wish to create certain online accounts with multiple users or designate a specific agent under your Durable Power of Attorney or Last Will and Testament or Trust (a “digital executor” or “digital trustee”).
- (3) **Consider your “Digital Assets” such as social media accounts, blogs, websites and photos stored online.** These are considered “digital assets” and you need to consider a plan to delete, maintain or memorialize these sites. For instance, if you have a Facebook account, you can set up your account to be permanently deleted when you die and you can also memorialize your account. You should consider leaving specific instructions for your Executor or other fiduciary about what you want done with these accounts following incapacity or death.

Nowadays, a smart estate plan necessarily involves instructions about your online presence. You may want to discuss with your estate planning attorney your range of digital assets, as well as your wishes regarding management of and access to this important information. Many attorneys now include specific provisions in estate planning documents which address the management of digital assets in the event of incapacity or death.

Planning ahead will provide family members and fiduciaries full access to your accounts and digital property, help minimize estate costs, promote a smooth estate administration and ensure that all assets are located, so that they can be distributed according to your wishes.



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“They say an elephant never forgets, but that was before I had so many passwords, user names and PIN numbers!”

This Edition's FEATURED ATTORNEYS

Fewer than 3% of lawyers in the state are named by
Business North Carolina's Legal Elite.

Michael A. Colombo and W. Lee Allen, III Named 2015 Legal Elite



Michael A. Colombo was named as a member of the *Legal Elite* and was named to the *Business North Carolina* Hall of Fame for receiving the most votes from his peers statewide in the area of Tax and Estate Planning.

He was also named by *Super Lawyers* magazine as one of the Top 100 among all lawyers on its 2015 list of North Carolina Super Lawyers. Before attending law school, Colombo served as a fighter pilot in the US Air Force.



W. Lee Allen, III was named *Legal Elite* in the area of family law. Mr. Allen has been practicing family law since 1992. He is one of only four attorneys in Greenville who is a State Bar Certified Specialist in Family Law.

Allen has also been named as a top attorney by National Academy of Family Law Attorneys. Allen served from 1998 to 2008 as a member of the Judge Advocate General Corps in the US Army. Allen is originally from Greenville.

Colombo Kitchin Dunn Ball and Porter, LLP has also been named by *US News and World Report* as a Tier 1 Best Law firm in Tax Law for the Raleigh Metro area. This ranking is based on a combination of surveys of lawyers and feedback from clients.

Attorney's Fee — Flat vs Hourly Rate

Flat fees are an all inclusive fee for an attorney to handle a certain matter. A flat fee can be a one-time payment or several payments. It may include certain cost and expenses, such as postage and copying, or it may not. The main advantage of a flat fee agreement is knowing up front how much a matter will cost. The main disadvantage is that the flat fee will typically result in a larger up-front charge than an hourly rate arrangement.

In an hourly rate fee arrangement, an attorney charges a client for the time spent working on his or her matter. The hourly rate is dependent upon the person or persons performing the work. For example, an attorney will cost more per hour than a paralegal. Costs and expenses are usually charged, in addition to the attorney's fees in hourly rate situations.



It is not too late to use **Free File** to file your income tax return, even though you may pay a late penalty of 1/2 of 1% of any tax (other than estimated tax) not paid by April 15, 2015. The penalty is charged each month until the income tax due is paid in full.

Visit <http://www.irs.gov/Filing/E-File-Options>

Tech Toolkit



Get Organized: Tips for Going Paperless at Home

- Opt out of Junk Mail Lists.** Go to DMAChoice.org and register to manage your influx of junk mail.
- Sign up for E-Statements.** Sign up to receive electronic bills and statements on each company's website. Colombo Kitchin Attorneys offers to send your monthly statements to your email account.
- Pay Bills Online.** Some financial institutions offer online banking, including automatic bill payment plans for added convenience. You may call our office at 321-2020 to pay your attorney bill over the phone.
- Start purging and recycling.** Tackle one small stack of papers each day. You can probably shred or toss most of it. Sort your papers into different piles.
- Digitize your documents.** If you choose to scan your documents for safe keeping, start by going forward, not backward. Set up a system for labeling documents and maintain consistency as you scan your files.
- Use a Tablet or Cell Phone for Notes.** Digital to-do apps include alerts and reminders so you don't have to keep due dates in your head. You can search your lists or notes for keywords quickly.
- List your Passwords.** Be sure someone you trust knows how to access your digital accounts.