

# TWO THINGS CERTAIN®

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## **New Law Protects Your Electronic Information After Death**

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Effective July 1, 2015, Virginia's new *Privacy Expectation Afterlife and Choices Act* clarifies a person's right to control the privacy of his or her information on the internet after death and codifies the right of a Personal Representative to access such information. The law amended two sections (64.2-109-110) of the Virginia Code and added three new sections (64.2-111-115).

### *What the Privacy Expectation Afterlife and Choices Act does*

The *Privacy Expectation Afterlife and Choices Act* allows a Personal Representative (e.g. an Executor or Administrator of an estate) the power to secure a judicial order granting access to a decedent's online accounts and information in certain circumstances. The full text of the new laws is available online. For brevity sake, a summary of the key provisions follows. (for full text see: <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=151&typ=bil&val=sb1450>).

Section 64.2-111(A) allows a Personal Representative limited access to electronic records. The access is limited to the eighteen months preceding death and does not include the right to electronic communication and stored contents. The principle underlying this section is that a Personal Representative needs to know where the deceased had accounts in order to administer the estate, but has no need to read a decedent's email or view archived photos. Records older than eighteen months can be obtained under Section 64.2-111(C) if a court concludes they are necessary to settle an estate.

Access to stored content is provided under Section 64.2-111(B) so long as the decedent's will gave consent for the Personal Representative to access the contents of his or her online accounts.

Thus said, Section 64.2-112 allows for all of the access provisions listed in Section 64.2-111 to be blocked by the decedent. In life, the decedent can block after-death access in three ways: by designating a setting within an online account in life, by otherwise making a lifetime

election with a service provider not to disclose after death, or by deleting content in life. No content deleted in life may be accessed after death.

Section 64.2-113 protects the data of a joint user on the account from access by a personal representative of the decedent. Section 64.2-114 forbids a Personal Representative from using a decedent's electronic account to send mail, post content, or make other uses.

#### The Purpose of the *Privacy Expectation Afterlife and Choices Act*

The Legislature passed the *Privacy Expectation Afterlife and Choices Act* to address two concerns. First, the prevalence of online bank and brokerage statements has made the Personal Representative's job of finding and accounting for estate assets increasingly difficult. The original title of the bill illustrates this first goal: "Personal Representative Access to Digital Accounts Act."

The Virginia Senate and the information technology lobby wanted to protect the privacy of decedents and added the consent and opt-out provisions toward that end. There are many reasons a person may wish correspondence, documents and photographs to remain private and the bill was amended to address those concerns.

#### What It Means For You

First, this is a reminder of the need to be deliberate in both your electronic privacy settings and your Estate Plan. If you want your Executor to have access to your content after passing, be sure to amend your will to expressly grant that authority. Should you want your service providers to keep your data close, make sure your privacy settings are properly set.

This is a new area of law and one that will continue to evolve. As financial and personal records transition from paper to bits and bytes we will continue to see the courts and legislatures deliberate and refine how traditional rules of authenticity and privacy apply.



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About the Author:

Dan lives in Williamsburg with his wife, Ginny, their young children, and their yellow lab, Lucy. Moving around much in early years, his family settled in Northern Virginia where he attended high school. At William and Mary, he majored in history, minored in religion, and received a teaching certificate. Upon graduating, he taught high school social studies in Hampton before returning to William and Mary for a law degree. He practiced Estate Planning law in the Washington D.C. metropolitan area until he married Ginny in 2005 and they soon returned to Williamsburg. Dan has been in private practice in Williamsburg since that move and enjoys speaking as an Estate Planning expert and as a continuing education teacher.

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