

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. KEARNS -- read once and referred to the Committee on Judiciary

AN ACT to amend the estates, powers and trusts law, in relation to access to a decedent's electronic mail, social networking and/or microblogging accounts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. The estates, powers and trusts law is amended by adding a
2 new section 11-1.12 to read as follows:
3 S 11-1.12 ACCESS TO DECEDENT'S ELECTRONIC MAIL, SOCIAL NETWORKING AND/OR
4 MICROBLOGGING ACCOUNTS
5 (A) THE EXECUTOR OR ADMINISTRATOR OR AN ESTATE OF A DECEASED PERSON
6 WHO WAS DOMICILED IN THIS STATE AT THE TIME OF HIS OR HER DEATH SHALL
7 HAVE THE POWER TO TAKE CONTROL OF, CONDUCT, CONTINUE OR TERMINATE ANY
8 ACCOUNTS OF THE DECEDENT ON ANY SOCIAL NETWORKING WEBSITE, ANY MICROB-
9 LOGGING OR SHORT MESSAGE SERVICE WEBSITE OR ANY EMAIL SERVICE WEBSITE.
10 (B) ANY SERVICE PROVIDER OF A SOCIAL NETWORKING WEBSITE, A MICROBLOG-
11 GING OR SHORT MESSAGE SERVICE WEBSITE OR AN EMAIL SERVICE WEBSITE SHALL
12 PROVIDE TO THE EXECUTOR OR ADMINISTRATOR OF SUCH ESTATE ACCESS TO ANY
13 ACCOUNT HELD BY THE DECEDENT UPON RECEIPT BY THE SERVICE PROVIDER OF:
14 (1) A WRITTEN REQUEST FOR SUCH ACCESS MADE BY THE EXECUTOR OR ADMINIS-
15 TRATOR, ACCOMPANIED BY A COPY OF THE DEATH CERTIFICATE AND A CERTIFIED
16 COPY OF THE CERTIFICATE OF APPOINTMENT AS EXECUTOR OR ADMINISTRATOR; AND
17 (2) AN ORDER OF THE COURT OF PROBATE WITH JURISDICTION OVER THE ESTATE
18 OF THE DECEDENT DESIGNATING THE EXECUTOR OR ADMINISTRATOR AS AN AGENT
19 FOR THE DECEASED SUBSCRIBER AS DEFINED IN THE ELECTRONIC COMMUNICATIONS
20 PRIVACY ACT, 18 U.S.C. 2701, ON BEHALF OF HIS OR HER ESTATE, AND ORDER-
21 ING THAT THE ESTATE SHALL FIRST INDEMNIFY THE SERVICE PROVIDER FROM ALL
22 LIABILITY IN COMPLYING WITH SUCH ORDER.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

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1 (C) NOTHING IN THIS CHAPTER SHALL BE CONSTRUED TO REQUIRE SUCH SERVICE
2 PROVIDER TO DISCLOSE ANY INFORMATION IN VIOLATION OF ANY APPLICABLE
3 FEDERAL LAW.

4 S 2. Severability. If any clause, sentence, paragraph, section or part
5 of this act shall be adjudged by any court of competent jurisdiction to
6 be invalid and after exhaustion of all further judicial review, the
7 judgment shall not affect, impair or invalidate the remainder thereof,
8 but shall be confined in its operation to the clause, sentence, para-
9 graph, section or part of this act directly involved in the controversy
10 in which the judgment shall have been rendered.

11 S 3. This act shall take effect immediately.