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## December 2014

Dear Friends:

### *Transfer Tax Exemptions*

2014 was a quiet year (finally!) for estate and gift tax laws. Here are the exemption amounts for 2014 and 2015:

*The gift tax annual exclusion* is \$14,000 for 2014 and will remain at \$14,000 for 2015. Recall that this is the amount each person can gift outright (or in a particular type of trust) to any number of individuals without any gift tax implications. A married couple together can gift \$28,000 to any individual.

*The lifetime gift, estate, and generation-skipping transfer tax exemption* is \$5,340,000 for 2014 and is increasing to \$5,430,000 in 2015. This means that each person will have an additional \$90,000 they can gift. Recall that the lifetime gift and estate tax exemption amount is the amount that each person can gift in total over their lifetime or at death without gift or estate tax implications. The GST exemption is the amount that can pass to grandchildren or younger generations (or in a GST trust) without an additional tax.

### *Estate Planning for the Digital Age*

As we enter the 16<sup>th</sup> year of this millennium, we must (perhaps grudgingly) admit that more and more of our lives are conducted and archived on computers, smartphones, tablets, online and in “the cloud”. Even those of us who don’t think of ourselves as really “tech savvy” might be surprised if we sat down and took inventory of all of our personal information that is stored on a device or online. Our electronic presence will outlive us. It is time, therefore, to figure out what happens to our digital life when we die and how we might plan to help executors and beneficiaries access information that might be important financially (e.g., tax returns and brokerage accounts) or emotionally (e.g., photos and Facebook pages).

Unfortunately, this is a confusing area of the law, which is not keeping up with the ways in which our lives are infused with technology. In July of this year, the Uniform Law Commission (ULC) approved the Uniform Fiduciary Access to Digital Assets Act (UFADAA). The UFADA’s purpose is to allow executors (and other fiduciaries) complete access to a deceased’s digital assets. This is a much needed step in the right direction, but a Uniform Law is not effective in a state until a state legislature adopts it and Texas has not adopted this law to date. So, here in Texas, every digital asset is governed by the terms and services agreements accepted by you at the time you opened the account. Providers, websites and social media networks all handle the deaths of their users differently, and have different requirements for deactivation. Many do not directly address what

happens at the death of the account holder. Some sites prevent your username from being used even after you have been confirmed deceased, while others will deactivate your account after six months of inactivity and make your username available again. Google's recent Inactive Account Manager automatically notifies specified contacts and allows them full access to data. However, this requires some attention, as the service won't work unless you set it up in advance. In this confusing environment there are three important steps all of us can take to make this process easier for our executors and loved ones.

*First, make some sort of inventory of our digital assets (including user names and passwords) and keep it safe but accessible to executors or family members.* But what are digital assets? Broadly, any information about you or created by you that exists in digital form is a digital asset. This includes the tangible digital devices (computers and smartphones), stored data (either on your devices or in the cloud), and online user accounts. Probably pertinent examples include:

Email accounts.

Digital music accounts, such as iTunes.

Social media accounts, such as Facebook, Twitter, LinkedIn, Pinterest and others.

Shopping accounts (such as Amazon Prime).

Photo and video sharing accounts, such as iPhoto, Flickr, Picasa, and Instagram.

Computing hardware, such as computers, external hard drives or flash drives, tables, smartphones, digital music players (like iPods), e-readers (like Kindle or Nook), and digital cameras.

Apple ID

Websites, blogs, and domain names.

*Second, try to make decisions about what should happen to these assets after your death.* For assets that contain important financial information, this may be as easy as ensuring that the executor will have the necessary information. This category would include any online banking or brokerage accounts which are "paperless" and access to a Quicken or similar account that contains information on bills that need to be paid. For other assets, the decisions are more personal. Who should get the data? And conversely, is there digital information you don't want others to see or have? For instance, do you have a preference as to whether your email account is shut down and deleted at your death or would you prefer your executor or family members to have access to it? If you have a Facebook or LinkedIn account, would you like it to remain active, be memorialized (Facebook) or deleted? Do you have a large iTunes or Kindle library that you would like a particular person to have access to, if possible?

*Third, communicate your desires in writing.* Of course, if you have a digital asset or assets of significant monetary value (e.g., a valuable domain name, a You Tube account with ad revenue, or an eBay or Etsy seller's account with significant revenue) you should certainly let us know so we can incorporate this into your formal estate plan. A formal approach may also be appropriate if your family situation is such that you worry family members may be conflicted over access to your digital assets. For many of us, though, our digital plan may easily be communicated in an informal note. If written entirely in your own handwriting, it may be possible to probate it as a codicil to your Will if necessary. Going forward, we will be suggesting to clients that they address a fiduciary's access to digital assets, as applicable to each client's individual situation.

**We hope the New Year brings prosperity, health and hope for all, here and around the world.**