

THE RISELING REPORT

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OKLAHOMA PROBATES ENTER THE FACEBOOK ERA

Beginning November 1, 2010, a new statute in Oklahoma (58 O.S. §269) gives the personal representative (“PR”) of a decedent’s estate authority over the decedent’s social networking accounts (the “Facebook Statute”). The Facebook Statute provides that the PR has the power “to take control of, conduct, continue, or terminate any accounts of a deceased person on any social networking website, any microblogging or short message service website or any e-mail service websites.” It is our understanding that Oklahoma is the first state to enact such a law. The new law, however, does not address whether or not ownership of social networking accounts can be transferred to the trustee of a revocable trust. Such an idea would seem to be possible and may be addressed in the future.

A few years back, controversy did arise over whether or not sites such as Facebook and Twitter owned the information a person posted to his or her page. A recent review of the Terms of Service (“TOS”) agreements for both Facebook and Twitter shows that the TOS agreements for both of these sites has been revised to state that the user does own the content posted to these sites. However, by using the service, a user does grant Facebook and Twitter a “worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display, and distribute” the posted content (from the Twitter TOS).

Since users do own their Facebook and Twitter account content, granting a PR authority over these accounts could prove to be useful. For example, a PR could post a message to friends of the user informing the friends of the decedent’s passing or remove content that could be undesirable in light of the decedent’s death. Given that this is a brand new law in a rapidly changing industry, other benefits or issues with this law are likely to become apparent in the future.

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