

## GAVEL TO GAVEL

# Digital assets and estate planning

*"Forgot your ID or password?"*

Almost everyone with online accounts has probably answered "Yes" to this question at some point. With the prevalence of online commerce, social media and electronic communications, creating usernames and passwords, as well as forgetting them, has become a daily occurrence.

Electronic communications and document storage have given rise to what is now referred to as the digital assets of an individual, usually meaning information, records and data kept in electronic form.

For a person who is a fiduciary, such as a personal representative of an estate, trustee, guardian or holder of a power of attorney, gaining internet access for or about another person can be challenging. This is because legal standards and requirements on privacy, electronic storage of information and computer systems may need to be satisfied and reconciled with those that govern the fiduciary's legal authority.

This makes the granting of access to digital assets an important factor to consider in estate planning.



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## Legal

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Preparing and signing estate planning documents that expressly state specific directions and authorizations regarding the fiduciary's access to online accounts and electronically stored information is advisable. This should at least eliminate doubt or uncertainty about what the individual wants and intends and could help gain cooperation from the internet custodians and service providers.

An individual should review options available for directing and authorizing fiduciary access to and disclosure of digital assets, and how this can most effectively be done. It is advisable for the written provisions of pertinent estate planning documents to specifically describe and recognize the existence of digital assets, and to include terms and provisions to carry out their intended planning. If desired, the documents should include specific provisions authorizing a designated fiduciary to access and use the digital assets, and the extent of this access.

To resolve these digital asset legal questions and provide consistency, a new uniform state law entitled Revised Uniform Fiduciary Access to Digital Assets Act has recently been adopted and proposed by the Uniform Law Commission. It has been introduced in the Oklahoma Legislature but, as of this writing, has yet to be enacted into law. The discussion of the purpose and meaning of the law published by the Uniform Law Commission is a helpful source of background information about digital asset issues that can be involved in estate planning.

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