

A CLOSER LOOK

Digital Assets: A Quick Guide for Holders and Fiduciaries

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Digital assets—accounts, documents, and records accessed primarily via electronic devices such as smartphones and laptops, and including social-media and purchasing accounts—have, unsurprisingly, become more widespread.

But too often, holders neglect arranging for how these assets will be handled after their death or if they become incapacitated.

The Revised (2015) Uniform Fiduciary Access to Digital Assets Act, now adopted by most states, provides guidance on this issue for fiduciaries. A fiduciary may be an agent under a power of attorney, an executor for an estate, a trustee, or a conservator.

Fiduciary Authority Is Narrow

The Act and most digital providers grant only limited powers to fiduciaries. On Facebook, for instance, the Terms of Service Agreement states that a fiduciary can do only one of two things with posts after a user dies: freeze them (subject to scrubbing by Facebook) or delete them.

However, the Act does allow fiduciaries to access and manage—though not control the disposition of—digital assets, using one of three routes. The first is an online tool (available so far only on Facebook and Google) that users set up designating who may access their accounts after death. The second method is an estate-planning document that grants a fiduciary access through a durable power of attorney, will, or trust. The third is a Custodian Provider's Terms of Service Agreement, under which a digital provider spells out conditions of use, though only rarely for fiduciaries.

As to priority, authority proceeds in the order above: online tools first, followed by estate-planning documents, followed by Terms of Service Agreements.

Some Details

It's important to note that simply providing a fiduciary with names and passwords to access digital assets in the event of incapacity or death is poor policy. In fact, it may expose fiduciaries to charges of computer hacking and fraud, and is also a violation of most Terms of Service. Instead, digital users should review the provider's policy about access at death or incapacity, establish an attorney-in-fact who has specific powers to administer digital assets under a Power of Attorney, and include specific language in one's will to address how and by whom digital assets should be handled.



The Digital Assets Act and most digital providers **grant only limited powers to fiduciaries**. It's important to stay vigilant for changes in the digital landscape.

Note that access to digital property in the form of emails and texts is also addressed in the Act, absent any contradictory terms in estate-planning documents. The Act specifies that a fiduciary must give a digital provider, upon request, the dates, times, and electronic addresses—albeit not the content—of all communications to and from the user.

The take-home lessons on digital assets:

Become familiar with fiduciary access rules, align user access decisions with their comfort levels, and stay vigilant for changes in the digital landscape.

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