

# **Does Your Estate Plan Address the Requirements of the New PA Law Controlling Access to Digital Assets?**

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Electronic devices have become central to our everyday lives. Our smart phones and computers provide social links for us as well as connections to our financial accounts. Due to our expanding use of electronic devices, the information stored on them has become increasingly important to those we appoint to assist us in managing our finances during our lifetime and after our death. Unfortunately, service providers have not consistently allowed access to digital assets stored on a server to persons other than the account owner. With the enactment of the Revised Uniform Fiduciary Access to Digital Assets Act, which became effective in January 2021, Pennsylvania now has a law controlling access to digital assets.

The statute defines digital assets as an electronic record in which an individual has a right or interest. The electronic record includes but is not limited to emails, social media posts and digital photos, as well as bank and other financial institution records. The new law provides a roadmap for accessing digital assets by an Executor after death of the account owner, a Trustee of a trust, a Guardian of an Estate and an Agent under a General Durable Power of Attorney during the lifetime of the account owner. The law will make it easier for Executors, Trustees, Guardians and Agents under a Power of Attorney to access digital assets.

Under this new law, the digital asset account owner is the “User”. The account holder that maintains, processes, or stores the digital assets of a User is the “Custodian” of the digital asset.

The new statute provides that if a Decedent gives the Executor permission to access his/her digital assets in his Last Will and Testament, or a trust gives the Trustee permission to access trust digital assets, or a Power of Attorney gives an Agent authority to access digital assets, or if a Court orders access to digital assets, the Custodian must release digital asset information to the Executor, Trustee or Agent, as the case may be. The Executor, Trustee and Agent can access electronic communications (any writing, data, sounds, etc., transmitted via wire, radio or other system such as emails, texts or social media postings) or electronic records of the decedent by following the procedure provided in the statute, and which includes a written

request to the Custodian. Upon receipt of a proper request, the Custodian must provide access to the digital assets within sixty days. The Executor, Trustee or Agent may request actual electronic communications or only a catalog of the electronic communications, which would include a list of emails but not the content of emails.

The law also provides that a Court can order a catalog of electronic communications of a person under guardianship be released to his guardian.

It is critical to note special provisions in the new law regarding the giving of authority to an Agent under a Power of Attorney, which is effective only during the lifetime of the individual creating it. For all Powers of Attorney executed before or after January 2021, in order for an Agent to access digital assets, the Power of Attorney must expressly grant the Agent access to digital assets or the Agent will not have the right to access to the digital assets. Service providers will not accept general language in the Power of Attorney authorizing the Agent to do anything the individual creating it could do to give the Agent authority to access digital assets.

Additionally, under the new law, it is important to remember that electronic devices such as an iPad, smartphone, flash drive or computer are considered personal property of the Decedent and thus should be included in any clause giving personal property to a beneficiary under a Last Will and Testament. The beneficiary receiving the electronic devices under the Last Will and testament should have access to any digital assets stored in the personal property.

The enactment of this law provides a good opportunity for you to review your estate plan and update it as needed. If you wish to grant authority to the Executor of your estate, the Trustee of your Trust and your Agent under your Power of Attorney to access your digital assets without having to obtain a court order, we recommend that your estate plan include provisions in the above documents that give your Executor, Trustee and Agent the required authority. Updating your documents now can save precious time later because so long as your estate planning documents include provisions required by the new law, the Custodian of your digital assets will be required by law to grant your Executor, Trustee or Agent access to your digital assets. Just contact our office for a review of your current estate plan and if it does not comply with the new law regarding the disclosure of digital assets, we can promptly update your estate plan.