

Washington's new fiduciary access to digital assets law

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If you have gone or are going paperless and receive online financial statements and documents only, make sure your fiduciaries can access your digital assets when you are incapacitated or deceased.

There are four common types of fiduciaries, that is, people with legal authority to manage someone else's property, namely:

- Executors or administrators of a deceased person's estate
- Court-appointed guardians of the estate of an incapacitated person
- Agents appointed under powers of attorney
- Trust trustees

Digital assets are electronic records that a person has a right to or interest in, including financial statements, email, social media accounts, photographs and personal documents, health records, videos, gaming accounts, and any similar digital assets.

Because of privacy protections of state and federal laws, companies that store digital assets on their servers usually have a terms of service agreement with internet users that can cause problems if an internal user dies or becomes incapacitated. Such agreements may allow termination and deletion of an account, and denial of passwords that would enable logging into a user's account.

Last year, the Washington State Legislature enacted the Revised Uniform Fiduciary Access to Digital Assets Act, RCW Chap. 11.120, to make it easier for fiduciaries to access electronic files stored in the cloud.

The new law permits internet users to use an online tool to direct the custodian to disclose or not to disclose some or all of a user's digital assets. It also provides that a user may allow or prohibit in a will, trust, power of attorney or other record, disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

When accessing a user's online accounts as a fiduciary, you first look to the terms of service agreement of the internet provider, then you look to see if the user used the online tool from the internet provider, and then you look to see if the user left any written directions for the disposition of such assets in a will, trust, power of attorney or other written record.

I recommend that you take these actions with regard to your digital assets, namely:

- Prepare an instruction letter concerning your digital assets
- Include provisions in your power of attorney authorizing access to some or all of your emails and electronic data
- Update your will or trust to allow access to some but not necessarily all digital assets, for example, your financial records, but not all of your private emails

If an internet user has not taken those actions, a fiduciary can still resort to the provisions of RCW Chap. 11.120 to access the user's files stored in the cloud.