Consider Digital Assets in Planning Your Estate

As our level of reliance on digital mediums in our daily lives increases, the need for fiduciaries to access digital assets is more critical now than ever.

Under Ohio's Revised Uniform Fiduciary Access to Digital Assets Act (ORC §2137), a fiduciary has the general authority to access and use the digital assets of:

1. a principal under a power of attorney,
2. a decedent under a last will and testament,
3. a trust under the terms of such trust and
4. a ward under guardianship.

Digital assets exist in an electronic format with an associated right of use. Digital assets often carry sentimental and/or financial value. They contain important personal information (e.g., an email account containing electronic bank statements or a cloud storage account containing photographs and essential documents in electronic format).

Though it is vital to appoint fiduciaries that can access digital assets, it is equally important that such fiduciaries can access, manage and terminate digital assets without unnecessary burden. It is wise to provide a fiduciary with an inventory of digital assets, associated passwords, and login information. Having such information in a safe location along with other estate planning documents will give a fiduciary a more efficient means of dealing with digital assets.

Certain companies now allow users to decide who may access digital assets upon a user's incapacitation or death. For example, Facebook allows for the designation of a "legacy contact," and Google allows for the appointment of an individual to access an account that has been inactive for a designated period). Though this practice by companies is welcomed, a complete estate plan should include a strategy for dealing with digital assets upon incapacitation or death. Without such a plan, digital assets may be permanently inaccessible, or a court order may be required to access the assets. As our lives continue to be less dependent on tangible items, so should our estate plans.