

PROBATE LAW JOURNAL OF OHIO

JULY/AUGUST 2026 | VOLUME 36 | ISSUE 6

ESTATE PLANNING FOR DIGITAL ASSETS NINE YEARS AFTER RUFADAA

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In April 2017, if you had the latest technology, you were sporting the iPhone 7, and potentially grieving that, for the first time, your phone did not have a headphone jack. You were placing calls and downloading data on a 4G network—and that data use wasn't attributable to TikTok, because the platform had not been developed yet. If you were using that iPhone 7 to track activity in the Ohio General Assembly, you also witnessed Ohio's adoption of the Revised Uniform Fiduciary Access to Digital Assets Act ("RUFADAA"). Today, approximately 91% of U.S. adults owns a smartphone,¹ and they check those phones, on average, about 186 times per day.² Some of them are using that phone to check the status of their Bitcoin holdings, as approximately 28% of Americans now own cryptocurrency.³ In April 2017, Bitcoin was trad-

ing at \$1,080 per coin, and it had *fallen* about 46% from its peak to sit at \$68,000 per coin in April 2026. It is safe to say that our relationship with technology has changed considerably in the last nine years. We are more dependent on digital devices for day-to-day activities, placing an even higher premium on administering these devices and their data well after a loved one has passed away.

Ohio adopted the uniform framework for such issues nine years ago. While the statutory framework remains largely unchanged, we have had nine years to observe some of the practical issues that can arise and how best to deal with them. This article will provide a brief recap of the statutory and caselaw framework concerning planning for and administering digital assets and provide some practical tips for how to ensure you and your clients are well-positioned to preserve them.

RUFADAA FUNDAMENTALS

The "DA" in RUFADAA stands for "Digital Asset," which is a defined statutory term. It is "an electronic record in which an individual has a right or interest. 'Digital asset' does not include an underlying asset or liability unless the asset or liability is itself an electronic record."⁴ If you are talking about digital assets with an estate planning lawyer, you might assume you are dealing with this definition. It is worth noting that if you are talking with a financial advisor or the IRS about a "digital asset," you might be referring only to cryptocurrency, which is a narrow slice of what the statutory definition includes. The statutory definition includes many types of assets relevant to estate planning beyond cryptocurrency, such as digital photo libraries, other digital file archives, and perhaps most importantly, the decedent's email account, which can be a treasure trove of information that is essential to estate administration.

Just as probate avoidance has become mainstream for most all forms of assets, RUFADAA contemplates that owners of digital assets might

want to bypass the messy process of court-appointed fiduciaries and just pass their accounts and contents directly to individuals of their choosing. RUFADAA allows custodians of digital assets to devise ways to facilitate such transfers. These mechanisms, like Facebook's and Apple's "Legacy Contact," and Google's "Inactive Account Manager" are known under RUFADAA as "online tools."⁵ They are essentially beneficiary designations for digital assets, operating in much the same way as "transfer-on-death" designations for real estate or securities. They are a customized setting, designed by the custodian, to facilitate transfer of specific types of access to the specific digital assets the custodian holds. These transfers can be very efficient for avoiding probate, but, like beneficiary designations, they can conflict with the rest of the estate plan, causing unintended results. They are also difficult for clients, much less their counsel, to track and coordinate. Further, they may never be triggered at all. Google's Inactive Account Manager is activated after a specific period of time has elapsed since the user last logged in to his or her account. If the user also shared his or her password (in violation of the terms of service agreement!) that second user of the account could keep triggering a reset of the clock—delaying the beneficiary's rights for years, or denying them entirely.

A key distinction in the rights RUFADAA gives to the fiduciaries it covers (agents under financial powers of attorney, executors, trustees, and guardians) is access to content of digital communications vs. access to other types of digital assets. "Content of electronic communication" means information containing the substance of the communication that is sent or received by the user, is stored by a custodian, and is not easily accessible to the public.⁶ "Catalogue of electronic communication," on the other hand, just identifies the parties to the communication, and the date and time of the communication.⁷ Content of electronic communication is subject to heightened privacy protections under federal law, so RUFADAA

requires a person to make an affirmative election to disclose such information to a fiduciary. On the other hand, the catalogue of communication, and all other digital assets, are generally available to most types of fiduciaries.

In general, fiduciaries must provide the following information under RUFADAA to access digital assets:

1. **Personal Representative** (which includes an executor, administrator, or commissioner in small estates procedure):

- a. *Content of Communication*: The Personal Representative only receives access if the user or a court directs, and the Personal Representative must provide a death certificate, letter of authority or entry relieving assets from administration, a copy of the Will *which explicitly authorizes disclosure*, and, if requested, information identifying the account.⁸
- b. *All Other Digital Assets*: The Personal Representative is presumed to have access and need not provide a copy of the Will authorizing disclosure.⁹

2. **Financial Power of Attorney**:

- a. *Content of Communication*: To obtain access, the Agent must provide a copy of the power of attorney *which explicitly authorizes disclosure*, a certification that the power of attorney remains in effect and, if requested, information identifying the account.¹⁰
- b. *All Other Digital Assets*: These items must be disclosed to the Agent under a *general* durable power of attorney, unless the power is specifically omitted. If it is a limited power of attorney, the authority over digital assets must be explicit.¹¹

3. **Trustees**: If the Trustee is the original owner of the digital asset, the Trustee has

full access under R.C. 2137.10, but it is very difficult to register a digital asset in the name of the Trust.

- a. *Content of Communication*: To obtain access, the Trustee must provide a copy of the Trust or a Certification of Trust that shows consent to disclosure and that the Trust is still in effect and, if requested, information identifying the account.¹²
 - b. *All Other Digital Assets*: These items must be disclosed to the Trustee unless directed otherwise by a Court or by the Trust instrument.¹³
4. **Guardians**: Because the ward is a living person, there is a heightened protection of privacy.
- a. *Content of Communication*: Under R.C. 2137.13, content of communication will not be provided.
 - b. *All Other Digital Assets*: These items will be provided only if allowed after a Court hearing.¹⁴ That is, authority to access is not an inherent part of the office of guardian.

Of course, these digital assets are generally accessed through devices owned by the decedent or the principal. Accordingly, RUFADAA also makes clear that the fiduciary attempting to access digital assets through a computing system is an “authorized user” for purposes of state and federal computer privacy laws.¹⁵

COURTS INTERPRETING RUFADAA

RUFADAA has been adopted relatively uniformly across almost every state as of April 2026, and given that it applies to national and international service providers, it contains provisions calling for judges to interpret it in a uniform manner to other states.¹⁶ However, in the era from iPhone 7 to iPhone 17, there have been surprisingly few published opinions relying on

RUFADAA. I have only been able to identify one Ohio opinion citing Chapter 2137, which involved a pro se litigant invoking it and the Court dismissing that count of the Complaint, because there were no facts involving fiduciaries or digital assets.¹⁷ Many major digital accounts are a combination of communications and other digital assets. The best practical roadmap for how Courts have tried to sort this out was a handful of New York cases in 2017 and 2019. The Courts parsed through which parts of Google and Apple accounts were permissible for fiduciary access and which were protected “content of communications” that could not be accessed without a Will providing access. The Courts generally found fiduciary access to a Google Contact List and Calendar¹⁸ and Apple Photos¹⁹ were permitted under the equivalent of R.C. 2137.07 but full access to a Google Account, including email contents²⁰ and full access to Apple iCloud backup, which included text messages and voice mail²¹ was impermissible without explicit authorization in a Will under the equivalent of R.C. 2137.06.

Perhaps the most interesting recent case on RUFADAA came out of Delaware last year.²² Under R.C. 2137.06(E), a custodian may request a fiduciary provide a Court finding of one of four items: (a) that the user had a specific, identifiable account with the custodian, (b) that the disclosure would not violate certain federal laws, (c) that the user consented to disclosure, or (d) that the disclosure is reasonably necessary for administration of the estate. In *Schwartz*, the fiduciary and Google submitted an agreed judgment entry that provided that “no law, legal duty, or obligation, including but not limited to, any provision of Delaware law or the federal Stored Communications Act (SCA) 18 U.S.C.A. § 2702, prohibits Google from disclosing to Petitioner the contents stored in the Account.”²³ The Court declined to approve this judgment entry due to this unsupported legal conclusion unless the parties fully briefed the issue to the Court. From the fiduciary’s perspective, the judgment entry should have been fine if it just identi-

fied the account. It is unclear from the opinion if Google was pushing for the additional protection under federal law or if the fiduciary and Google were simply being over-inclusive. As an advisor to fiduciaries, it is important to keep these judgment entries as concise as possible to accomplish the goal of granting access to the assets.

PRACTICAL TIPS FOR DIGITAL ASSET PLANNING AND ADMINISTRATION

The most important concept in planning for digital assets is transparency. If the owner of digital assets wants to pass them on to surviving family or friends, he or she must make a way to let survivors know what assets exist and where they can be found. The minimum step would be to create a list of digital accounts or create an inventory that lists where to find significant files on one's devices. Some owners of digital assets go so far as to supplement the list of accounts with the list of usernames and passwords. This can, however, be problematic for several reasons including: (a) sharing usernames and passwords may be a violation of the terms of service agreement; (b) many accounts require regular password updates making it difficult to maintain such a list accurately and increasing the risk of permanent lockout from multiple attempts with a wrong password; (c) there are identity theft risks inherent in gathering usernames and passwords in one place; and (d) the increasing prevalence of multifactor authentication makes mere passwords of little use without access to other devices to validate the password. The problems with password sharing and account identification are even more problematic as applied specifically to cryptocurrency. Sometimes "wallets" for cryptocurrency can be hidden within other wallets and multiple incorrect password guesses can result in destruction or loss of the underlying cryptocurrency.

The one exception to the notion that sharing passwords is of little use is sharing passcodes to

devices. Sharing the passcode to a device is often a threshold step to even get access to an understanding of where the digital accounts are. While R.C. 2137.14(E) gives the fiduciary *legal authority* to access the decedent's devices, the *practical ability* to access the device may still be unavailable without the passcode. For example, if an iPhone is locked and the passcode is not known, Apple literally is not able to provide the passcode to the fiduciary. It can only wipe the phone and restore any available contents from iCloud backup—and recall that a full iCloud account contains content of communication that must be specifically authorized to be disclosed to the fiduciary in the decedent's Will.

Beyond mere identification of the accounts, the next easiest way to encourage efficient administration of digital assets is to use online tools. Just like other probate avoidance mechanisms, these make transfers far simpler than the probate process would. They are arguably of even higher value than transfer-on-death designations for simplification both because the probate process is even more onerous for digital assets than for traditional assets like bank accounts and because the transfer can be more customized in an online tool to the exact type of digital asset being transferred. For example, Facebook's Legacy Contact is not given full access to the account, but instead is given a limited bundle of rights with respect to the account that are appropriate for the administration of the deceased user's account.

If an online tool is not available, R.C. 2137.03 contemplates that a user could authorize access to accounts in a "a will, trust, power of attorney, or other record" (emphasis added). Such "other record" could be a specific written statement authorizing or prohibiting disclosure of information, including contents of communications, contained in the decedent's account. In making such a directive, it is worth considering what the fiduciary would most likely receive from the custodian. A fiduciary could receive full access to the account, that is, the ability to natively navigate the account as though he or she was

the decedent. Alternatively, the fiduciary could receive the ability to download the data from the account for a limited period of time. This second option is far more likely. If signing a stand-alone direction for a digital account, note the level of access you intend to give. If the intent is to give access to content of communications, be sure to include those words in the disclosure. Of course, also make sure that any such stand-alone directives can be found by the survivors after the user has passed away.

As an advisor, the most important thing you can do for clients is to prompt them to think about this issue. While clients are increasingly aware that their digital presence should be considered in their estate plan, my experience indicates that relatively few have already thought through how to comprehensively plan for their digital assets. The legal framework for such planning and administration has remained largely unchanged for nine years, and companies continue to develop online tools to make succession easier under that framework. However, the increasing prevalence and complexity of our digital assets shows no sign of slowing down, so proactive planning remains necessary to ensure appropriate and efficient succession of these treasured assets.

ENDNOTES:

¹Pew Research Center, *Mobile Fact Sheet*, November 20, 2025, available at <https://www.pewresearch.org/internet/fact-sheet/mobile/>.

²Reviews.org, *Cell Phone Usage Stats 2026*, January 1, 2026, available at <https://www.reviews.org/mobile/cell-phone-addiction/>.

³Security.org, *2026 Cryptocurrency Adoption and Sentiment Report*, May 11, 2026, available at <https://www.security.org/digital-security/cryptocurrency-annual-consumer-report/>.

⁴R.C. 2137.01(I).

⁵See R.C. 2137.01(P) (online tools are provided to user under the terms-of-service agreement between the custodian and user).

⁶R.C. 2137.01(E).

⁷R.C. 2137.01(D).

⁸R.C. 2137.06.

⁹R.C. 2137.07.

¹⁰R.C. 2137.08.

¹¹R.C. 2137.09.

¹²R.C. 2137.11.

¹³R.C. 2137.12.

¹⁴R.C. 2137.13.

¹⁵R.C. 2137.14.

¹⁶R.C. 2137.16.

¹⁷*Duncan v. Bartone*, No. 21M000245, 2021 WL 10428653 (Ohio Com.Pl., Geauga County Aug. 03, 2021) (Trial Order).

¹⁸*In re Estate of Serrano*, 56 Misc. 3d 497, 54 N.Y.S.3d 564 (Sur. Ct. 2017).

¹⁹*In re Scandalios*, 2019 WL 266570 (N.Y. Sur. Ct. 2019).

²⁰*In re Estate of White*, No. 2017-812/A, 2017 WL 8944064 (N.Y.Sur., Suffolk County Sep. 21, 2017) (Trial Order).

²¹*Matter of Coleman*, 63 Misc. 3d 609, 96 N.Y.S.3d 515 (Sur. Ct. 2019).

²²*Schwartz v. Google LLC*, No. 2025-0014-CDW, 2025 WL 511676 (Del.Ch. Feb. 14, 2025) (Trial Order).

²³*Schwartz v. Google LLC*, No. 2025-0014-CDW, 2025 WL 511676 (Del.Ch. Feb. 14, 2025) (Trial Order).



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