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FOR DISCUSSION ONLY

**[REVISED/AMENDED] UNIFORM FIDUCIARY ACCESS  
TO DIGITAL ASSETS ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FOURTH YEAR  
WILLIAMSBURG, VIRGINIA  
JULY 10 - JULY 16, 2015

**[REVISED/AMENDED] UNIFORM FIDUCIARY ACCESS  
TO DIGITAL ASSETS ACT**

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July 10, 2015

**[REVISED/AMENDED] UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT**

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1 **[REVISED/AMENDED] UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Fiduciary  
3 Access to Digital Assets Act.

4 **SECTION 2. DEFINITIONS.** In this [act]:

5 (1) “Account” means an arrangement under a terms-of-service agreement in which the  
6 custodian holds one or more digital assets of the user or provides goods or services to the user.

7 (2) “Agent” means an attorney in fact granted authority under a durable or nondurable  
8 power of attorney.

9 (3) “Carries” means engages in the transmission of electronic communications.

10 (4) “Catalogue of electronic communications” means information that identifies each  
11 person with which a user has had an electronic communication, the time and date of the  
12 communication, and the electronic address of the person.

13 (5) “[Conservator]” means a person appointed by a court to manage the estate of a living  
14 individual. The term includes a limited [conservator].

15 (6) “Content of an electronic communication” means information concerning the  
16 substance or meaning of the communication which:

17 (A) has been sent or received by a user;

18 (B) is in electronic storage by a custodian providing an electronic-communication  
19 service to the public or is carried or maintained by a custodian providing a remote-computing  
20 service to the public; and

21 (C) is not readily accessible to the public.

22 (7) “Court” means the [insert name of court in this state having jurisdiction in matters  
23 relating to the content of this act].

1 (8) “Custodian” means a person that carries, maintains, processes, receives, or stores a  
2 digital asset of a user.

3 (9) “Designated recipient” means a person appointed to administer digital assets by a user  
4 using an online tool.

5 (10) “Digital asset” means an electronic record in which an individual has a right or  
6 interest. The term does not include an underlying asset or liability unless the asset or liability is  
7 itself an electronic record.

8 (11) “Electronic” means relating to technology having electrical, digital, magnetic,  
9 wireless, optical, electromagnetic, or similar capabilities.

10 (12) “Electronic communication” has the same meaning as the definition in 18 U.S.C.  
11 Section 2510(12) [as amended].

12 (13) “Electronic-communication service” means a custodian that provides to a user the  
13 ability to send or receive an electronic communication.

14 (14) “Fiduciary” means an original, additional, or successor personal representative,  
15 [conservator], agent, or trustee.

16 (15) “Information” means data, text, images, videos, sounds, codes, computer programs,  
17 software, databases, or the like.

18 (16) “Online tool” means an electronic service provided by a custodian that allows the  
19 user, in an agreement distinct from the terms-of-service agreement between the custodian and  
20 user, to provide directions for disclosure or non-disclosure of digital assets to a third person.

21 (17) “Person” means an individual, estate, business or nonprofit entity, public  
22 corporation, government or governmental subdivision, agency, or instrumentality, or other legal  
23 entity.

1 (18) “Personal representative” means an executor, administrator, special administrator, or  
2 person that performs substantially the same function under law of this state other than this [act].

3 (19) “Power of attorney” means a record that grants an agent authority to act in the place  
4 of a principal.

5 (20) “Principal” means an individual who grants authority to an agent in a power of  
6 attorney.

7 (21) “[Protected person]” means an individual for whom a [conservator] has been  
8 appointed. The term includes an individual for whom an application for the appointment of a  
9 [conservator] is pending.

10 (22) “Record” means information that is inscribed on a tangible medium or that is stored  
11 in an electronic or other medium and is retrievable in perceivable form.

12 (23) “Remote-computing service” means a custodian that provides to a user computer  
13 processing services or the storage of digital assets by means of an electronic communications  
14 system, as defined in 18 U.S.C. Section 2510(14) [, as amended].

15 (24) “Terms-of-service agreement” means an agreement that controls the relationship  
16 between a user and a custodian.

17 (25) “Trustee” means a fiduciary with legal title to property pursuant to an agreement or  
18 declaration that creates a beneficial interest in another. The term includes a successor trustee.

19 (26) “User” means a person that has an account with a custodian.

20 (27) “Will” includes a codicil, testamentary instrument that only appoints an executor,  
21 and instrument that revokes or revises a testamentary instrument.

22 ***Legislative Note:*** States should insert the appropriate term for a person named in a  
23 conservatorship or comparable state proceeding to manage another’s estate in paragraph (6),  
24 the appropriate court in paragraph (8), and the appropriate term for the individual that would

1 *be subject to a conservatorship or comparable state proceeding in paragraph (22).*

2 *In states in which the constitution, or other law, does not permit the phrase “as amended” when*  
3 *federal statutes are incorporated into state law, the phrase should be deleted in paragraphs (13)*  
4 *and (24).*

5 **SECTION 3. APPLICABILITY.**

6 (a) This [act] applies to:

7 (1) a fiduciary acting under a will or power of attorney executed before, on, or  
8 after [the effective date of this [act]];

9 (2) a personal representative acting for a decedent who died before, on, or after  
10 [the effective date of this [act]];

11 (3) a [conservatorship] proceeding, whether pending in a court or commenced  
12 before, on, or after [the effective date of this [act]];

13 (4) a trustee acting under a trust created before, on, or after [the effective date of  
14 this [act]]; and

15 (5) a custodian of digital assets for a user who resides in this state or who resided  
16 in this state at the time of the user’s death.

17 (b) This [act] does not apply to a digital asset of an employer used by an employee in the  
18 ordinary course of the employer’s business.

19 (c) This act allows a custodian to disclose account information to a fiduciary when the  
20 information is required to close an account used to access licensed digital assets.

21 **SECTION 4. INDIVIDUAL’S DIRECTION FOR DISCLOSURE OF DIGITAL**  
22 **ASSETS.**

23 (a) A user may use an online tool to allow a custodian to disclose or prohibit a custodian  
24 from disclosing some or all of the user’s digital assets, including the contents of electronic

1 communications. If the online tool allows the user to modify or delete a direction at any time, a  
2 direction regarding disclosure using an online tool supersedes a contrary direction by the user in  
3 a will, trust, power of attorney, or other record.

4 (b) If a user has not used an online tool to give direction under subsection (a) regarding  
5 disclosure of digital assets, or if a custodian has not provided an online tool, a user may allow or  
6 prohibit in a will, trust, power of attorney, or other record, the disclosure to a fiduciary of some  
7 or all of the user's digital assets, including the content of an electronic communication sent or  
8 received by the user.

9 (c) The user's direction for disclosure of digital assets under subsection (a) or (b)  
10 supersedes a contrary provision in a custodian's terms-of-service agreement that did not require  
11 the user to act affirmatively and separately from the user's assent to the terms-of-service  
12 agreement.

13 **SECTION 5. TERMS-OF-SERVICE AGREEMENT PRESERVED.**

14 (a) Nothing in this act changes or impairs a party's rights under a terms-of-service  
15 agreement to access and use digital assets of a user.

16 (b) This act does not give a fiduciary any new or expanded rights than those held by the  
17 user for whom, or for whose estate, the fiduciary acts or represents.

18 (c) A fiduciary's access to digital assets may be modified or eliminated by a user, by  
19 federal law, or, when the user has not provided any direction that is recognized in Section 4, by a  
20 terms-of-service agreement.

21 **SECTION 6. PROCEDURE FOR DISCLOSING DIGITAL ASSETS.**

22 (a) When disclosing the digital assets of a user under this act, the custodian may at its  
23 sole discretion:

1 (1) grant the fiduciary or designated recipient full access to the user's account;

2 (2) grant the fiduciary or designated recipient partial access to the user's account

3 sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

4 (3) provide the fiduciary or designated recipient with a digital or paper copy of  
5 any digital asset that, on the date the custodian received the request for disclosure, the user could  
6 have accessed if the user were alive and had full capacity and access to the account.

7 (b) A custodian may assess a reasonable administrative charge for the cost of disclosing  
8 digital assets.

9 (c) Nothing in this [act] shall be interpreted to confer upon the fiduciary or designated  
10 recipient any greater rights in the contents of electronic communications than those enjoyed by  
11 the account holder.

12 (d) A custodian need not disclose a digital asset deleted by a user.

13 (e) If a user directs or a fiduciary requests a custodian to disclose some, but not all, of the  
14 user's digital assets, the custodian need not comply if segregation of the digital assets would  
15 impose an undue burden on the custodian. If the custodian believes that the direction or request  
16 imposes an undue burden, either the custodian or the fiduciary may petition the court for an order  
17 to:

18 (1) disclose a date delimited subset of the account holder's digital assets;

19 (2) disclose all of the user's digital assets to the fiduciary or designated recipient;

20 (3) disclose none of the user's digital assets; or

21 (4) disclose all of the user's digital assets to the court for review in chambers.

22



1           **SECTION 7. DISCLOSURE OF THE CONTENT OF ELECTRONIC**

2           **COMMUNICATIONS OF DECEASED USER.** If the user consented to disclosure of the  
3           content of an electronic communication or if the court directs disclosure, a custodian shall  
4           disclose to the personal representative of the estate of a deceased user the content of an electronic  
5           communication sent or received by the user if the personal representative gives to the custodian:

6                   (1) a written request for disclosure in physical or electronic form;

7                   (2) a certified copy of the death certificate of the user;

8                   (3) a certified copy of [the letter of appointment of the representative or a small-estate  
9           affidavit or court order];

10                  (4) unless the user provided direction using an online tool, a copy of the user’s will, trust,  
11           power of attorney, or other record evidencing the user’s consent to disclosure of the content of an  
12           electronic communication; and

13                  (5) any of the following requested by the custodian:

14                           (A) a number, username, or address assigned by the custodian to identify the  
15           user’s account;

16                           (B) evidence linking the account to the user; or

17                           (C) an order of the court finding that:

18                                   (i) the user had a specific account with the custodian, identifiable by a  
19           number, username, or address assigned by the custodian;

20                                   (ii) that disclosure of the content of the user’s electronic communications  
21           would not violate 18 U.S.C. Section 2701 et seq., 47 U.S.C. Section 222, or other applicable law;

22                                   (iii) unless the user provided direction using an online tool, that the user  
23           consented to disclosure of the content of an electronic communication; or

1 (iv) disclosure of the content of an electronic communication of a user is  
2 reasonably necessary for estate administration.

3 **SECTION 8. DISCLOSURE OF OTHER DIGITAL ASSETS OF DECEASED**

4 **USER.** Unless the user prohibited disclosure of digital assets or the court directs otherwise, a  
5 custodian shall disclose to the personal representative of the estate of a deceased user a catalogue  
6 of electronic communications sent or received by the user, and a digital asset in which the user  
7 had a right or interest, except the content of an electronic communication, if the personal  
8 representative gives to the custodian:

9 (1) a written request for disclosure in physical or electronic form;

10 (2) a certified copy of the death certificate of the user;

11 (3) a certified copy of [the letter of appointment of the representative or a small-estate  
12 affidavit or court order]; and

13 (4) any of the following requested by the custodian:

14 (A) a number, username, or address assigned by the custodian to identify the  
15 user's account;

16 (B) evidence linking the account to the user;

17 (C) an affidavit stating that disclosure of the user's digital assets is reasonably  
18 necessary for estate administration; or

19 (D) an order of the court finding that:

20 (i) the user had a specific account with the custodian, identifiable by a  
21 number, username, or address assigned by the custodian; or

22 (ii) disclosure of the user's digital assets is reasonably necessary for estate  
23 administration.

1           **SECTION 9. DISCLOSURE OF CONTENT OF ELECTRONIC**

2   **COMMUNICATION OF PRINCIPAL.** To the extent a power of attorney expressly grants an  
3 agent authority over the content of an electronic communication sent or received by the principal  
4 and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent  
5 the content of a principal’s electronic communication if the agent gives to the custodian:

6           (1) a written request for disclosure in physical or electronic form;

7           (2) an original or copy of the power of attorney expressly granting the agent authority  
8 over the contents of electronic communications of the principal to the agent;

9           (3) a certification by the agent, under penalty of perjury, that the power of attorney is in  
10 effect; and

11           (4) any of the following requested by the custodian:

12                   (A) a number, username, or address assigned by the custodian to identify the  
13 principal’s account; or

14                   (B) evidence linking the account to the principal.

15           **SECTION 10. DISCLOSURE OF OTHER DIGITAL ASSETS OF PRINCIPAL.**

16 Unless otherwise ordered by the court, directed by the principal, or provided by a power of  
17 attorney, a custodian shall disclose to an agent with general authority to act on behalf of a  
18 principal: a catalogue of electronic communications sent or received by the principal, and any  
19 digital asset in which the principal has a right or interest, except the content of an electronic  
20 communication, if the agent gives to the custodian:

21           (1) a written request for disclosure in physical or electronic form;

22           (2) an original or a copy of the power of attorney that gives the agent general authority to  
23 act on behalf of the principal;

1 (3) a certification by the agent, under penalty of perjury, that the power of attorney is in  
2 effect; and

3 (4) if requested by the custodian:

4 (A) a number, username, or address assigned by the custodian to identify the  
5 principal's account; or

6 (B) evidence linking the account to the principal.

7 *Legislative Note: States may also need to amend their power of attorney statutes and forms to*  
8 *include this power.*

9 **SECTION 11. DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST WHEN**  
10 **TRUSTEE IS THE ORIGINAL USER.**

11 Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to  
12 a trustee that is an original user any digital asset held in trust, including any catalogue of  
13 electronic communications of the trustee and the content of an electronic communication.

14 **SECTION 12. DISCLOSURE OF CONTENT OF ELECTRONIC**  
15 **COMMUNICATION HELD IN TRUST WHEN TRUSTEE NOT ORIGINAL USER.**

16 Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian  
17 shall disclose to a trustee that is not an original user the content of an electronic communication  
18 sent or received by an original or successor user and carried, maintained, processed, received, or  
19 stored by a custodian in an account of the trust if the trustee gives to the custodian:

20 (1) a written request for disclosure in physical or electronic form;

21 (2) a certified copy of the trust instrument[, or a certification of the trust under [cite  
22 trust-certification statute, such as Uniform Trust Code Section 1013],] that includes consent to  
23 disclosure of the content of an electronic communication to the trustee;

24 (3) a certification by the trustee, under penalty of perjury, that the trust exists and that the

1 trustee is a currently acting trustee of the trust; and

2 (4) if requested by the custodian:

3 (A) a number, username, or address assigned by the custodian to identify the  
4 trust's account; or

5 (B) evidence linking the account to the trust.

6 **SECTION 13. DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN TRUST**

7 **WHEN TRUSTEE NOT ORIGINAL USER.** Unless otherwise ordered by the court, directed  
8 by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original  
9 user the catalogue of electronic communications sent or received by an original or successor user  
10 and stored, carried, or maintained by a custodian in an account of the trust and any digital asset  
11 in which the trust has a right or interest, other than the content of electronic communications, if  
12 the trustee gives to the custodian:

13 (1) a written request for disclosure in physical or electronic form;

14 (2) a certified copy of the trust instrument[, or a certification of the trust under [cite  
15 trust-certification statute, such as Uniform Trust Code Section 1013],];

16 (3) a certification by the trustee, under penalty of perjury, that the trust exists and that the  
17 trustee is a currently acting trustee of the trust; and

18 (4) if requested by the custodian:

19 (A) a number, username, or address assigned by the custodian to identify the  
20 trust's account; or

21 (B) evidence linking the account to the trust.

22

1           **SECTION 14. DISCLOSURE OF DIGITAL ASSETS TO [CONSERVATOR] OF**  
2 **[PROTECTED PERSON].**

3           (a) The court, after an opportunity for a hearing under [state conservatorship law], may  
4 grant a [conservator] the right to access a [protected person]’s digital assets.(b) Unless otherwise  
5 ordered by a court or directed by the user, a custodian shall disclose to a [conservator] the  
6 catalogue of electronic communications sent or received by a [protected person] and any digital  
7 asset in which the [protected person] has a right or interest, other than the content of an  
8 electronic communication, if the [conservator] gives to the custodian:

9                   (1) a written request for disclosure in physical or electronic form;

10                   (2) a certified copy of the court order that gives the [conservator] authority over  
11 the [protected person]’s digital assets; and

12                   (3) if requested by the custodian:

13                           (A) a number, username, or address assigned by the custodian to identify  
14 the [protected person]’s account; or

15                           (B) evidence linking the account to the [protected person].

16           (c) A [conservator] with general authority to manage the assets of a [protected person]  
17 may request a custodian of the [protected person]’s digital assets to suspend or terminate an  
18 account of the [protected person] for good cause. A request made under this section shall be  
19 accompanied by a certified copy of the court order giving the [conservator] authority over the  
20 protected person’s property.

21 *Legislative Note: States should insert the appropriate term for a conservator or comparable*  
22 *fiduciary throughout this section.*

23           **SECTION 15. FIDUCIARY DUTY AND AUTHORITY.**

24           (a) The legal duties imposed on a fiduciary charged with managing tangible property also

1 apply to the management of digital assets, including when applicable:

- 2 (1) the duty of care;
- 3 (2) the duty of loyalty; and
- 4 (3) the duty of confidentiality.

5 (b) A fiduciary's authority with respect to a digital asset of a user:

- 6 (1) except as provided in Section 4, is subject to the terms-of-service agreement
- 7 governing the account;
- 8 (2) is subject to other applicable laws, including copyright law;
- 9 (3) is limited by the scope of the fiduciary's duties; and
- 10 (4) may not be used to impersonate the user.

11 (c) A fiduciary with authority over the property of a decedent, [protected person],  
12 principal, or settlor has the right to access any digital asset in which the decedent, [protected  
13 person], principal, or settlor had a right or interest and that is not held by a custodian or subject  
14 to a terms-of-service agreement.

15 (d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of  
16 the property of the decedent, [protected person], principal, or settlor for the purpose of applicable  
17 computer-fraud and unauthorized-computer-access laws, including [this state's law on  
18 unauthorized computer access].

19 (e) A fiduciary with authority over the tangible, personal property of a decedent,  
20 [protected person], principal, or settlor:

- 21 (1) has the right to access the property and any digital asset stored in it; and
- 22 (2) is an authorized user of a stored digital asset for purposes of any applicable
- 23 computer-fraud and unauthorized-computer-access laws, including [this state's law on

1 unauthorized computer access].

2 (f) A fiduciary may request termination of a user's account if termination would not  
3 violate any fiduciary duty. A request for account termination must be in writing, in either  
4 physical or electronic form, and accompanied by:

5 (1) if the user is deceased, a certified copy of the death certificate of the user;

6 (2) a certified copy of [the letter of appointment of the representative or a  
7 small-estate affidavit or court order, ] court order, power of attorney, or trust giving the  
8 fiduciary authority over the account; and

9 (3) if requested by the custodian:

10 (A) a number, username, or address assigned by the custodian to identify  
11 the user's account;

12 (B) evidence linking the account to the user; or

13 (C) an order of the court finding that the user had a specific account with  
14 the custodian, identifiable by a number, username, or address assigned by the custodian.

15 *Legislative Note: A state with a computer trespass statute should add the appropriate reference*  
16 *in paragraph (e)(2) and may want to amend the statute to be in accord with this act.*

17 **SECTION 16. CUSTODIAN COMPLIANCE AND IMMUNITY.**

18 (a) A custodian shall comply with a fiduciary's request for disclosure of digital assets or  
19 account termination not later than [60] days after receipt of all the required information. If the  
20 custodian fails to comply, the fiduciary may apply to the court for an order directing compliance.

21 (b) An order directing compliance must contain a finding that compliance is not in  
22 violation of 18 U.S.C. § 2702.

23 (c) A custodian may notify the user that a request for disclosure of digital assets or  
24 account termination was made pursuant to this [act].



1 (d) A custodian may deny a fiduciary’s request for disclosure of digital assets or account  
2 termination if the custodian is aware of any lawful access to the account following the receipt of  
3 the fiduciary’s request.

4 (e) Nothing in this [act] shall limit a custodian's ability to obtain or to require a requesting  
5 party to obtain a court order from an appropriate court which makes the finding that:

6 (1) the account belongs to the [protected person]/principal;

7 (2) there is sufficient consent from the [protected person]/principal] to support the  
8 requested disclosure; and

9 (3) disclosure will not violate federal or state law.

10 (f) A custodian and its officers, employees, and agents are immune from liability for an  
11 act or omission done in good faith in compliance with this [act].

12 **SECTION 17. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
13 applying and construing this uniform act, consideration must be given to the need to promote  
14 uniformity of the law with respect to its subject matter among states that enact it.

15 **SECTION 18. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**  
16 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic  
17 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not  
18 modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize  
19 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.  
20 Section 7003(b).

21 **[SECTION 19. SEVERABILITY.** If any provision of this [act] or its application to  
22 any person or circumstance is held invalid, the invalidity does not affect other provisions or  
23 applications of this [act] which can be given effect without the invalid provision or application,

1 and to this end the provisions of this [act] are severable.]

2 *Legislative Note: Include this section only if this state lacks a general severability statute or a*  
3 *decision by the highest court of this state stating a general rule of severability.*

4 **SECTION 20. REPEALS; CONFORMING AMENDMENTS.**

5 (a) ....

6 (b) ....

7 (c) ....

8 **SECTION 21. EFFECTIVE DATE.** This [act] takes effect....