

**REVISED UNIFORM FIDUCIARY ACCESS TO
DIGITAL ASSETS ACT (2015)***

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

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

STATUTORY TEXT ONLY

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

July 21, 2015

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REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (2015)

SECTION 1. SHORT TITLE. This [act] may be cited as the Revised Uniform Fiduciary Access to Digital Assets Act (2015).

SECTION 2. DEFINITIONS. In this [act]:

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

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

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

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

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

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

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

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

(C) is not readily accessible to the public.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. APPLICABILITY.

(a) This [act] applies to:

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

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

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

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

(5) a custodian of digital assets for a user if the user resides in this state or resided in this state at the time of the user's death.

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

(c) A custodian may disclose account information to a fiduciary when the information is required to close an account used to access licensed digital assets.

SECTION 4. INDIVIDUAL'S DIRECTION FOR DISCLOSURE OF DIGITAL ASSETS.

(a) A user may use an online tool to allow a custodian to disclose or prohibit a custodian from disclosing some or all of the user's digital assets, including the contents of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool supersedes a contrary direction by the user in a will, trust, power of attorney, or other record.

(b) If a user has not used an online tool to give direction under subsection (a) regarding disclosure of digital assets, or if a custodian has not provided an online tool, a user may allow or

prohibit in a will, trust, power of attorney, or other record, the disclosure to a fiduciary of some or all of the user's digital assets, including the contents of electronic communications sent or received by the user.

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

SECTION 5. TERMS-OF-SERVICE AGREEMENT PRESERVED.

(a) This [act] does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of a user.

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

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

SECTION 6. PROCEDURE FOR DISCLOSING DIGITAL ASSETS.

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

- (1) grant the fiduciary or designated recipient full access to the user's account;
- (2) grant the fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or
- (3) provide the fiduciary or designated recipient with a digital or paper copy of any digital asset that, on the date the custodian received the request for disclosure, the user could

have accessed if the user were alive and had full capacity and access to the account.

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

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

(d) If a user directs or a fiduciary requests a custodian to disclose some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian considers the direction or request to impose an undue burden, either the custodian or the fiduciary may petition the court for an order to:

(1) disclose a date delimited subset of the user's digital assets;

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

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

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

SECTION 7. DISCLOSURE OF THE CONTENTS OF ELECTRONIC

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

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

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

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

(4) unless the user provided direction using an online tool, a copy of the user's will, trust,

power of attorney, or other record evidencing the user's consent to disclosure of the contents of electronic communications; and

(5) if requested by the custodian:

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

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

(C) an order of the court finding that:

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

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

(iii) unless the user provided direction using an online tool, the user consented to disclosure of the contents of electronic communications; or

(iv) disclosure of the contents of electronic communications of a user is reasonably necessary for estate administration.

SECTION 8. DISCLOSURE OF OTHER DIGITAL ASSETS OF DECEASED

USER. Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets in which the user had a right or interest, except the contents of electronic communications, if the personal representative gives to the custodian:

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

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

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

(4) if requested by the custodian:

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

(B) evidence linking the account to the user;

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

(D) an order of the court finding that:

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

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

SECTION 9. DISCLOSURE OF CONTENTS OF ELECTRONIC

COMMUNICATIONS OF PRINCIPAL. To the extent a power of attorney expressly grants an agent authority over the contents of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content of an electronic communication sent or received by the principal if the agent gives to the custodian:

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

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

(3) a certification by the agent, under penalty of perjury, that the power of attorney is in

effect; and

(4) if requested by the custodian:

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

(B) evidence linking the account to the principal.

SECTION 10. DISCLOSURE OF OTHER DIGITAL ASSETS OF PRINCIPAL.

Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal, and any digital assets in which the principal has a right or interest, except the contents of electronic communications, if the agent gives to the custodian:

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

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

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

(4) if requested by the custodian:

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

(B) evidence linking the account to the principal.

SECTION 11. DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE IS THE ORIGINAL USER. Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user any digital asset held in trust,

including any catalogue of electronic communications of the trustee and the content contents of an electronic communication communications.

SECTION 12. DISCLOSURE OF CONTENTS OF ELECTRONIC COMMUNICATIONS HELD IN TRUST WHEN TRUSTEE NOT ORIGINAL USER.

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

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the trust instrument[, or a certification of the trust under [cite trust-certification statute, such as Uniform Trust Code Section 1013],] that includes consent to disclosure of the contents of electronic communications to the trustee;
- (3) a certification by the trustee, under penalty of perjury, that the trust exists and that the trustee is a currently acting trustee of the trust; and
- (4) if requested by the custodian:
 - (A) a number, username, or address assigned by the custodian to identify the trust's account; or
 - (B) evidence linking the account to the trust.

SECTION 13. DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE NOT ORIGINAL USER. Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user, the catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by a custodian in an account of the trust and any digital

assets in which the trust has a right or interest, other than the contents of electronic communications, if the trustee gives to the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the trust instrument[, or a certification of the trust under [cite trust-certification statute, such as Uniform Trust Code Section 1013],];
- (3) a certification by the trustee, under penalty of perjury, that the trust exists and that the trustee is a currently acting trustee of the trust; and
- (4) if requested by the custodian:
 - (A) a number, username, or address assigned by the custodian to identify the trust's account; or
 - (B) evidence linking the account to the trust.

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

(a) The court, after an opportunity for a hearing under [state conservatorship law], may grant a [conservator] the right to access a [protected person]'s digital assets.

(b) Unless otherwise ordered by a court or directed by the user, a custodian shall disclose to a [conservator] the catalogue of electronic communications sent or received by a [protected person] and any digital assets in which the [protected person] has a right or interest, other than the contents of electronic communications, if the [conservator] gives to the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the court order that gives the [conservator] authority over the [protected person's] digital assets; and
- (3) if requested by the custodian:

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

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

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

SECTION 15. FIDUCIARY DUTY AND AUTHORITY.

(a) The legal duties imposed on a fiduciary charged with managing tangible property also apply to the management of digital assets, including when applicable:

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

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

(1) except as otherwise provided in Section 4, is subject to the terms-of-service agreement governing the account;

- (2) is subject to other applicable laws, including copyright law;
- (3) is limited by the scope of the fiduciary’s duties; and
- (4) may not be used to impersonate the user.

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

to a terms-of-service agreement.

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

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

(1) has the right to access the property and any digital asset stored in it; and

(2) is an authorized user for purposes of any applicable computer-fraud and unauthorized-computer-access laws, including [this state's law on unauthorized computer access].

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

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

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

(3) if requested by the custodian:

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

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

(C) an order of the court finding that the user had a specific account with

the custodian, identifiable by a number, username, or address assigned by the custodian.

SECTION 16. CUSTODIAN COMPLIANCE AND IMMUNITY.

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

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

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

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

(e) This [act] does not limit a custodian's ability to obtain or to require a requesting party to obtain a court order from an appropriate court which makes the finding that:

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

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

(3) any specific factual finding required by any other applicable law in effect at such time.

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

SECTION 17. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote

uniformity of the law with respect to its subject matter among states that enact it.

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

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

SECTION 20. REPEALS; CONFORMING AMENDMENTS.

- (a)
- (b)
- (c)

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