



Outline

- I. Recognize Digital Assets and their nature
- II. Identify issues that planning for digital assets Create:
 - a. Privacy Concerns
 - b. Decedent's intent conflicts with Terms of Service Agreements
 - c. Social networking presence that could last in perpetuity
- III. Strategies to Plan for Digital Assets
- IV. Understand recent legislation, including RUFADAA



Planning for Digital Assets is Important

- Planning for digital assets has become a bit of a "hot topic" in the estate planning arena.
 - Baby boomers are more technologically savvy than their parents and will need additional planning for those assets
- State Statutes typically provide little guidance on differentiating digital and nondigital assets.
- Federal Laws often make accessing a decedent's digital assets a crime, because it is a violation of the "Terms of Service Agreement" ("TOSA").



Importance of planning for Digital Assets (cont.)

- 30 million Facebook accounts registered to dead users
- \$5 billion worth of Bitcoin outstanding
- Although many digital assets can be monetarily worthless, their emotional value may be invaluable
 - e.g. videos on Instagram, Vine, or Facebook
- Fiduciaries have a duty to protect the estate they have been charged to administer. They need to access accounts to prevent identity theft and fraud
- Individuals are increasingly "going paperless," and it may be impossible to locate all accounts / liabilities without access to decedent's email.
- Finally, access to decedent's digital content may provide answers surrounding decedent's death. See case of Eric Rash 17 year old VA boy that committed suicide.



Digital Assets: Defined

 Revised Uniform Fiduciary Access to Digital Assets Act ("RUFADAA") definition:

 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.

• "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.



Examples of Digital Assets:

I. Bitcoin, Facebook (and other social media), online or internet-online banking accounts, software and saved data in the software, information stored on hard drives or other physical storage devices including servers, email, online brokerage accounts (e.g. TD Ameritrade), domain names, iTunes, etc.

II. Virtual "Worlds" or presence in virtual worlds. E.g. sales of accounts in "World of Warcraft." See www.vbarrack.com for purchasing Elf Hunters, Troll Shamens, or Worgen Druids, which can be bought for \$220-\$500. See also sale of Club Neverdie on EntropiaPlanets.com

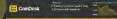


facebook









Sale of World of Warcraft Avatars

Warcraft Account

There are 96 available





BUY WOW CHARACTER

SEARGH

Character Details



Level 100 Female Night Elf Hunter

13 ILevel 670 HC Raid Epics Avg Item Level 673



Rating

Class/Race

Night Elf

Hunter

Regular Price

USD \$699.00

Price

On Sale For

USD\$499.00



100

Level 100 Male Troll Shaman

12 ILevel 655 Raid Epics Avg Item Level 661

MORE





Troll Shaman

Regular Price usp \$599.00

On Sale For

USD\$379.00





Level 100 Male Troll Druid

14 ILevel 655+ Raid Epics

PREMADE ACCOUNT

Troll

Regular Price USD \$599.00 Search keywords: == Select a Race == . == Select a Class == . == Select a Level == . == Select a Gender == == Select a Faction == == VBarrack™ Rating == ▼ == Price Range == == Talents == . == Profession == . == Category == .

Transfer Only



Club Neverdie



Sold for \$635,000 in 2010. The owner also charged entry fees to "club neverdie" for 5 years prior to the sale.



Bitcoin / Virtual Currency





The Terms of Service Agreements ("TOSAs")

- TOSAs are the agreements that most people don't read, but agree to when opening online accounts of every kind.
- The agreement is between the account holder and the custodian (business providing the account, e.g. Yahoo!, Google, Facebook, etc.)
- The TOSA governs the terms of the account and the relationship between the user and provider of the service.
- Can make planning for digital assets difficult because TOSAs typically restrict account holders from transferring their accounts.



Examples of TOSAs

- Yahoo! specifically forbids transfer of an account in its TOSA. So, upon the user's death, Yahoo! will not provide passwords or fiduciary access to the decedent's accounts. Yahoo! does have a process in place to allow the user's family to close accounts and have contents deleted.
- Facebook recently amended its TOSA to allow account holders to designate a legacy user to log into the decedent's account and close the account.
- iTunes does not allow for the transfer of the license to its products / music. The terms read:
 - Scope of License: This license granted to you for the Licensed Application by Licensor is limited to a nontransferable license to use the Licensed Application on any Apple-branded products running iOs ... You may not rent, lease, lend, sell, transfer, redistribute, or sublicense the Licensed Application and, if you sell your Mac Computer or iOS Device to a third party, you must remove the Licensed Application from the Mac Computer or iOS Device before doing so.



TOSA Examples Cont. - Google

Google allows users to set a time period of "inactivity" that triggers a Google response. Google will delete the account after the provided time period, but will alert the account holder via text and email before doing so. Google allows the user to designate up to 10 beneficiaries that are then given the opportunity to download the original user's content (gmail, photos, videos, etc.)



Current Law Governing Digital Assets



* See uniformlaws.org



Digital Assets Fourth Amendment Prevents government from searching homes without probable cause and a search warrant Federal Stored Communications Law Act (SCA) 18 U.S.C. Sec. 2701-2711 Prohibits disclosure of content of communications Computer Fraud and Abuse Act (CFAA) Criminalizes or creates civil liability for unauthorized access of computer hardware and devices and stored data Computer Tampering 720 ILCS 5/17-51 et seq. Class B misdemeanor, Class A misdemeanor or Illinois Class A felony Law **Revised Uniform Fiduciary Access to** Digital Assets Act (UFADAA) Public Act 099-0775



The Stored Communications Act ("SCA")

- The Fourth Amendment generally protects an individual's right to privacy. The government cannot, for example, search a person or their home without probable cause and/or a search warrant.
- Since, however, a computer network is not physically located in our home, legislation was needed to protect internet privacy.
- In response, Congress enacted the SCA (Title II of the Electronic Communications Privacy Act of 1986 (EPCA)) which prevents unlawful access to stored communications (Section 2701) and prevents providers of public communications from disclosing the contents of the communication (Section 2702).





SCA (Continued)

Section 2701 - Provides criminal penalties for anyone who "intentionally accesses without authorization a facility through which an electronic communication service is provided or...intentionally exceeds an authorization to access that facility..."

Section 2702 - Prohibits persons or entities providing "electronic communications services" and "remote computing services" from disclosing the contents of a communication while in electronic storage, unless they have "lawful consent" of "the originator" or an addressee or intended recipient of the communication or the subscriber.



SCA

SCA Continued

The SCA also provides a private right of action for violation of its provisions under Section 2707.

See Cheng v. Romo, No. 11-cv-10007-DJC, 2013 WL 2245312 (D. Mass.). In that case, two physician-partners previously shared an email password so they could read patient consultations. After the Defendant left the practice, she accessed the email account to obtain business information in an ongoing business dispute. The plaintiff sued under the SCA, alleging that the use of the email account was unauthorized. The court agreed, awarding \$450,000 to the plaintiff, despite little evidence on the calculation of damages.

See also *Robbins v. Lower Merion School District* where plantiffs charged two suburban Philadelphia high schools with secretly spying on students through webcams in schoolissued laptops. The schools admitted to secretly snapping over 66,000 webshots.



SCA (Cont.)

*Final note on the SCA: similar to a phone call, account providers may disclose records of the communications, such as date, time, IP address, user's name, etc. (the catalogue of electronic communications) to anyone other than a governmental entity.

It is the **content of the communication** that is protected.



Digital Assets Fourth Amendment Prevents government from searching homes without probable cause and a search warrant Federal Stored Communications Law Act (SCA) 18 U.S.C. Sec. 2701-2711 Prohibits disclosure of content of communications Computer Fraud and Abuse Act (CFAA) Criminalizes or creates civil liability for unauthorized access of computer hardware and devices and stored data Computer Tampering 720 ILCS 5/17-51 et seq. Class B misdemeanor, Class A misdemeanor or Illinois Class A felony Law Revised Uniform Fiduciary Access to Digital Assets Act (UFADAA) Public Act 099-0775

Computer Fraud and Abuse Act ("CFAA")

- Congress enacted the CFAA as an amendment to existing computer fraud law to clarify and increase its scope.
- Each state has adopted an analogous law. The federal and state CFAAs criminalize and create the right to maintain a civil action for the unauthorized access of a computer or stored data on the computer.
 - (a) Whoever ... (2) intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains ... (c) information from any protected computer if the conduct involved an interstate or foreign communication ... shall be punished ... 18 USC 1030(a)(2)(C)
- The CFA implicates basically all web traffic as simply loading a page typically involves a computer accessing an out-ofstate server, thereby triggering its use in "interstate commerce." Further, loading a web page is considered accessing information.

CFAA (Cont.)

- Importantly, the term "exceeds authorized access" is defined:
 - To access a computer with authorization and to use such access to obtain or alter information in the computer that the access is not entitled so to obtain or alter. 18 USC 1030(e)(6)
- Why is this important? Because a violation of the TOSA likely leads to a violation of the CFAA (and the SCA). TOSAs typically prevent a second user or assignment of the account. So, a fiduciary accessing the account would violate the TOSA, and thus be "unauthorized" to access the account, in turn violating the CFAA.
- Most people don't even realize what is in a TOSA, as they simply click through them to access the account. For example, gmail's terms do not address what happens to the account upon the user's death.



CFAA Cases (Cont.)

Aaron Swartz Case:

- Mr. Swartz was a computer "hacktivist" and co-founder of the popular internet social media and news website, Reddit.
- Mr. Swartz was prosecuted under the CFAA for illegally downloading 4.8 millions articles from JSTOR, an online library.
- While under federal indictment for downloading the articles, Mr. Swartz committed suicide, a result the family blamed on overzealous prosecutors' use of the CFAA.

CFAA Cases (Cont.)

Megan Meier Case:

- In 2006 a 14 year old girl hanged herself after being bullied by a fictitious online boyfriend.
- Megan had been conversing on MySpace with a boy she believed to be named "Josh". In fact, Josh was Lori Drew and her daughter, a former friend of Megan's.
- Initially "Josh" was nice to Megan. His communications, however, became increasingly dark and cruel. Eventually "Josh" told Megan that the world would be a better place without her.
- After her death, Megan's parents were alerted that Josh did not exist.
- Ms. Drew was indicted under the CFAA, because she exceeded the scope of MySpace's TOSA.
- The judge, however, concluded that a violation of a TOSA, by itself, did not constitute a misdemeanor violation of the CFAA.



CFAA Cases (Cont.)

The sometimes conflicting use of the CFAA leaves the scope of the CFAA unclear, which provides uncertainty when planning. Planners do not know if the CFAA will be used against the fiduciaries, or whether the Federal (or State) government will pursue charges.



or resided in IL at the user's death.

loal of the act is to remove barriers to a

lociary's access to electronic records while not

ecting other, existing laws.

REVISED UFADAA

Illinois HB 4648
Public Act 099-0775
Effective August 12, 2016
755 ILCS 70/1 et seq.

Illinois HB 0621

Trustee

in electronic communication. Access in the trustee is the original user. Access itted if the trust includes consent to it the contents of electronic trust to the trustee.

al Assets. Access is permitted unler to the user, the trust or court.



PURPOSE

Revised Uniform Fiduciary Access to Digital Assets Act (UFADAA):

- Vest fiduciaries with the authority to access, control, or copy digital assets and accounts while protecting the privacy and intent of the account holder
- Act applies only to fiduciaries (not family members or other non-fiduciaries) and the act specifically does not apply to a fiduciary's access to an employer's internal email system.
- Act applies to a custodian if the user resides in IL or resided in IL at the user's death.
- Goal of the act is to remove barriers to a fiduciary's access to electronic records while not affecting other, existing laws .



USER DIRECTION: afformation af

- Goal of the fiduciary's acaffecting other

(a) Online Tool

- To disclose or not disclose content
- Overrides contrary direction in a will, trust, power of attorney or other record

(b) No Online Tool

- User may allow or prohibit in a will, trust, power of attorney or other record disclosure to a fiduciary content
- (c) Direction under (a) or (b) overrides TOSA. If a user provides **no direction**, **the terms-of-service control**, or other law controls if the terms-of-service are silent on fiduciary access.



Fiduciaries Protected Under UFADAA



Disclosure of Content of Electronic Communications of Deceased User

Consent By Decedent or Court Directs Disclosure:

- (1) Written Request
- (2) Certified Death Certificate
- (3) Certified Letters of Appointment of Representative or Court Order
- (4) If consent not in online tool, a copy of will, trust power of attorney or other *record of consent*
- (5) Custodian May Request:
 - Identification of User's information
 - Evidence linking account to User
 - Court finding that:
 - User had account with custodian
 - Disclosure would not violate SCA or other act
 - User consented to disclosure; or
 - Disclosure is permitted under this act and reasonably necessary for administration of the estate.



Disclosure of Other Digital Assets of Deceased User

- Unless prohibited by user, custodian shall disclose the catalogue of electronic communications sent or received by the user and digital assets (other than content) if representative provides:
 - (1) written request
 - (2) certified death certificate
 - (3) certified letter of appointment of the representative or court order; and
 - (4) if requested by custodian
 - User information
 - evidence linking the account to the user
 - affidavit stating disclosure is reasonably necessary for administration of the estate; or
 - a finding by the court that the user had an account with the custodian or disclosure of digital assets is reasonably necessary for administration of the estate



Agents Acting Pursuant to a Power of Attorney

- 1) To the extent a power of attorney **expressly grants an agent authority over the content** of an electronic communication or digital asset of the principal, the agent has the right to access the **content** of an electronic communication or the digital asset.
- 2) Unless otherwise ordered by the court, directed by the principal or provided by a power of attorney, an agent has the right to access the catalogue of electronic communications in which the principal has a right or interest.
 - *Note that an agent's access to content or digital assets requires specific authority in the power of attorney. No specific authority is required for access to the catalogue of electronic communications.



Trustee

Content of an electronic communication. Access is permitted if the trustee is the original user. Access is also permitted if the trust includes consent to disclosure of the contents of electronic communications to the trustee.

Other Digital Assets. Access is permitted unless prohibited by the user, the trust or court.



Conservators/ Guardians for Protected Persons

The **court**, after an opportunity for hearing under Illinois Guardianship law, **may grant a Guardian the right to access the ward's digital assets**.

A custodian need not disclose the content of an electronic communication without the express consent of the ward, but may suspend or terminate an account for good cause.



UFADAA Procedure for Disclosure

The custodian may at its sole discretion:

- 1. grant the fiduciary full access to the user's account;
- 2. grant the fiduciary partial access to the user's account sufficient to perform the tasks charged; or
- 3. provide the fiduciary with a digital or paper copy of any digital asset.

Custodian shall comply within 60 days after receipt of the request. Also provides immunity to the custodian for acts or omission in good faith.



Amendment to Illinois Criminal Code

720 ILCS 5/17-51 and 54
(a-10) Accessing a computer network is deemed to be with the authorization of a computer's owner if: ... (3) The person accesses the computer network in compliance with the Revised Uniform Fiduciary Access to Digital Assets Act (2015).



PLANNING FOR DIGITAL ASSETS



Poze

access to ac specifically "Non-Legal" Planning



Dealing with the TOSAs

*Remember that the account custodians will attempt to rely on the TOSAs, not the estate planning documents, when it comes to fiduciary requests.

Step 1: Make sure clients are aware of the problems that digital assets may pose. Some digital assets may have monetary value, others may not. E.g. manuscript saved on encrypted hard drive vs. digital photos from vacation.



Non-Legal Planning - Dealing with TOSAs (Cont.)

Step 2: Inventory digital assets.

- Encourage the client to inventory their online accounts and keep record of those assets, including passwords and usernames. *See Handout*.
- Account for valuable digital assets and make a plan for them. E.g. Bitcoin.
 - Make separate Bitcoin account for bulk of Bitcoin assets and keep the private key in a safe deposit box, with the attorney, or on a flash drive that will not be lost or damaged "Cold storage".
 - Make absolutely sure that Bitcoin private keys are not lost.
- Consider downloading a password memorization program such as Passwordbox.com, an online digital asset planning tool, or other companies, e.g., finalroadmap.com, safebeyond or incubate. However, note the risks that these companies may pose. Also note that the onus is on the user to properly update their records.



Non-Legal Planning - Dealing with TOSAs (Cont.)

Step 3: If possible, arrange for access to decedent's email, as his / her inbox may be the best place to inventory accounts. This can be difficult, especially if the decedent does not wish to allow access to potentially private information kept in his / her email.

Additionally, recall that if the custodian of the account's TOSA does not allow access, the subsequent user could run afoul of the CFAA. See Step 4.



Non-Legal Planning - Dealing with TOSAs (Cont.)

Step 4: Designate Legacy Contacts or successor users for services that allow for them.

- Facebook recently (Feb 12, 2015) changed its settings to allow users to designate "Legacy Contacts" who, after the user's death, will be allowed to change the profile picture of the decedent, accept or deny friend requests, download photos and videos, and close the account. The Contact will not be able to view private messages, however. The original user may also simply request that Facebook delete his / her account.
- Update Google settings for "inactivity" so the "beneficiaries" may download content belonging to the decedent.



Security Settings

Login Notifications	Get notified when it looks like someone	else is trying to access your account.	Edi
Login Approvals	Use your phone as an extra layer of security to keep other people from logging into your account.		Edi
Code Generator	Use your Facebook app to get security codes when you need them.		Edi
App Passwords	Use special passwords to log into your apps instead of using your Facebook password or Login Approvals codes.		Edi
Trusted Contacts	Pick friends you can call to help you get back into your account if you get locked out.		Edi
Your Browsers and Apps	Review which browsers you saved as ones you often use.		Edi
Where You're Logged In	Review and manage where you're currently logged into Facebook		Edi
Legacy Contact	My Legacy Contact A legacy contact is someone you choose you pass away. They'll be able to do thin Timeline, respond to new friend requests They won't post as you or see your mess Julianne Zimny Morton	gs like pin a post on your , and update your profile picture	
	Your legacy contact won't be notified until you have the online to send them a message right		



Non-Legal Planning - Dealing with TOSAs (Cont.)

Step 4: Designate Legacy Contacts or successor users for services that allow for them.

- Facebook recently (Feb 12, 2015) changed its settings to allow users to designate "Legacy Contacts" who, after the user's death, will be allowed to change the profile picture of the decedent, accept or deny friend requests, download photos and videos, and close the account. The Contact will not be able to view private messages, however. The original user may also simply request that Facebook delete his / her account.
- Update Google settings for "inactivity" so the "beneficiaries" may download content belonging to the decedent.



Alert me

Provide a mobile phone number to be alerted before any actions will be performed on your account.

You can also add an additional email address.



Add mobile phone number (Required)

Email address jdmorton100@gmail.com

Add email

Timeout period

Set a timeout period for your account. Google will alert you 1 month before this period expires.



Your account will time out if you haven't signed-in to your Google account for:

3 months \$



WILLS

Should the estate plan devise assets via a will rather than a trust, make sure that the fiduciary is expressly granted all powers under state and federal law with regard to digital assets. This is crucial with the Illinois adoption of Revised UFADAA. Obviously, passwords and usernames should not be referenced.



Trust/Will Language

Access to Digital Assets. My executor/ trustee shall have the power to access, handle, distribute, and dispose of the contents of my electronic communications and all of my other digital assets, and the power to obtain, access, modify, delete, and control my passwords and other electronic credentials associated with my digital devices and digital assets. This language is intended to comply with the Illinois Revised Uniform Access to Digital Assets Act 755 ILCS 70/1 et. seq.



Example 1 - Revised UFADAA

Access to Digital Assets by Personal Representative

D dies with a will silent with respect to digital assets. His assets include an online bank account, digital photos in cloud-based storage and an e-mail account.

Bank Account - Executor has authority (digital asset)
Photos - Executor has authority (digital asset)
E-mail - Executor may access the catalogue of communications. Access to the content is permitted if the service provider may disclose the content under the SCA. Executor may also need a court order indicating that disclosure of the content is reasonably necessary for the administration of the estate. Executor may also obtain the bank statements from the bank since the bank is not subject to the SCA.



TRUSTS

- If possible, designate accounts in the name of the trust. E.g. Jon Doe as Trustee of the Jon Doe Trust. This change can be made in account settings.
- This strategy is somewhat exploratory as to whether it would defeat TOSAs limitation on transfer of ownership.
- If effective, it would make access to the account easier as the successor trustee would simply step into the shoes of the previous trustee-account holder.



Example 2 - Revised UFADAA

Access to Digital Assets by Trustee

Jon establishes a trust with ATG Trust Company as Trustee. ATG opens a trust account and only sends electronic statements. Jon also transfers into his trust his online game character and in-game property and his online photo account and his email account (assuming a provider actually allows this).

ATG Trust Company as the original user may access the game character and in-game property, the photo account (all digital assets).

ATG Trust Company may access the catalogue of communications on the e-mail account and the content of those communications if they are the original user. If they are not the original user, the trust must specifically authorize access.



Powers of Attorney: Property

Powers of Attorney that grant fiduciary access to accounts may also work. Our firm specifically provides that agents under powers of attorney are given the power to act with regard to online accounts and digital assets, citing to a few common digital accounts, such as Facebook and Amazon.



(a)To acce not be lim mobile tel which cur the purpo transferri control, ar communilocated, ir digital pho

Power of Attorney Language

(a)To access, use and control my digital devices, including but not be limited to, desktops, laptops, tablets, storage devices, mobile telephones, smartphones, and any similar digital device which currently exists or may exist as technology develops for the purpose of accessing, modifying, deleting, controlling, or transferring my digital assets, and (b) to access, modify, delete, control, and transfer the contents of my electronic communications and all of my other digital assets, wherever located, including but not limited to emails, digital music, digital photographs, digital videos, software licenses, social network accounts, file sharing accounts, financial accounts, banking accounts, utility accounts, domain registrations, web hosting accounts, tax preparation service accounts, online stores, affiliate programs, other online accounts, and similar digital items which currently exist or may exist as technology develops, and (c) to obtain, access, modify, delete and control my passwords and other electronic credentials associated with my digital devices and digital assets described above. This language is intended to comply with the Illinois Revised Uniform Fiduciary Access to Digital Assets Act 755 ILCS 70/1 et seq.



Example 3 - Revised UFADAA

Access to Digital Assets by Agent

Jon creates a POA designating his wife as his agent and expressly granting authority over his digital assets, including the content of electronic communications.

Jon has an online bank account, an internet account, a game character and in-game property as part of the game, and has an e-mail account.

Jon's wife will have access to Jon's digital assets so that the bank, photo account and online game must give her access when the request is made to the password protected accounts.

Jon's wife will also have access to both the catalogue and the contents of his e-mail communications.



Conclusion

- 1) Recognize Digital Assets and Issues;
- 2) Understand Terms of Service Agreements and pitfalls;
- 3) Talk to your clients about planning for digital assets;
- 4) "Opt-in" to Revised UFADAA Provisions in your estate planning documents.





Information maintained by the Legislative Reference Bureau

Updating the database of the Illinois Compiled Statutes (ILCS) is an ongoing process. Recent laws may not yet be included in the ILCS database, but they are found on this site as Public Acts soon after they become law. For information concerning the relationship between statutes and Public Acts, refer to the Guide.

Because the statute database is maintained primarily for legislative drafting purposes, statutory changes are sometimes included in the statute database before they take effect. If the source note at the end of a Section of the statutes includes a Public Act that has not yet taken effect, the version of the law that is currently in effect may have already been removed from the database and you should refer to that Public Act to see the changes made to the current law.

ESTATES

(755 ILCS 70/) Revised Uniform Fiduciary Access to Digital Assets Act (2015).

(755 ILCS 70/1)

Sec. 1. Short title. This Act may be cited as the Revised Uniform Fiduciary Access to Digital Assets Act (2015). (Source: P.A. 99-775, eff. 8-12-16.)

(755 ILCS 70/2)

Sec. 2. Definitions. In this Act:

- (1) "Account" means an arrangement under a terms-ofservice agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset 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 an electronic communication.
- (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) "Guardian" means a person appointed by a court to manage the estate of a living individual. The term includes a standby or temporary guardian.
- (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 remotecomputing service to the public; and
 - (C) is not readily accessible to the public.
 - (7) "Court" means a court of competent jurisdiction.
- (8) "Custodian" means a person that carries, maintains, processes, receives, or stores a digital asset of a user.
- (9) "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.
- (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 meaning set forth 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, guardian, 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 a user in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure 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) "Person with a disability" means an individual for whom a guardian has been appointed. The term includes an individual for whom an application for the appointment of a guardian 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 under 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.

(Source: P.A. 99-775, eff. 8-12-16.)

(755 ILCS 70/3)

Sec. 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 guardianship proceeding commenced before, on, or after the effective date of this Act; and
- (4) a trustee acting under a trust created before, on, or after the effective date of this Act.

- (b) This Act applies to a custodian if the user resides in this state or resided in this state at the time of the user's death.
- (c) 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.

(Source: P.A. 99-775, eff. 8-12-16.)

(755 ILCS 70/4)

Sec. 4. User direction for disclosure of digital assets.

- (a) A user may use an online tool to direct the custodian to disclose to a designated recipient or not to disclose some or all of the user's digital assets, including the content 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 overrides 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) or if the custodian has not provided an online tool, the 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.
- (c) A user's direction under subsection (a) or (b) overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service. (Source: P.A. 99-775, eff. 8-12-16.)

(755 ILCS 70/5)

Sec. 5. Terms-of-service agreement.

- (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 the user.
- (b) This Act does not give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.
- (c) A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under Section 4.

(Source: P.A. 99-775, eff. 8-12-16.)

(755 ILCS 70/6)

Sec. 6. Procedure for disclosing digital assets.

- (a) When disclosing digital assets of a user under this \mbox{Act} , the custodian may at its sole discretion:
 - (1) grant a fiduciary or designated recipient full access to the user's account;
 - (2) grant a 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 a fiduciary or designated recipient a copy in a record 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 under this $\operatorname{Act.}$
- (c) A custodian need not disclose under this $\mbox{Act a digital}$ asset deleted by a user.
- (d) If a user directs or a fiduciary requests a custodian to disclose under this Act 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 believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:
 - (1) a subset limited by date of the user's digital assets;
 - (2) all of the user's digital assets to the fiduciary or designated recipient;
 - (3) none of the user's digital assets; or
 - (4) all of the user's digital assets to the court for review in camera.

(Source: P.A. 99-775, eff. 8-12-16.)

(755 ILCS 70/7)

- Sec. 7. Disclosure of content of electronic communications of deceased user. If a deceased user consented or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives 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 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 content of electronic communications; and
 - (5) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
 - (B) evidence linking the account to the user; or
 - (C) a finding by the court that:
 - (i) the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A);
 - (ii) disclosure of the content of electronic communications of the user would not violate 18 U.S.C. Section 2701 et seq., as amended, 47 U.S.C. Section 222, as amended, or other applicable law;
 - (iii) unless the user provided direction
 using an online tool, the user consented to
 disclosure of the content of electronic
 communications; or
 - (iv) disclosure of the content of electronic

communications of the user is permitted under this Act and reasonably necessary for administration of the estate.

(Source: P.A. 99-775, eff. 8-12-16.)

(755 ILCS 70/8)

- Sec. 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, other than the content of electronic communications, of the user, if the representative gives 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 court order; and
 - (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier 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 administration of the estate; or
 - (D) a finding by the court that:
 - (i) the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A); or
 - (ii) disclosure of the user's digital assets is permitted under this Act and reasonably necessary for administration of the estate.

(Source: P.A. 99-775, eff. 8-12-16.)

(755 ILCS 70/9)

- Sec. 9. Disclosure of content of electronic communications of principal. To the extent a power of attorney expressly grants an agent authority over the content 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 if the agent gives 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 content of electronic communications 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, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or
 - (B) evidence linking the account to the principal.

(755 ILCS 70/10)

- Sec. 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 digital assets, other than the content of electronic communications, of the principal if the agent gives 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 specific authority over digital assets or 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, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or
- (B) evidence linking the account to the principal. (Source: P.A. 99-775, eff. 8-12-16.)

(755 ILCS 70/11)

Sec. 11. Disclosure of digital assets held in trust when trustee is 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 of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

(Source: P.A. 99-775, eff. 8-12-16.)

(755 ILCS 70/12)

Sec. 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 of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the trust instrument that includes consent to disclosure of the content of electronic communications to the trustee;
- (3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and
 - (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or
 - (B) evidence linking the account to the trust.

(755 ILCS 70/13)

- Sec. 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 of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:
 - (1) a written request for disclosure in physical or electronic form;
 - (2) a certified copy of the trust instrument;
 - (3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and
 - (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or
- (B) evidence linking the account to the trust. (Source: P.A. 99-775, eff. 8-12-16.)

(755 ILCS 70/14)

- Sec. 14. Disclosure of contents of electronic communications and digital assets to guardian of person with a disability.
- (a) After an opportunity for a hearing under Article XIa of the Probate Act of 1975, the court may direct the disclosure of the digital assets of a person with a disability to his or her guardian.
- (b) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a guardian the catalogue of electronic communications sent or received by a person with a disability and any digital assets, other than the content of electronic communications, in which the person with a disability has a right or interest if the guardian gives the custodian:
 - (1) a written request for disclosure in physical or electronic form;
 - (2) a certified copy of the court order that gives the guardian authority over the digital assets of the person with a disability; and
 - (3) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the person with a disability; or
 - (B) evidence linking the account to the person with a disability.
- (c) A guardian with general authority to manage the assets of a person with a disability may request a custodian of the digital assets of the person with a disability to suspend or terminate an account of the person with a disability for good cause. A request made under this Section must be accompanied by a certified copy of the court order giving the guardian authority over the protected person's property.

(755 ILCS 70/15)

Sec. 15. Fiduciary duty and authority.

- (a) (Blank).
- (b) A fiduciary's or designated recipient's authority with respect to a digital asset of a user:
 - (1) except as otherwise provided in Section 4, is subject to the applicable terms of service;
 - (2) is subject to other applicable law, including copyright law;
 - (3) in the case of a fiduciary, is limited by the scope of the fiduciary's duties under Illinois law; and
 - (4) may not be used to impersonate the user.
- (c) A fiduciary with authority over the property of a decedent, person with a disability, principal, or settlor has the right to access any digital asset in which the decedent, person with a disability, 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, person with a disability, principal, or settlor for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including Subdivision 30 of Article 17 of the Criminal Code of 2012, and may challenge the validity of an online tool in court when requesting an order directing compliance with this Act.
- (e) A fiduciary with authority over the tangible, personal property of a decedent, person with a disability, 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 the purpose of computer-fraud and unauthorized-computer-access laws, including Subdivision 30 of Article 17 of the Criminal Code of 2012.
- (f) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.
- (g) A fiduciary of a user may request a custodian to terminate the user's account. A request for 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, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
 - (B) evidence linking the account to the user; or
 - (C) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A).

(755 ILCS 70/16)

Sec. 16. Custodian compliance and immunity.

- (a) Not later than 60 days after receipt of the information required under Sections 7 through 15, a custodian shall comply with a request under this Act from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.
- (b) An order under subsection (a) directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. Section 2702, as amended.
- (c) A custodian may notify the user that a request for disclosure or to terminate an account was made under this Act.
- (d) A custodian may deny a request under this Act from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account 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 require a fiduciary or designated recipient requesting disclosure or termination under this Act to obtain a court order which:
 - (1) specifies that an account belongs to the person with a disability or principal;
 - (2) specifies that there is sufficient consent from the person with a disability or principal to support the requested disclosure; and
 - (3) contains a finding required by law other than this Act.
- (f) A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith, except for willful and wanton misconduct, in compliance with this Act.

(Source: P.A. 99-775, eff. 8-12-16.)

(755 ILCS 70/17)

Sec. 17. (Blank).

(Source: P.A. 99-775, eff. 8-12-16.)

(755 ILCS 70/18)

Sec. 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).

(Source: P.A. 99-775, eff. 8-12-16.)

(755 ILCS 70/19)

Sec. 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.

(755 ILCS 70/20)

Sec. 20. (Amendatory provisions; text omitted). (Source: P.A. 99-775, eff. 8-12-16; text omitted.)

(755 ILCS 70/21)

Sec. 21. Effective date. This Act takes effect upon

becoming law.



100TH GENERAL ASSEMBLY State of Illinois 2017 and 2018 HB0621

by Rep. Emanuel Chris Welch

SYNOPSIS AS INTRODUCED:

755 ILCS 70/7 755 ILCS 70/14

Amends the Revised Uniform Fiduciary Access to Digital Assets Act (2015). Deletes language requiring a representative of a decedent to provide a custodian with a finding by the court that disclosure of the content of electronic communications of the user would not violate 18 U.S.C. Section 2701 et seq., as amended, 47 U.S.C. Section 222, as amended, or other applicable law. Provides that a custodian shall disclose digital assets to the guardian of a person with a disability if the guardian gives the custodian specified documentation. Makes other changes. Effective immediately.

LRB100 00325 HEP 10329 b

1 AN ACT concerning civil law.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

- Section 5. The Revised Uniform Fiduciary Access to Digital
 Assets Act (2015) is amended by changing Sections 7 and 14 as
 follows:
- 7 (755 ILCS 70/7)
- Sec. 7. Disclosure of content of electronic communications 8 of deceased user. If a deceased user consented or a court disclosure of of 10 the contents communications of the user, the custodian shall disclose to the 11 personal representative of the estate of the user the content 12 of an electronic communication sent or received by the user if 13 14 the representative gives the custodian:
- 15 (1) a written request for disclosure in physical or electronic form;
- 17 (2) a certified copy of the death certificate of the user;
- 19 (3) a certified copy of the letter of appointment of 20 the representative or a court order;
- 21 (4) unless the user provided direction using an online 22 tool, a copy of the user's will, trust, power of attorney, 23 or other record evidencing the user's consent to disclosure

1	of the content of electronic communications; and
2	(5) if requested by the custodian:
3	(A) a number, username, address, or other unique
4	subscriber or account identifier assigned by the
5	custodian to identify the user's account;
6	(B) evidence linking the account to the user; or
7	(C) a finding by the court that:
8	(i) the user had a specific account with the
9	custodian, identifiable by the information
10	specified in subparagraph (A);
11	(ii) (blank) disclosure of the content of
12	electronic communications of the user would not
13	violate 18 U.S.C. Section 2701 et seq., as amended,
14	47 U.S.C. Section 222, as amended, or other
15	applicable law;
16	(iii) unless the user provided direction using
17	an online tool, the user consented to disclosure of
18	the content of electronic communications; or
19	(iv) disclosure of the content of electronic
20	communications of the user is permitted under this
21	Act and reasonably necessary for administration of
22	the estate.
23	(Source: P.A. 99-775, eff. 8-12-16.)
24	(755 ILCS 70/14)
25	Sec. 14. Disclosure of contents of electronic

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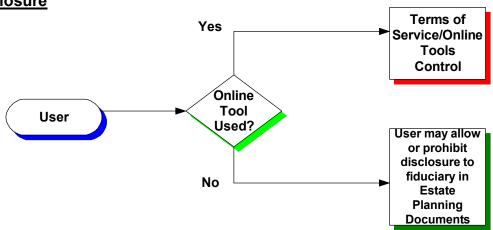
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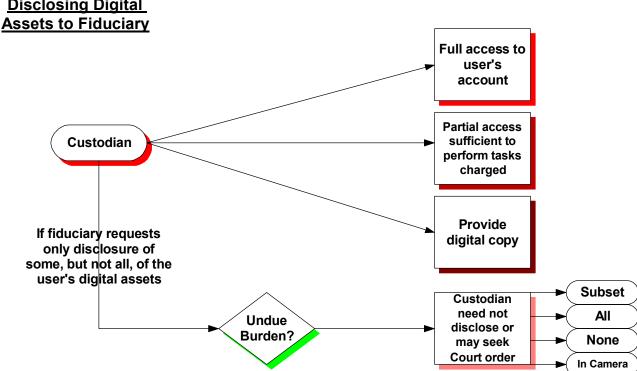
- communications and digital assets to quardian of person with a 1 2 disability.
 - (a) After an opportunity for a hearing under Article XIa of the Probate Act of 1975, the court may direct the disclosure of the digital assets of a person with a disability to his or her quardian. A custodian shall make such a disclosure if the quardian gives the custodian:
- 8 (1) a written request for disclosure in physical or 9 electronic form;
 - (2) a certified copy of the court order directing disclosure of such assets; and
 - (3) if requested by the custodian:
- 13 (A) a number, username, address, or other unique subscriber or account identifier assigned by the 14 custodian to identify the account of the person with a 15 16 disability; or
- 17 (B) evidence linking the account to the person with 18 a disability.
 - (b) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a quardian the catalogue of electronic communications sent or received by a person with a disability and any digital assets, other than the content of electronic communications, in which the person with a disability has a right or interest if the guardian gives the custodian:
 - (1) a written request for disclosure in physical or

- 1 electronic form;
- 2 (2) a certified copy of the court order that gives the 3 guardian authority over the digital assets of the person 4 with a disability; and
 - (3) if requested by the custodian:
- 6 (A) a number, username, address, or other unique
 7 subscriber or account identifier assigned by the
 8 custodian to identify the account of the person with a
 9 disability; or
- 10 (B) evidence linking the account to the person with a disability.
- 12 (c) A guardian with general authority to manage the assets 13 of a person with a disability may request a custodian of the 14 digital assets of the person with a disability to suspend or 15 terminate an account of the person with a disability for good 16 cause. A request made under this Section must be accompanied by 17 a certified copy of the court order giving the guardian 18 authority over the protected person's property of the person with a <u>disability</u>. 19
- 20 (Source: P.A. 99-775, eff. 8-12-16.)
- 21 Section 99. Effective date. This Act takes effect upon 22 becoming law.

User Direction for Disclosure

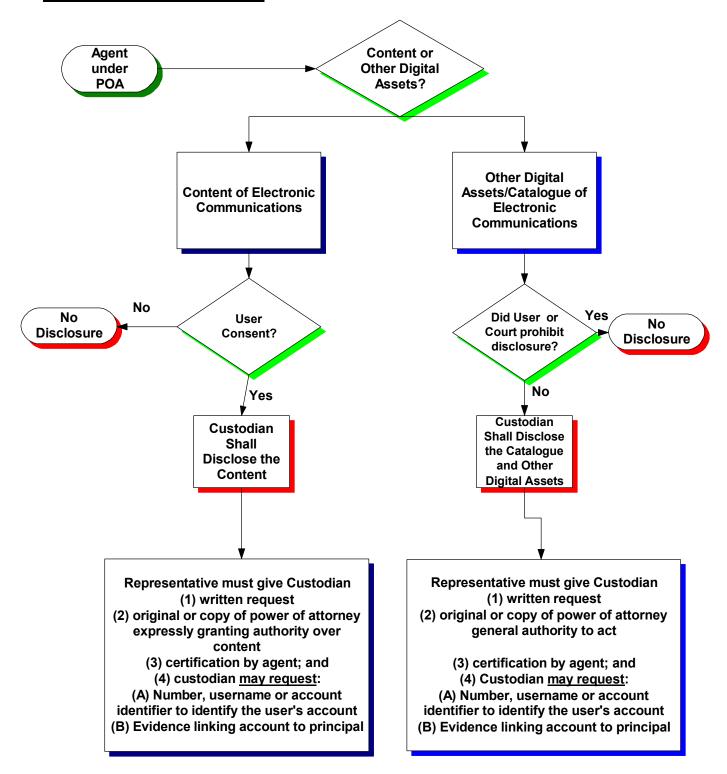


Procedure for Disclosing Digital

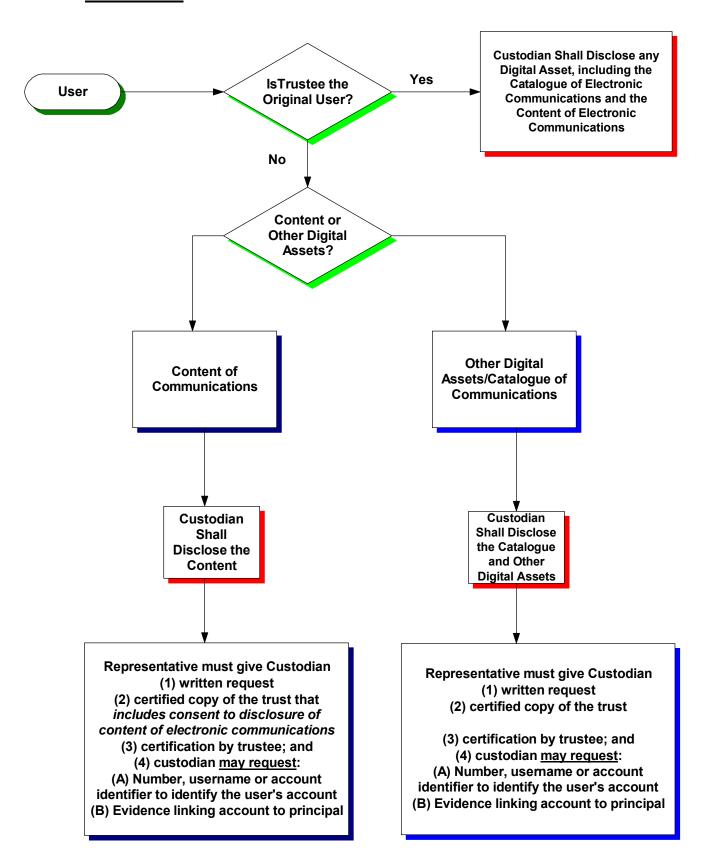


Disclosure of Electronic Communications of Deceased User Content or Deceased Other Digital User Assets? Other Digital Content of Electronic Assets/Catalogue of Electronic Communications Communications User Consented or No Did User or **Disclosure Court Directs** Court prohibit Disclosure? disclosure? Custodian Custodian Shall Disclose Shall the Catalogue Disclose the and Other Content **Digital Assets** Representative must give Custodian Representative must give Custodian (1) written request (1) written request (2) certified copy of death certificate (2) certified copy of death certificate (3) certified copy of the letters of office (3) certified copy of the letters of office or court order or court order (4) Unless online tool used, copy of user's will, trust, power of attorney or other record evidencing user's consent and **Custodian may also request:** Custodian may also request: (A) Number, username or account (A) Number, username or account identifier to identify the user's account identifier to identify the user's account (B) Evidence linking account to user (B) Evidence linking account to user (C) Finding by Court: (C) affidavit that disclosure is (i) User had specific account reasonably necessary for administration (ii) disclosure would not violate the SCA of the estate; or or privacy laws (D) Finding by Court: (iii) unless online tool used, user (i) user had specific account consented (ii) disclosure permitted under this act (iv) disclosure permitted under this act and reasonably necessary for and reasonably necessary for administration of the estate administration of the estate

<u>Disclosure of Electronic</u> <u>Communications of Principal</u>



<u>Disclosure of Digital Assets</u> <u>Held in Trust</u>



Disclosure of Electronic Communications and Digital Assets to **Guardian of Person with a Disability** After Guardian **Opportunity for** Court Hearing Other Digital Assets/Catalogue of **Content of Electronic** Electronic **Communications Communications** Did User or Court prohibit disclosure? Yes No **Disclosure** No Custodian **Shall Disclose** the Catalogue and Other **Digital Assets** Representative must give Custodian (1) written request (2) certified copy of court order that gives the guardian authority over the digital assets; and (4) Custodian may request: (A) Number, username or account identifier to identify the user's account (B) Evidence linking account to principal A guardian with general authority to manage the assets of a disabled person may request a custodian of the digital assets to suspend or terminate an account for good cause.