

Uniform Fiduciary Access to Digital Assets Act

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On July 16, 2014 the Uniform Law Commission passed the Uniform Fiduciary Access to Digital Assets Act. The Uniform Law Commission “provides states with non-partisan, well drafted legislation that helps bring clarity and stability to critical areas of state law.” The ULC is made up of lawyers, judges, legislators and law professors whom are appointed by state governments. The ULC strives to “draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.” The ULC membership works together to draft proposed legislation and once published the proposed legislation is then available to the states for adoption. States then have the ability to work with their state governments to adopt these proposals into law.

The goal of this Act is to provide fiduciaries with access, control or the ability to copy and obtain the digital assets of living, incapacitated or deceased individuals. The Act covers executors, conservators, agents with power of attorney and trustees. In order to take advantage of the Act individuals must grant authorization in their estate planning documents to those whom they wish to have access to their accounts. Therefore, planners should work to update the language of estate documents by appointing a fiduciary for digital accounts and granting that fiduciary authorization to access their accounts in conformity with the Act.

This law helps fiduciaries avoid the traditional obstacles that prevented them from accessing these accounts and assets. For example, the Federal Computer Fraud and Abuse Act and the Stored Communications Act in some circumstances criminalized access by fiduciaries to accounts or other digital assets, even when granted access by will or other document (which in most circumstances would be legally binding). In addition to the federal laws, the laws of each

state and the user agreements with each electronic service provider can vary greatly. For example, Facebook allows for the removal or memorialization of the page of a deceased individual, but no access. Twitter will deactivate the account with proper documentation, but will not provide access. Google and Outlook.com on the other hand provide access to the content in the account when documentation such as a death certificate is provided.

This proposal will simplify the task of the fiduciary by providing them access to the digital accounts and assets of an individual on a uniform basis. Individuals still need to make known the accounts/assets they control. Therefore planners should work with their clients to create a log of digital assets they own and or control. This list should include usernames, passwords and links to the website logins if applicable. We recommended that planners consider a password vault or other storage system for the safekeeping and protection of the username and password log.

This Act if adopted by states around the country will help create clarity, and consistency in the new area of digital asset estate management. Currently less than fifteen states have laws regarding digital assets, and the depth and power of the laws vary greatly. Please check back to this site frequently for updates and legislative developments.