

7604--A

Cal. No. 1132

I N S E N A T E

May 11, 2016

Introduced by Sen. BONACIC -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report

AN ACT to amend the estates, powers and trusts law, in relation to the administration of digital assets

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The estates, powers and trusts law is amended by adding a
2 new article 13-A to read as follows:

3 ARTICLE 13-A

4 ADMINISTRATION OF DIGITAL ASSETS

5 SUMMARY OF ARTICLE

6 PART 1. DEFINITIONS

7 SECTION 13-A-1 DEFINITIONS.

8 PART 2. APPLICABILITY, PROCEDURE FOR DISCLOSURE, USER DIRECTIONS

9 SECTION 13-A-2.1 APPLICABILITY.

10 13-A-2.2 USER DIRECTION FOR DISCLOSURE OF DIGITAL ASSETS.

11 13-A-2.3 TERMS-OF-SERVICE AGREEMENT.

12 13-A-2.4 PROCEDURE FOR DISCLOSING DIGITAL ASSETS.

13 PART 3. DISCLOSURE OF DIGITAL ASSETS TO FIDUCIARY

14 SECTION 13-A-3.1 DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF
15 DECEASED USER.

16 13-A-3.2 DISCLOSURE OF OTHER DIGITAL ASSETS OF DECEASED USER.

17 13-A-3.3 DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF
18 PRINCIPAL.

19 13-A-3.4 DISCLOSURE OF OTHER DIGITAL ASSETS OF PRINCIPAL.

20 13-A-3.5 DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE
21 IS ORIGINAL USER.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD14544-03-6

1 13-A-3.6 DISCLOSURE OF CONTENTS OF ELECTRONIC COMMUNICATIONS
2 HELD IN TRUST WHEN TRUSTEE NOT ORIGINAL USER.

3 13-A-3.7 DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN TRUST WHEN
4 TRUSTEE NOT ORIGINAL USER.

5 13-A-3.8 DISCLOSURE OF DIGITAL ASSETS TO GUARDIAN OF WARD.

6 PART 4. FIDUCIARY DUTY AND AUTHORITY, COMPLIANCE AND IMMUNITY

7 SECTION 13-A-4.1 FIDUCIARY DUTY AND AUTHORITY.

8 13-A-4.2 CUSTODIAN COMPLIANCE AND IMMUNITY.

9 PART 5. MISCELLANEOUS PROVISIONS

10 SECTION 13-A-5.1 RELATION TO ELECTRONIC SIGNATURE IN GLOBAL AND NATIONAL
11 COMMERCE ACT.

12 13-A-5.2 SEVERABILITY.

13 PART 1. DEFINITIONS

14 S 13-A-1 DEFINITIONS

15 IN THIS ARTICLE THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

16 (A) "ACCOUNT" MEANS AN ARRANGEMENT UNDER A TERMS-OF-SERVICE AGREEMENT
17 IN WHICH A CUSTODIAN CARRIES, MAINTAINS, PROCESSES, RECEIVES, OR STORES
18 A DIGITAL ASSET OF THE USER OR PROVIDES GOODS OR SERVICES TO THE USER.

19 (B) "AGENT" MEANS A PERSON GRANTED AUTHORITY TO ACT AS
20 ATTORNEY-IN-FACT FOR THE PRINCIPAL UNDER A POWER OF ATTORNEY AND
21 INCLUDES THE ORIGINAL AGENT OR ANY CO-AGENT OR SUCCESSOR AGENT.

22 (C) "CARRIES" MEANS ENGAGES IN THE TRANSMISSION OF AN ELECTRONIC
23 COMMUNICATION.

24 (D) "CATALOGUE OF ELECTRONIC COMMUNICATIONS" MEANS INFORMATION THAT
25 IDENTIFIES EACH PERSON WITH WHICH A USER HAS HAD AN ELECTRONIC COMMUNI-
26 CATION, THE TIME AND DATE OF THE COMMUNICATION, AND THE ELECTRONIC
27 ADDRESS OF THE PERSON.

28 (E) "CONTENT OF AN ELECTRONIC COMMUNICATION" MEANS INFORMATION
29 CONCERNING THE SUBSTANCE OR MEANING OF THE COMMUNICATION WHICH:

30 (1) HAS BEEN SENT OR RECEIVED BY A USER;

31 (2) IS IN ELECTRONIC STORAGE BY A CUSTODIAN PROVIDING AN
32 ELECTRONIC-COMMUNICATION SERVICE TO THE PUBLIC OR IS CARRIED OR MAIN-
33 TAINED BY A CUSTODIAN PROVIDING A REMOTE-COMPUTING SERVICE TO THE
34 PUBLIC; AND

35 (3) IS NOT READILY ACCESSIBLE TO THE PUBLIC.

36 (F) "COURT" MEANS THE COURT IN THIS STATE HAVING JURISDICTION IN
37 MATTERS RELATING TO THE CONTENT OF THIS ARTICLE.

38 (G) "CUSTODIAN" MEANS A PERSON THAT CARRIES, MAINTAINS, PROCESSES,
39 RECEIVES, OR STORES A DIGITAL ASSET OF A USER.

40 (H) "DESIGNATED RECIPIENT" MEANS A PERSON CHOSEN BY A USER USING AN
41 ONLINE TOOL TO ADMINISTER DIGITAL ASSETS OF THE USER.

42 (I) "DIGITAL ASSET" MEANS AN ELECTRONIC RECORD IN WHICH AN INDIVIDUAL
43 HAS A RIGHT OR INTEREST. THE TERM DOES NOT INCLUDE AN UNDERLYING ASSET
44 OR LIABILITY UNLESS THE ASSET OR LIABILITY IS ITSELF AN ELECTRONIC
45 RECORD.

46 (J) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING ELECTRICAL,
47 DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPA-
48 BILITIES.

49 (K) "ELECTRONIC COMMUNICATION" HAS THE MEANING SET FORTH IN 18 U.S.C.
50 SECTION 2510(12), AS AMENDED.

51 (L) "ELECTRONIC-COMMUNICATION SERVICE" MEANS A CUSTODIAN THAT PROVIDES
52 TO A USER THE ABILITY TO SEND OR RECEIVE AN ELECTRONIC COMMUNICATION.

1 (M) "FIDUCIARY" INCLUDES AN EXECUTOR, PRELIMINARY EXECUTOR, ADMINIS-
2 TRATOR, TEMPORARY ADMINISTRATOR, VOLUNTARY ADMINISTRATOR, PERSONAL
3 REPRESENTATIVE, GUARDIAN, AGENT, OR TRUSTEE. THIS TERM INCLUDES THE
4 SUCCESSOR TO ANY FIDUCIARY.

5 (N) "GUARDIAN" MEANS A PERSON WHO HAS BEEN APPOINTED AS A GUARDIAN BY
6 A COURT OF THIS STATE PURSUANT TO THE SURROGATE'S COURT PROCEDURE ACT OR
7 THE MENTAL HYGIENE LAW.

8 (O) "INFORMATION" MEANS DATA, METADATA, INTERNET PROTOCOL ADDRESS,
9 USER LOGIN INFORMATION, TEXT, IMAGES, VIDEOS, SOUNDS, CODES, COMPUTER
10 PROGRAMS, SOFTWARE, DATABASES, OR SIMILAR INTELLIGENCE OF ANY NATURE.

11 (P) "ONLINE TOOL" MEANS AN ELECTRONIC SERVICE PROVIDED BY A CUSTODIAN
12 THAT ALLOWS THE USER, IN AN AGREEMENT DISTINCT FROM THE TERMS-OF-SERVICE
13 AGREEMENT BETWEEN THE CUSTODIAN AND USER, TO PROVIDE DIRECTIONS FOR
14 DISCLOSURE OR NONDISCLOSURE OF DIGITAL ASSETS TO A THIRD PERSON.

15 (Q) "PERSON" MEANS A NATURAL PERSON, CORPORATION, BUSINESS TRUST,
16 ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION,
17 JOINT VENTURE, BUSINESS OR NONPROFIT ENTITY, PUBLIC CORPORATION, GOVERN-
18 MENT OR GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER
19 LEGAL OR COMMERCIAL ENTITY, BOARD AND THE STATE.

20 (R) "POWER OF ATTORNEY" MEANS A RECORD THAT GRANTS AN AGENT AUTHORITY
21 TO ACT IN THE PLACE OF A PRINCIPAL.

22 (S) "PRINCIPAL" MEANS AN INDIVIDUAL WHO GRANTS AUTHORITY TO AN AGENT
23 IN A POWER OF ATTORNEY.

24 (T) "PROTECTIVE ORDER" MEANS AN ORDER APPOINTING A GUARDIAN OR ANOTHER
25 ORDER RELATED TO MANAGEMENT OF A WARD'S PROPERTY.

26 (U) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM
27 OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN
28 PERCEIVABLE FORM.

29 (V) "REMOTE-COMPUTING SERVICE" MEANS A CUSTODIAN THAT PROVIDES TO A
30 USER COMPUTER-PROCESSING SERVICES OR THE STORAGE OF DIGITAL ASSETS BY
31 MEANS OF AN ELECTRONIC COMMUNICATIONS SYSTEM, AS DEFINED IN 18 U.S.C.
32 SECTION 2510(14), AS AMENDED.

33 (W) "TERMS-OF-SERVICE AGREEMENT" MEANS AN AGREEMENT THAT CONTROLS THE
34 RELATIONSHIP BETWEEN A USER AND A CUSTODIAN.

35 (X) "TRUSTEE" INCLUDES AN ORIGINAL ADDITIONAL. AND SUCCESSOR TRUSTEE,
36 AND A CO-TRUSTEE.

37 (Y) "USER" MEANS A PERSON THAT HAS AN ACCOUNT WITH A CUSTODIAN.

38 (Z) "WARD" MEANS AN INDIVIDUAL FOR WHOM A GUARDIAN HAS BEEN APPOINTED
39 BY A COURT OF THIS STATE PURSUANT TO THE SURROGATE'S COURT PROCEDURE ACT
40 OR THE MENTAL HYGIENE LAW. THE TERM INCLUDES AN INDIVIDUAL FOR WHOM AN
41 APPLICATION OF GUARDIANSHIP IS PENDING.

42 PART 2. APPLICABILITY; PROCEDURE FOR DISCLOSURE; USER DIRECTIONS

43 S 13-A-2.1 APPLICABILITY

44 (A) THIS ARTICLE APPLIES TO:

45 (1) A FIDUCIARY ACTING UNDER A WILL, TRUST OR POWER OF ATTORNEY
46 EXECUTED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE;

47 (2) AN EXECUTOR, ADMINISTRATOR OR PERSONAL REPRESENTATIVE ACTING FOR A
48 DECEDENT WHO DIED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS ARTI-
49 CLE;

50 (3) A GUARDIANSHIP PROCEEDING COMMENCED BEFORE, ON, OR AFTER THE
51 EFFECTIVE DATE OF THIS ARTICLE; AND

52 (4) A TRUSTEE ACTING UNDER A TRUST CREATED BEFORE, ON, OR AFTER THE
53 EFFECTIVE DATE OF THIS ARTICLE.

1 (B) THIS ARTICLE APPLIES TO A CUSTODIAN IF THE USER RESIDES IN THIS
2 STATE OR RESIDED IN THIS STATE AT THE TIME OF THE USER'S DEATH.

3 (C) THIS ARTICLE DOES NOT APPLY TO A DIGITAL ASSET OF AN EMPLOYER USED
4 BY AN EMPLOYEE IN THE ORDINARY COURSE OF THE EMPLOYER'S BUSINESS.

5 S 13-A-2.2 USER DIRECTION FOR DISCLOSURE OF DIGITAL ASSETS

6 (A) A USER MAY USE AN ONLINE TOOL TO DIRECT THE CUSTODIAN TO DISCLOSE
7 TO A DESIGNATED RECIPIENT OR NOT TO DISCLOSE SOME OR ALL OF THE USER'S
8 DIGITAL ASSETS, INCLUDING THE CONTENT OF ELECTRONIC COMMUNICATIONS. IF
9 THE ONLINE TOOL ALLOWS THE USER TO MODIFY OR DELETE A DIRECTION AT ALL
10 TIMES, A DIRECTION REGARDING DISCLOSURE USING AN ONLINE TOOL OVERRIDES A
11 CONTRARY DIRECTION BY THE USER IN A WILL, TRUST, POWER OF ATTORNEY, OR
12 OTHER RECORD.

13 (B) IF A USER HAS NOT USED AN ONLINE TOOL TO GIVE DIRECTION UNDER
14 PARAGRAPH (A) OR IF THE CUSTODIAN HAS NOT PROVIDED AN ONLINE TOOL, THE
15 USER MAY ALLOW OR PROHIBIT IN A WILL, TRUST, POWER OF ATTORNEY, OR OTHER
16 RECORD, DISCLOSURE TO A FIDUCIARY OF SOME OR ALL OF THE USER'S DIGITAL
17 ASSETS, INCLUDING THE CONTENT OF ELECTRONIC COMMUNICATIONS SENT OR
18 RECEIVED BY THE USER.

19 (C) A USER'S DIRECTION UNDER PARAGRAPH (A) OR (B) OVERRIDES A CONTRARY
20 PROVISION IN A TERMS-OF-SERVICE AGREEMENT THAT DOES NOT REQUIRE THE USER
21 TO ACT AFFIRMATIVELY AND DISTINCTLY FROM THE USER'S ASSENT TO THE TERMS
22 OF SERVICE.

23 S 13-A-2.3 TERMS-OF-SERVICE AGREEMENT

24 (A) THIS ARTICLE DOES NOT CHANGE OR IMPAIR A RIGHT OF A CUSTODIAN OR A
25 USER UNDER A TERMS-OF-SERVICE AGREEMENT TO ACCESS AND USE DIGITAL ASSETS
26 OF THE USER.

27 (B) THIS ARTICLE DOES NOT GIVE A FIDUCIARY OR A DESIGNATED RECIPIENT
28 ANY NEW OR EXPANDED RIGHTS OTHER THAN THOSE HELD BY THE USER FOR WHOM,
29 OR FOR WHOSE ESTATE, THE FIDUCIARY OR DESIGNATED RECIPIENT ACTS OR
30 REPRESENTS.

31 (C) A FIDUCIARY'S OR DESIGNATED RECIPIENT'S ACCESS TO DIGITAL ASSETS
32 MAY BE MODIFIED OR ELIMINATED BY A USER, BY FEDERAL LAW, OR BY A TERMS-
33 OF-SERVICE AGREEMENT IF THE USER HAS NOT PROVIDED DIRECTION UNDER
34 SECTION 13-A-2.2.

35 S 13-A-2.4 PROCEDURE FOR DISCLOSING DIGITAL ASSETS

36 (A) WHEN DISCLOSING DIGITAL ASSETS OF A USER UNDER THIS ARTICLE, THE
37 CUSTODIAN MAY AT ITS SOLE DISCRETION:

38 (1) GRANT A FIDUCIARY OR DESIGNATED RECIPIENT FULL ACCESS TO THE
39 USER'S ACCOUNT;

40 (2) GRANT A FIDUCIARY OR DESIGNATED RECIPIENT PARTIAL ACCESS TO THE
41 USER'S ACCOUNT SUFFICIENT TO PERFORM THE TASKS WITH WHICH THE FIDUCIARY
42 OR DESIGNATED RECIPIENT IS CHARGED; OR

43 (3) PROVIDE A FIDUCIARY OR DESIGNATED RECIPIENT A COPY IN A RECORD OF
44 ANY DIGITAL ASSET THAT, ON THE DATE THE CUSTODIAN RECEIVED THE REQUEST
45 FOR DISCLOSURE, THE USER COULD HAVE ACCESSED IF THE USER WERE ALIVE AND
46 HAD FULL CAPACITY AND ACCESS TO THE ACCOUNT.

47 (B) A CUSTODIAN MAY ASSESS A REASONABLE ADMINISTRATIVE CHARGE FOR THE
48 COST OF DISCLOSING DIGITAL ASSETS UNDER THIS ARTICLE.

49 (C) A CUSTODIAN NEED NOT DISCLOSE UNDER THIS ARTICLE A DIGITAL ASSET
50 DELETED BY A USER.

51 (D) IF A USER DIRECTS OR A FIDUCIARY REQUESTS A CUSTODIAN TO DISCLOSE
52 UNDER THIS ARTICLE SOME, BUT NOT ALL, OF THE USER'S DIGITAL ASSETS, THE
53 CUSTODIAN NEED NOT DISCLOSE THE ASSETS IF SEGREGATION OF THE ASSETS
54 WOULD IMPOSE AN UNDUE BURDEN ON THE CUSTODIAN. IF THE CUSTODIAN BELIEVES
55 THE DIRECTION OR REQUEST IMPOSES AN UNDUE BURDEN, THE CUSTODIAN OR FIDU-
56 CIARY MAY SEEK AN ORDER FROM THE COURT TO DISCLOSE:

- 1 (1) A SUBSET LIMITED BY DATE OF THE USER'S DIGITAL ASSETS;
- 2 (2) ALL OF THE USER'S DIGITAL ASSETS TO THE FIDUCIARY OR DESIGNATED
- 3 RECIPIENT;
- 4 (3) NONE OF THE USER'S DIGITAL ASSETS; OR
- 5 (4) ALL OF THE USER'S DIGITAL ASSETS TO THE COURT FOR REVIEW IN
- 6 CAMERA.

7 PART 3. DISCLOSURE OF DIGITAL ASSETS TO FIDUCIARY

8 S 13-A-3.1 DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF
9 DECEASED USER

10 IF A DECEASED USER CONSENTED OR A COURT DIRECTS DISCLOSURE OF THE
11 CONTENTS OF ELECTRONIC COMMUNICATIONS OF THE USER, THE CUSTODIAN SHALL
12 DISCLOSE TO THE EXECUTOR, ADMINISTRATOR OR PERSONAL REPRESENTATIVE OF
13 THE ESTATE OF THE USER THE CONTENT OF AN ELECTRONIC COMMUNICATION SENT
14 OR RECEIVED BY THE USER IF THE EXECUTOR, ADMINISTRATOR OR REPRESENTATIVE
15 GIVES THE CUSTODIAN:

- 16 (A) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM;
- 17 (B) A COPY OF THE DEATH CERTIFICATE OF THE USER;
- 18 (C) A CERTIFIED COPY OF THE LETTER OF APPOINTMENT OF THE EXECUTOR,
- 19 ADMINISTRATOR, OR PERSONAL REPRESENTATIVE OR A SMALL-ESTATE AFFIDAVIT OR
- 20 COURT ORDER;

21 (D) UNLESS THE USER PROVIDED DIRECTION USING AN ONLINE TOOL, A COPY OF
22 THE USER'S WILL, TRUST, OR OTHER RECORD EVIDENCING THE USER'S CONSENT TO
23 DISCLOSURE OF THE CONTENT OF ELECTRONIC COMMUNICATIONS; AND

24 (E) IF REQUESTED BY THE CUSTODIAN:

- 25 (1) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT
- 26 IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE USER'S ACCOUNT;
- 27 (2) EVIDENCE LINKING THE ACCOUNT TO THE USER; OR
- 28 (3) A FINDING BY THE COURT THAT:

29 (A) THE USER HAD A SPECIFIC ACCOUNT WITH THE CUSTODIAN, IDENTIFIABLE
30 BY THE INFORMATION SPECIFIED IN SUBPARAGRAPH (1);

31 (B) DISCLOSURE OF THE CONTENT OF ELECTRONIC COMMUNICATIONS OF THE USER
32 WOULD NOT VIOLATE 18 U.S.C. SECTION 2701 ET SEQ., AS AMENDED, 47 U.S.C.
33 SECTION 222, AS AMENDED, OR OTHER APPLICABLE LAW;

34 (C) UNLESS THE USER PROVIDED DIRECTION USING AN ONLINE TOOL, THE USER
35 CONSENTED TO DISCLOSURE OF THE CONTENT OF ELECTRONIC COMMUNICATIONS; OR

36 (D) DISCLOSURE OF THE CONTENT OF ELECTRONIC COMMUNICATIONS OF THE USER
37 IS REASONABLY NECESSARY FOR ADMINISTRATION OF THE ESTATE.

38 S 13-A-3.2 DISCLOSURE OF OTHER DIGITAL ASSETS OF DECEASED USER

39 UNLESS THE USER PROHIBITED DISCLOSURE OF DIGITAL ASSETS OR THE COURT
40 DIRECTS OTHERWISE, A CUSTODIAN SHALL DISCLOSE TO THE EXECUTOR, ADMINIS-
41 TRATOR OR PERSONAL REPRESENTATIVE OF THE ESTATE OF A DECEASED USER A
42 CATALOGUE OF ELECTRONIC COMMUNICATIONS SENT OR RECEIVED BY THE USER AND
43 DIGITAL ASSETS, OTHER THAN THE CONTENT OF ELECTRONIC COMMUNICATIONS, OF
44 THE USER, IF THE EXECUTOR, ADMINISTRATOR OR PERSONAL REPRESENTATIVE
45 GIVES THE CUSTODIAN:

- 46 (A) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM;
- 47 (B) A COPY OF THE DEATH CERTIFICATE OF THE USER;
- 48 (C) A CERTIFIED COPY OF THE LETTER OF APPOINTMENT OF THE EXECUTOR,
- 49 ADMINISTRATOR, OR PERSONAL REPRESENTATIVE OR A SMALL-ESTATE AFFIDAVIT OR
- 50 COURT ORDER; AND

51 (D) IF REQUESTED BY THE CUSTODIAN:

- 52 (1) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT
- 53 IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE USER'S ACCOUNT;
- 54 (2) EVIDENCE LINKING THE ACCOUNT TO THE USER;

1 (3) AN AFFIDAVIT STATING THAT DISCLOSURE OF THE USER'S DIGITAL ASSETS
2 IS REASONABLY NECESSARY FOR ADMINISTRATION OF THE ESTATE; OR

3 (4) A FINDING BY THE COURT THAT:

4 (A) THE USER HAD A SPECIFIC ACCOUNT WITH THE CUSTODIAN, IDENTIFIABLE
5 BY THE INFORMATION SPECIFIED IN SUBPARAGRAPH (1); OR

6 (B) DISCLOSURE OF THE USER'S DIGITAL ASSETS IS REASONABLY NECESSARY
7 FOR ADMINISTRATION OF THE ESTATE.

8 S 13-A-3.3 DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF PRINCI-
9 PAL

10 TO THE EXTENT A POWER OF ATTORNEY EXPRESSLY GRANTS AN AGENT AUTHORITY
11 OVER THE CONTENT OF ELECTRONIC COMMUNICATIONS SENT OR RECEIVED BY THE
12 PRINCIPAL AND UNLESS DIRECTED OTHERWISE BY THE PRINCIPAL OR THE COURT, A
13 CUSTODIAN SHALL DISCLOSE TO THE AGENT THE CONTENT IF THE AGENT GIVES THE
14 CUSTODIAN:

15 (A) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM;

16 (B) A COPY OF THE POWER OF ATTORNEY EXPRESSLY GRANTING THE AGENT
17 AUTHORITY OVER THE CONTENT OF ELECTRONIC COMMUNICATIONS OF THE PRINCI-
18 PAL;

19 (C) AN AFFIDAVIT IN WHICH THE AFFIANT ATTESTS THAT THE COPY IS AN
20 ACCURATE COPY OF THE ORIGINAL POWER OF ATTORNEY AND THAT, TO THE BEST OF
21 THE AFFIANT'S KNOWLEDGE, THE POWER REMAINS IN EFFECT; AND

22 (D) IF REQUESTED BY THE CUSTODIAN:

23 (1) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT
24 IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE PRINCIPAL'S
25 ACCOUNT; OR

26 (2) EVIDENCE LINKING THE ACCOUNT TO THE PRINCIPAL.

27 S 13-A-3.4 DISCLOSURE OF OTHER DIGITAL ASSETS OF PRINCIPAL

28 UNLESS OTHERWISE ORDERED BY THE COURT, DIRECTED BY THE PRINCIPAL, OR
29 PROVIDED BY A POWER OF ATTORNEY, A CUSTODIAN SHALL DISCLOSE TO AN AGENT
30 WITH SPECIFIC AUTHORITY OVER DIGITAL ASSETS OR GENERAL AUTHORITY TO ACT
31 ON BEHALF OF A PRINCIPAL A CATALOGUE OF ELECTRONIC COMMUNICATIONS SENT
32 OR RECEIVED BY THE PRINCIPAL AND DIGITAL ASSETS, OTHER THAN THE CONTENT
33 OF ELECTRONIC COMMUNICATIONS, OF THE PRINCIPAL IF THE AGENT GIVES THE
34 CUSTODIAN:

35 (A) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM;

36 (B) A COPY OF THE POWER OF ATTORNEY THAT GIVES THE AGENT SPECIFIC
37 AUTHORITY OVER DIGITAL ASSETS OR GENERAL AUTHORITY TO ACT ON BEHALF OF
38 THE PRINCIPAL;

39 (C) AN AFFIDAVIT IN WHICH THE AFFIANT ATTESTS THAT THE COPY IS AN
40 ACCURATE COPY OF THE ORIGINAL POWER OF ATTORNEY AND THAT, TO THE BEST OF
41 THE AFFIANT'S KNOWLEDGE, THE POWER REMAINS IN EFFECT; AND

42 (D) IF REQUESTED BY THE CUSTODIAN:

43 (1) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT
44 IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE PRINCIPAL'S
45 ACCOUNT; OR

46 (2) EVIDENCE LINKING THE ACCOUNT TO THE PRINCIPAL.

47 S 13-A-3.5 DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE IS
48 ORIGINAL USER

49 UNLESS OTHERWISE ORDERED BY THE COURT OR PROVIDED IN A TRUST, A CUSTO-
50 DIAN SHALL DISCLOSE TO A TRUSTEE THAT IS AN ORIGINAL USER OF AN ACCOUNT
51 ANY DIGITAL ASSET OF THE ACCOUNT HELD IN TRUST, INCLUDING A CATALOGUE OF
52 ELECTRONIC COMMUNICATIONS OF THE TRUSTEE AND THE CONTENT OF ELECTRONIC
53 COMMUNICATIONS.

54 S 13-A-3.6 DISCLOSURE OF CONTENTS OF ELECTRONIC COMMUNICATIONS HELD IN
55 TRUST WHEN TRUSTEE NOT ORIGINAL USER

1 UNLESS OTHERWISE ORDERED BY THE COURT, DIRECTED BY THE USER, OR
2 PROVIDED IN A TRUST, A CUSTODIAN SHALL DISCLOSE TO A TRUSTEE THAT IS NOT
3 AN ORIGINAL USER OF AN ACCOUNT THE CONTENT OF AN ELECTRONIC COMMUNI-
4 CATION SENT OR RECEIVED BY AN ORIGINAL OR SUCCESSOR USER AND CARRIED,
5 MAINTAINED, PROCESSED, RECEIVED, OR STORED BY THE CUSTODIAN IN THE
6 ACCOUNT OF THE TRUST IF THE TRUSTEE GIVES THE CUSTODIAN:

7 (A) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM;

8 (B) A COPY OF THE TRUST INSTRUMENT THAT INCLUDES CONSENT TO DISCLOSURE
9 OF THE CONTENT OF ELECTRONIC COMMUNICATIONS TO THE TRUSTEE;

10 (C) A CERTIFICATION BY THE TRUSTEE, UNDER PENALTY OF PERJURY, THAT THE
11 TRUST EXISTS AND THE TRUSTEE IS A CURRENTLY ACTING TRUSTEE OF THE TRUST;
12 AND

13 (D) IF REQUESTED BY THE CUSTODIAN:

14 (1) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT
15 IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE TRUST'S ACCOUNT; OR

16 (2) EVIDENCE LINKING THE ACCOUNT TO THE TRUST.

17 S 13-A-3.7 DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE
18 NOT ORIGINAL USER

19 UNLESS OTHERWISE ORDERED BY THE COURT, DIRECTED BY THE USER, OR
20 PROVIDED IN A TRUST, A CUSTODIAN SHALL DISCLOSE, TO A TRUSTEE THAT IS
21 NOT AN ORIGINAL USER OF AN ACCOUNT, A CATALOGUE OF ELECTRONIC COMMUNI-
22 CATIONS SENT OR RECEIVED BY AN ORIGINAL OR SUCCESSOR USER AND STORED,
23 CARRIED, OR MAINTAINED BY THE CUSTODIAN IN AN ACCOUNT OF THE TRUST AND
24 ANY DIGITAL ASSETS, OTHER THAN THE CONTENT OF ELECTRONIC COMMUNICATIONS,
25 IN WHICH THE TRUST HAS A RIGHT OR INTEREST IF THE TRUSTEE GIVES THE
26 CUSTODIAN:

27 (A) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM;

28 (B) A COPY OF THE TRUST INSTRUMENT;

29 (C) A CERTIFICATION BY THE TRUSTEE, UNDER PENALTY OF PERJURY, THAT THE
30 TRUST EXISTS AND THE TRUSTEE IS A CURRENTLY ACTING TRUSTEE OF THE TRUST;
31 AND

32 (D) IF REQUESTED BY THE CUSTODIAN:

33 (1) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT
34 IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE TRUST'S ACCOUNT; OR

35 (2) EVIDENCE LINKING THE ACCOUNT TO THE TRUST.

36 S 13-A-3.8 DISCLOSURE OF DIGITAL ASSETS TO GUARDIAN OF WARD

37 (A) AFTER AN OPPORTUNITY FOR A HEARING CONCERNING THE APPOINTMENT OR
38 AUTHORITY OF A GUARDIAN, THE COURT MAY GRANT A GUARDIAN ACCESS TO THE
39 DIGITAL ASSETS OF A WARD.

40 (B) UNLESS OTHERWISE ORDERED BY THE COURT OR DIRECTED BY THE USER, A
41 CUSTODIAN SHALL DISCLOSE TO A GUARDIAN THE CATALOGUE OF ELECTRONIC
42 COMMUNICATIONS SENT OR RECEIVED BY A WARD AND ANY DIGITAL ASSETS, OTHER
43 THAN THE CONTENT OF ELECTRONIC COMMUNICATIONS, IN WHICH THE WARD HAS A
44 RIGHT OR INTEREST IF THE WARD GIVES THE CUSTODIAN:

45 (1) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM;

46 (2) A CERTIFIED COPY OF THE COURT ORDER THAT GIVES THE GUARDIAN
47 AUTHORITY OVER THE DIGITAL ASSETS OF THE WARD; AND

48 (3) IF REQUESTED BY THE CUSTODIAN:

49 (A) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT
50 IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE ACCOUNT OF THE
51 WARD; OR

52 (B) EVIDENCE LINKING THE ACCOUNT TO THE WARD.

53 (C) A GUARDIAN WITH GENERAL AUTHORITY TO MANAGE THE ASSETS OF A WARD
54 MAY REQUEST A CUSTODIAN OF THE DIGITAL ASSETS OF THE WARD TO SUSPEND OR
55 TERMINATE AN ACCOUNT OF THE WARD FOR GOOD CAUSE. A REQUEST MADE UNDER

1 THIS SECTION MUST BE ACCOMPANIED BY A CERTIFIED COPY OF THE COURT ORDER
2 GIVING THE GUARDIAN AUTHORITY OVER THE WARD'S PROPERTY.

3 PART 4. FIDUCIARY DUTY AND AUTHORITY, COMPLIANCE AND IMMUNITY

4 S 13-A-4.1 FIDUCIARY DUTY AND AUTHORITY

5 (A) THE LEGAL DUTIES IMPOSED ON A FIDUCIARY CHARGED WITH MANAGING
6 TANGIBLE PROPERTY APPLY TO THE MANAGEMENT OF DIGITAL ASSETS, INCLUDING:

- 7 (1) THE DUTY OF CARE;
- 8 (2) THE DUTY OF LOYALTY; AND
- 9 (3) THE DUTY OF CONFIDENTIALITY.

10 (B) A FIDUCIARY'S OR DESIGNATED RECIPIENT'S AUTHORITY WITH RESPECT TO
11 A DIGITAL ASSET OF A USER:

- 12 (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 13-A-2.2, IS SUBJECT TO
13 THE APPLICABLE TERMS OF SERVICE;
- 14 (2) IS SUBJECT TO OTHER APPLICABLE LAW, INCLUDING COPYRIGHT LAW;
- 15 (3) IN THE CASE OF A FIDUCIARY, IS LIMITED BY THE SCOPE OF THE
16 FIDUCIARY'S DUTIES; AND
- 17 (4) MAY NOT BE USED TO IMPERSONATE THE USER.

18 (C) A FIDUCIARY WITH AUTHORITY OVER THE PROPERTY OF A DECEDENT, WARD,
19 PRINCIPAL, OR SETTLOR HAS THE RIGHT TO ACCESS ANY DIGITAL ASSET IN WHICH
20 THE DECEDENT, WARD, PRINCIPAL, OR SETTLOR HAD A RIGHT OR INTEREST AND
21 THAT IS NOT HELD BY A CUSTODIAN OR SUBJECT TO A TERMS-OF-SERVICE AGREE-
22 MENT.

23 (D) A FIDUCIARY ACTING WITHIN THE SCOPE OF THE FIDUCIARY'S DUTIES IS
24 AN AUTHORIZED USER OF THE PROPERTY OF THE DECEDENT, WARD, PRINCIPAL, OR
25 SETTLOR FOR THE PURPOSE OF APPLICABLE COMPUTER-FRAUD AND
26 UNAUTHORIZED-COMPUTER-ACCESS LAWS, INCLUDING THIS STATE'S LAW ON UNAU-
27 THORIZED COMPUTER ACCESS.

28 (E) A FIDUCIARY WITH AUTHORITY OVER THE TANGIBLE, PERSONAL PROPERTY OF
29 A DECEDENT, WARD, PRINCIPAL, OR SETTLOR;

- 30 (1) HAS THE RIGHT TO ACCESS THE PROPERTY AND ANY DIGITAL ASSET STORED
31 IN IT; AND
- 32 (2) IS AN AUTHORIZED USER FOR THE PURPOSE OF COMPUTER-FRAUD AND UNAU-
33 THORIZED-COMPUTER-ACCESS LAWS, INCLUDING THIS STATE'S LAW ON UNAUTHOR-
34 IZED COMPUTER ACCESS.

35 (F) A CUSTODIAN MAY DISCLOSE INFORMATION IN AN ACCOUNT TO A FIDUCIARY
36 OF THE USER WHEN THE INFORMATION IS REQUIRED TO TERMINATE AN ACCOUNT
37 USED TO ACCESS DIGITAL ASSETS LICENSED TO THE USER.

38 (G) A FIDUCIARY OF A USER MAY REQUEST A CUSTODIAN TO TERMINATE THE
39 USER'S ACCOUNT. A REQUEST FOR TERMINATION MUST BE IN WRITING, IN EITHER
40 PHYSICAL OR ELECTRONIC FORM, AND ACCOMPANIED BY:

41 (1) IF THE USER IS DECEASED, A COPY OF THE DEATH CERTIFICATE OF THE
42 USER;

43 (2) A CERTIFIED COPY OF THE LETTER OF APPOINTMENT OF THE EXECUTOR,
44 ADMINISTRATOR, OR PERSONAL REPRESENTATIVE OR A SMALL-ESTATE AFFIDAVIT OR
45 COURT ORDER, POWER OF ATTORNEY, OR TRUST GIVING THE FIDUCIARY AUTHORITY
46 OVER THE ACCOUNT; AND

47 (3) IF REQUESTED BY THE CUSTODIAN:

- 48 (A) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT
49 IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE USER'S ACCOUNT;
- 50 (B) EVIDENCE LINKING THE ACCOUNT TO THE USER; OR
- 51 (C) A FINDING BY THE COURT THAT THE USER HAD A SPECIFIC ACCOUNT WITH

52 THE CUSTODIAN, IDENTIFIABLE BY THE INFORMATION SPECIFIED IN ITEM (A).

53 S 13-A-4.2 CUSTODIAN COMPLIANCE AND IMMUNITY

54 (A) NOT LATER THAN SIXTY DAYS AFTER RECEIPT OF THE INFORMATION
55 REQUIRED UNDER SECTIONS 13-A-3.1 THROUGH 13-A-4.1, A CUSTODIAN SHALL

1 COMPLY WITH A REQUEST UNDER THIS ARTICLE FROM A FIDUCIARY OR DESIGNATED
2 RECIPIENT TO DISCLOSE DIGITAL ASSETS OR TERMINATE AN ACCOUNT. IF THE
3 CUSTODIAN FAILS TO COMPLY, THE FIDUCIARY OR DESIGNATED RECIPIENT MAY
4 APPLY TO THE COURT FOR AN ORDER DIRECTING COMPLIANCE.

5 (B) AN ORDER UNDER PARAGRAPH (A) DIRECTING COMPLIANCE MUST CONTAIN A
6 FINDING THAT COMPLIANCE IS NOT IN VIOLATION OF 18 U.S.C. SECTION 2702,
7 AS AMENDED.

8 (C) A CUSTODIAN MAY NOTIFY THE USER THAT A REQUEST FOR DISCLOSURE OR
9 TO TERMINATE AN ACCOUNT WAS MADE UNDER THIS ARTICLE.

10 (D) A CUSTODIAN MAY DENY A REQUEST UNDER THIS ARTICLE FROM A FIDUCIARY
11 OR DESIGNATED RECIPIENT FOR DISCLOSURE OF DIGITAL ASSETS OR TO TERMINATE
12 AN ACCOUNT IF THE CUSTODIAN IS AWARE OF ANY LAWFUL ACCESS TO THE ACCOUNT
13 FOLLOWING THE RECEIPT OF THE FIDUCIARY'S REQUEST.

14 (E) THIS ARTICLE DOES NOT LIMIT A CUSTODIAN'S ABILITY TO OBTAIN OR
15 REQUIRE A FIDUCIARY OR DESIGNATED RECIPIENT REQUESTING DISCLOSURE OR
16 TERMINATION UNDER THIS ARTICLE TO OBTAIN A COURT ORDER WHICH:

17 (1) SPECIFIES THAT AN ACCOUNT BELONGS TO THE WARD OR PRINCIPAL;

18 (2) SPECIFIES THAT THERE IS SUFFICIENT CONSENT FROM THE WARD OR PRIN-
19 CIPAL TO SUPPORT THE REQUESTED DISCLOSURE; AND

20 (3) CONTAINS A FINDING REQUIRED BY LAW OTHER THAN THIS ARTICLE.

21 (F) A CUSTODIAN AND ITS OFFICERS, EMPLOYEES, AND AGENTS ARE IMMUNE
22 FROM LIABILITY FOR AN ACT OR OMISSION DONE IN GOOD FAITH IN COMPLIANCE
23 WITH THIS ARTICLE.

24 PART 5. MISCELLANEOUS PROVISIONS

25 S 13-A-5.1 RELATION TO ELECTRONIC SIGNATURE IN GLOBAL AND NATIONAL
26 COMMERCE ACT

27 THIS ARTICLE MODIFIES, LIMITS, OR SUPERSEDES THE ELECTRONIC SIGNATURES
28 IN GLOBAL AND NATIONAL COMMERCE ACT, 15 U.S.C. SECTION 7001 ET SEQ., BUT
29 DOES NOT MODIFY, LIMIT, OR SUPERSEDE SECTION 101(C) OF SUCH ACT, 15
30 U.S.C. SECTION 7001(C), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE
31 NOTICES DESCRIBED IN SECTION 103(B) OF SUCH ACT, 15 U.S.C. SECTION
32 7003(B).

33 S 13-A-5.2 SEVERABILITY

34 IF ANY PROVISION OF THIS ARTICLE OR ITS APPLICATION TO ANY PERSON OR
35 CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER
36 PROVISIONS OR APPLICATIONS OF THIS ARTICLE WHICH CAN BE GIVEN EFFECT
37 WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE
38 PROVISIONS OF THIS ARTICLE ARE SEVERABLE.

39 S 2. This act shall take effect immediately.