

7604

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

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.

22 13-A-3.6 DISCLOSURE OF CONTENTS OF ELECTRONIC COMMUNICATIONS
23 HELD IN TRUST WHEN TRUSTEE NOT ORIGINAL USER.

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

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1 13-A-3.7 DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN TRUST WHEN
2 TRUSTEE NOT ORIGINAL USER.

3 13-A-3.8 DISCLOSURE OF DIGITAL ASSETS TO GUARDIAN OF WARD.

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

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

6 13-A-4.2 CUSTODIAN COMPLIANCE AND IMMUNITY.

7 PART 5. MISCELLANEOUS PROVISIONS

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

10 13-A-5.2 SEVERABILITY.

11 PART 1. DEFINITIONS

12 S 13-A-1 DEFINITIONS

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

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

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

20 (C) "CARRIES" MEANS ENGAGES IN THE TRANSMISSION OF AN ELECTRONIC
21 COMMUNICATION.

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

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

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

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

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

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

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

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

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

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

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

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

51 (M) "FIDUCIARY" INCLUDES AN EXECUTOR, PRELIMINARY EXECUTOR, ADMINIS-
52 TRATOR, TEMPORARY ADMINISTRATOR, VOLUNTARY ADMINISTRATOR, PERSONAL

1 REPRESENTATIVE, GUARDIAN, AGENT, OR TRUSTEE. THIS TERM INCLUDES THE
2 SUCCESSOR TO ANY FIDUCIARY.

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

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

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

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

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

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

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

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

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

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

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

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

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

40 PART 2. APPLICABILITY; PROCEDURE FOR DISCLOSURE, USER DIRECTIONS

41 S 13-A-2.1 APPLICABILITY

42 (A) THIS ARTICLE APPLIES TO:

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

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

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

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

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

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

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

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

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

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

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

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

24 (B) THIS ARTICLE DOES NOT GIVE A FIDUCIARY ANY NEW OR EXPANDED RIGHTS
25 OTHER THAN THOSE HELD BY THE USER FOR WHOM, OR FOR WHOSE ESTATE, THE
26 FIDUCIARY ACTS OR REPRESENTS.

27 (C) A FIDUCIARY'S ACCESS TO DIGITAL ASSETS MAY BE MODIFIED OR ELIMI-
28 NATED BY A USER, BY FEDERAL LAW, OR BY A TERMS-OF-SERVICE AGREEMENT IF
29 THE USER HAS NOT PROVIDED DIRECTION UNDER SECTION 13-A-2.2.

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

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

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

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

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

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

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

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

52 (1) A SUBSET LIMITED BY DATE OF THE USER'S DIGITAL ASSETS;

53 (2) ALL OF THE USER'S DIGITAL ASSETS TO THE FIDUCIARY OR DESIGNATED
54 RECIPIENT;

55 (3) NONE OF THE USER'S DIGITAL ASSETS; OR

1 (4) ALL OF THE USER'S DIGITAL ASSETS TO THE COURT FOR REVIEW IN
2 CAMERA.

3 PART 3. DISCLOSURE OF DIGITAL ASSETS TO FIDUCIARY

4 S 13-A-3.1 DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF
5 DECEASED USER

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

- 12 (A) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM;
- 13 (B) A COPY OF THE DEATH CERTIFICATE OF THE USER;
- 14 (C) A CERTIFIED COPY OF THE LETTER OF APPOINTMENT OF THE EXECUTOR,
15 ADMINISTRATOR, OR PERSONAL REPRESENTATIVE OR A SMALL-ESTATE AFFIDAVIT OR
16 COURT ORDER;
- 17 (D) UNLESS THE USER PROVIDED DIRECTION USING AN ONLINE TOOL, A COPY OF
18 THE USER'S WILL, TRUST, OR OTHER RECORD EVIDENCING THE USER'S CONSENT TO
19 DISCLOSURE OF THE CONTENT OF ELECTRONIC COMMUNICATIONS; AND
- 20 (E) IF REQUESTED BY THE CUSTODIAN:

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

- 25 (A) THE USER HAD A SPECIFIC ACCOUNT WITH THE CUSTODIAN, IDENTIFIABLE
26 BY THE INFORMATION SPECIFIED IN SUBPARAGRAPH (1);
- 27 (B) DISCLOSURE OF THE CONTENT OF ELECTRONIC COMMUNICATIONS OF THE USER
28 WOULD NOT VIOLATE 18 U.S.C. SECTION 2701 ET SEQ., AS AMENDED, 47 U.S.C.
29 SECTION 222, AS AMENDED, OR OTHER APPLICABLE LAW;

- 30 (C) UNLESS THE USER PROVIDED DIRECTION USING AN ONLINE TOOL, THE USER
31 CONSENTED TO DISCLOSURE OF THE CONTENT OF ELECTRONIC COMMUNICATIONS; OR
- 32 (D) DISCLOSURE OF THE CONTENT OF ELECTRONIC COMMUNICATIONS OF THE USER
33 IS REASONABLY NECESSARY FOR ADMINISTRATION OF THE ESTATE.

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

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

- 42 (A) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM;
- 43 (B) A COPY OF THE DEATH CERTIFICATE OF THE USER;
- 44 (C) A CERTIFIED COPY OF THE LETTER OF APPOINTMENT OF THE EXECUTOR,
45 ADMINISTRATOR, OR PERSONAL REPRESENTATIVE OR A SMALL-ESTATE AFFIDAVIT OR
46 COURT ORDER; AND
- 47 (D) IF REQUESTED BY THE CUSTODIAN:
- 48 (1) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT
49 IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE USER'S ACCOUNT;
- 50 (2) EVIDENCE LINKING THE ACCOUNT TO THE USER;
- 51 (3) AN AFFIDAVIT STATING THAT DISCLOSURE OF THE USER'S DIGITAL ASSETS
52 IS REASONABLY NECESSARY FOR ADMINISTRATION OF THE ESTATE; OR
- 53 (4) A FINDING BY THE COURT THAT:

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

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

5 S 13-A-3.3 DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF PRINCI-
6 PAL

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

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

13 (B) A COPY OF THE POWER OF ATTORNEY EXPRESSLY GRANTING THE AGENT
14 AUTHORITY OVER THE CONTENT OF ELECTRONIC COMMUNICATIONS OF THE PRINCI-
15 PAL;

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

19 (D) IF REQUESTED BY THE CUSTODIAN:

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

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

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

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

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

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

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

39 (D) IF REQUESTED BY THE CUSTODIAN:

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

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

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

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

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

53 UNLESS OTHERWISE ORDERED BY THE COURT, DIRECTED BY THE USER, OR
54 PROVIDED IN A TRUST, A CUSTODIAN SHALL DISCLOSE TO A TRUSTEE THAT IS NOT
55 AN ORIGINAL USER OF AN ACCOUNT THE CONTENT OF AN ELECTRONIC COMMUNI-
56 CATION SENT OR RECEIVED BY AN ORIGINAL OR SUCCESSOR USER AND CARRIED,

1 MAINTAINED, PROCESSED, RECEIVED, OR STORED BY THE CUSTODIAN IN THE
2 ACCOUNT OF THE TRUST IF THE TRUSTEE GIVES THE CUSTODIAN:

- 3 (A) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM;
- 4 (B) A COPY OF THE TRUST INSTRUMENT THAT INCLUDES CONSENT TO DISCLOSURE
5 OF THE CONTENT OF ELECTRONIC COMMUNICATIONS TO THE TRUSTEE;
- 6 (C) A CERTIFICATION BY THE TRUSTEE, UNDER PENALTY OF PERJURY, THAT THE
7 TRUST EXISTS AND THE TRUSTEE IS A CURRENTLY ACTING TRUSTEE OF THE TRUST;
8 AND
- 9 (D) IF REQUESTED BY THE CUSTODIAN:
 - 10 (1) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT
11 IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE TRUST'S ACCOUNT; OR
 - 12 (2) EVIDENCE LINKING THE ACCOUNT TO THE TRUST.

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

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

- 23 (A) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM;
- 24 (B) A COPY OF THE TRUST INSTRUMENT;
- 25 (C) A CERTIFICATION BY THE TRUSTEE, UNDER PENALTY OF PERJURY, THAT THE
26 TRUST EXISTS AND THE TRUSTEE IS A CURRENTLY ACTING TRUSTEE OF THE TRUST;
27 AND
- 28 (D) IF REQUESTED BY THE CUSTODIAN:
 - 29 (1) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT
30 IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE TRUST'S ACCOUNT; OR
 - 31 (2) EVIDENCE LINKING THE ACCOUNT TO THE TRUST.

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

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

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

- 41 (1) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM;
- 42 (2) A CERTIFIED COPY OF THE COURT ORDER THAT GIVES THE GUARDIAN
43 AUTHORITY OVER THE DIGITAL ASSETS OF THE WARD; AND
- 44 (3) IF REQUESTED BY THE CUSTODIAN:
 - 45 (A) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT
46 IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE ACCOUNT OF THE
47 WARD; OR
 - 48 (B) EVIDENCE LINKING THE ACCOUNT TO THE WARD.
 - 49 (C) A GUARDIAN WITH GENERAL AUTHORITY TO MANAGE THE ASSETS OF A WARD
50 MAY REQUEST A CUSTODIAN OF THE DIGITAL ASSETS OF THE WARD TO SUSPEND OR
51 TERMINATE AN ACCOUNT OF THE WARD FOR GOOD CAUSE. A REQUEST MADE UNDER
52 THIS SECTION MUST BE ACCOMPANIED BY A CERTIFIED COPY OF THE COURT ORDER
53 GIVING THE GUARDIAN AUTHORITY OVER THE WARD'S PROPERTY.

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

55 S 13-A-4.1 FIDUCIARY DUTY AND AUTHORITY

1 (A) THE LEGAL DUTIES IMPOSED ON A FIDUCIARY CHARGED WITH MANAGING
2 TANGIBLE PROPERTY APPLY TO THE MANAGEMENT OF DIGITAL ASSETS, INCLUDING:
3 (1) THE DUTY OF CARE;
4 (2) THE DUTY OF LOYALTY; AND
5 (3) THE DUTY OF CONFIDENTIALITY.

6 (B) A FIDUCIARY'S AUTHORITY WITH RESPECT TO A DIGITAL ASSET OF A USER:
7 (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 13-A-2.2, IS SUBJECT TO
8 THE APPLICABLE TERMS OF SERVICE;
9 (2) IS SUBJECT TO OTHER APPLICABLE LAW, INCLUDING COPYRIGHT LAW;
10 (3) IS LIMITED BY THE SCOPE OF THE FIDUCIARY'S DUTIES; AND
11 (4) MAY NOT BE USED TO IMPERSONATE THE USER.

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

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

22 (E) A FIDUCIARY WITH AUTHORITY OVER THE TANGIBLE, PERSONAL PROPERTY OF
23 A DECEDENT, WARD, PRINCIPAL, OR SETTLOR;
24 (1) HAS THE RIGHT TO ACCESS THE PROPERTY AND ANY DIGITAL ASSET STORED
25 IN IT; AND
26 (2) IS AN AUTHORIZED USER FOR THE PURPOSE OF COMPUTER-FRAUD AND UNAU-
27 THORIZED-COMPUTER-ACCESS LAWS, INCLUDING THIS STATE'S LAW ON UNAUTHOR-
28 IZED COMPUTER ACCESS.

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

32 (G) A FIDUCIARY OF A USER MAY REQUEST A CUSTODIAN TO TERMINATE THE
33 USER'S ACCOUNT. A REQUEST FOR TERMINATION MUST BE IN WRITING, IN EITHER
34 PHYSICAL OR ELECTRONIC FORM, AND ACCOMPANIED BY:
35 (1) IF THE USER IS DECEASED, A COPY OF THE DEATH CERTIFICATE OF THE
36 USER;
37 (2) A CERTIFIED COPY OF THE LETTER OF APPOINTMENT OF THE EXECUTOR,
38 ADMINISTRATOR, OR PERSONAL REPRESENTATIVE OR A SMALL-ESTATE AFFIDAVIT OR
39 COURT ORDER, POWER OF ATTORNEY, OR TRUST GIVING THE FIDUCIARY AUTHORITY
40 OVER THE ACCOUNT; AND
41 (3) IF REQUESTED BY THE CUSTODIAN:
42 (A) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT
43 IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE USER'S ACCOUNT;
44 (B) EVIDENCE LINKING THE ACCOUNT TO THE USER; OR
45 (C) A FINDING BY THE COURT THAT THE USER HAD A SPECIFIC ACCOUNT WITH
46 THE CUSTODIAN, IDENTIFIABLE BY THE INFORMATION SPECIFIED IN ITEM (A).

47 S 13-A-4.2 CUSTODIAN COMPLIANCE AND IMMUNITY
48 (A) NOT LATER THAN SIXTY DAYS AFTER RECEIPT OF THE INFORMATION
49 REQUIRED UNDER SECTIONS 13-A-3.1 THROUGH 13-A-3.8, A CUSTODIAN SHALL
50 COMPLY WITH A REQUEST UNDER THIS ARTICLE FROM A FIDUCIARY OR DESIGNATED
51 RECIPIENT TO DISCLOSE DIGITAL ASSETS OR TERMINATE AN ACCOUNT. IF THE
52 CUSTODIAN FAILS TO COMPLY, THE FIDUCIARY OR DESIGNATED RECIPIENT MAY
53 APPLY TO THE COURT FOR AN ORDER DIRECTING COMPLIANCE.

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

1 (C) A CUSTODIAN MAY NOTIFY THE USER THAT A REQUEST FOR DISCLOSURE OR
2 TO TERMINATE AN ACCOUNT WAS MADE UNDER THIS ARTICLE.
3 (D) A CUSTODIAN MAY DENY A REQUEST UNDER THIS ARTICLE FROM A FIDUCIARY
4 OR DESIGNATED RECIPIENT FOR DISCLOSURE OF DIGITAL ASSETS OR TO TERMINATE
5 AN ACCOUNT IF THE CUSTODIAN IS AWARE OF ANY LAWFUL ACCESS TO THE ACCOUNT
6 FOLLOWING THE RECEIPT OF THE FIDUCIARY'S REQUEST.
7 (E) THIS ARTICLE DOES NOT LIMIT A CUSTODIAN'S ABILITY TO OBTAIN OR
8 REQUIRE A FIDUCIARY OR DESIGNATED RECIPIENT REQUESTING DISCLOSURE OR
9 TERMINATION UNDER THIS ARTICLE TO OBTAIN A COURT ORDER WHICH:
10 (1) SPECIFIES THAT AN ACCOUNT BELONGS TO THE WARD OR PRINCIPAL;
11 (2) SPECIFIES THAT THERE IS SUFFICIENT CONSENT FROM THE WARD OR PRIN-
12 CIPAL TO SUPPORT THE REQUESTED DISCLOSURE; AND
13 (3) CONTAINS A FINDING REQUIRED BY LAW OTHER THAN THIS ARTICLE.
14 (F) A CUSTODIAN AND ITS OFFICERS, EMPLOYEES, AND AGENTS ARE IMMUNE
15 FROM LIABILITY FOR AN ACT OR OMISSION DONE IN GOOD FAITH IN COMPLIANCE
16 WITH THIS ARTICLE.

17 PART 5. MISCELLANEOUS PROVISIONS

18 S 13-A-5.1 RELATION TO ELECTRONIC SIGNATURE IN GLOBAL AND NATIONAL
19 COMMERCE ACT

20 THIS ARTICLE MODIFIES, LIMITS, OR SUPERSEDES THE ELECTRONIC SIGNATURES
21 IN GLOBAL AND NATIONAL COMMERCE ACT, 15 U.S.C. SECTION 7001 ET SEQ., BUT
22 DOES NOT MODIFY, LIMIT, OR SUPERSEDE SECTION 101(C) OF SUCH ACT, 15
23 U.S.C. SECTION 7001(C), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE
24 NOTICES DESCRIBED IN SECTION 103(B) OF SUCH ACT, 15 U.S.C. SECTION
25 7003(B).

26 S 13-A-5.2 SEVERABILITY

27 IF ANY PROVISION OF THIS ARTICLE OR ITS APPLICATION TO ANY PERSON OR
28 CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER
29 PROVISIONS OR APPLICATIONS OF THIS ARTICLE WHICH CAN BE GIVEN EFFECT
30 WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE
31 PROVISIONS OF THIS ARTICLE ARE SEVERABLE.

32 S 2. This act shall take effect immediately.