

ESTATES CODE

TITLE 4. DIGITAL ASSETS

CHAPTER 2001. TEXAS REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL
ASSETS ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2001.001. SHORT TITLE. This chapter may be cited as the Texas Revised Uniform Fiduciary Access to Digital Assets Act. Added by Acts 2017, 85th Leg., R.S., Ch. 400 (S.B. [1193](#)), Sec. 1, eff. September 1, 2017.

Sec. 2001.002. DEFINITIONS. In this chapter:

(1) "Account" means an arrangement under a terms-of-service 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 to act for a principal under a durable or other power of attorney. The term does not include an agent under a medical power of attorney.

(3) "Carries" means to engage in the transmission of an electronic communication.

(4) "Catalog of electronic communications" means information that identifies each person with whom a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.

(5) "Content of an electronic communication" means information concerning the substance or meaning of an electronic communication that:

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

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

(C) is not readily accessible to the public.

(6) "Custodian" means a person that carries, maintains, processes, receives, or stores a digital asset of a user.

(7) "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.

(8) "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.

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

(10) "Electronic communication" has the meaning assigned by 18 U.S.C. Section 2510(12), as it existed on January 1, 2017.

(11) "Electronic communication service" means a custodian that provides to a user the ability to send or receive an electronic communication.

(12) "Fiduciary" means an original, additional, or successor personal representative, guardian, agent, or trustee.

(13) "Guardian" has the meaning assigned by Section [1002.012](#), except that the term does not include a guardian of the person of a ward.

(14) "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

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

(16) "Person" has the meaning assigned by Section [311.005](#), Government Code.

(17) "Personal representative," notwithstanding Section [22.031](#), means:

- (A) an executor or independent executor;
- (B) an administrator, independent administrator, or temporary administrator;

(C) a successor to an executor or administrator listed in Paragraph (A) or (B); or

(D) a person who performs functions substantially similar to those performed by the persons listed in Paragraph (A), (B), or (C) under the laws of this state, other than this chapter.

(18) "Power of attorney" means a record that grants an agent authority to act in the place of a principal with regard to property matters, including a durable power of attorney as provided by Subtitle P, Title 2. The term does not include a medical power of attorney.

(19) "Principal" means an individual who grants authority to an agent in a power of attorney.

(20) "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.

(21) "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 by 18 U.S.C. Section 2510(14), as it existed on January 1, 2017.

(22) "Terms-of-service agreement" means an agreement that controls the relationship between a user and a custodian.

(23) "Trustee" has the meaning assigned by Section [111.004](#), Property Code.

(24) "User" means a person who has an account with a custodian.

Added by Acts 2017, 85th Leg., R.S., Ch. 400 (S.B. [1193](#)), Sec. 1, eff. September 1, 2017.

Sec. 2001.003. APPLICABILITY. (a) This chapter applies to a custodian if the user resides in this state or resided in this state at the time of the user's death.

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

Added by Acts 2017, 85th Leg., R.S., Ch. 400 (S.B. [1193](#)), Sec. 1,

eff. September 1, 2017.

Sec. 2001.004. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law, with respect to the subject matter of this chapter, among states that enact a law based on the uniform act on which this chapter is based.

Added by Acts 2017, 85th Leg., R.S., Ch. 400 (S.B. 1193), Sec. 1, eff. September 1, 2017.

Sec. 2001.005. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the federal 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)).

Added by Acts 2017, 85th Leg., R.S., Ch. 400 (S.B. 1193), Sec. 1, eff. September 1, 2017.

SUBCHAPTER B. GENERAL PROCEDURES FOR ACCESS TO DIGITAL ASSETS

Sec. 2001.051. USER DIRECTION FOR DISCLOSURE OF DIGITAL ASSETS. (a) A user may use an online tool to direct the custodian to disclose or not to disclose to a designated recipient some or all of the user's digital assets, including the content of an electronic communication. 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 disclosure to a fiduciary of some or all of the user's digital assets, including the content of an electronic communication sent or received by the user, in a will,

trust, power of attorney, or other record.

(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.

Added by Acts 2017, 85th Leg., R.S., Ch. 400 (S.B. 1193), Sec. 1, eff. September 1, 2017.

Sec. 2001.052. TERMS-OF-SERVICE AGREEMENT. (a) This chapter 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 chapter 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 or trust, 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 2001.051.

Added by Acts 2017, 85th Leg., R.S., Ch. 400 (S.B. 1193), Sec. 1, eff. September 1, 2017.

Sec. 2001.053. PROCEDURE FOR DISCLOSING DIGITAL ASSETS.

(a) When disclosing digital assets of a user under this chapter, the custodian may, at the custodian's 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 chapter.

(c) A custodian is not required to disclose under this chapter a digital asset deleted by a user.

(d) If a user directs or a fiduciary requests a custodian to disclose under this chapter some, but not all, of the user's digital assets, the custodian is not required to 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.

Added by Acts 2017, 85th Leg., R.S., Ch. 400 (S.B. [1193](#)), Sec. 1, eff. September 1, 2017.

SUBCHAPTER C. PROCEDURES FOR DISCLOSURE OF DIGITAL ASSETS OF DECEASED USER

Sec. 2001.101. DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF DECEASED USER. (a) If a deceased user consented to or a court directs disclosure of the content of an electronic communication 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 letters testamentary or of administration, a small estate affidavit filed under Section

205.001, or other court order; and

(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 an electronic communication if the user consented to the disclosure.

(b) In addition to the items required to be given to the custodian under Subsection (a), the personal representative shall provide the following if requested by the custodian:

(1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the deceased user's account;

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

(3) a finding by the court that:

(A) the deceased user had a specific account with the custodian, identifiable by the information specified in Subdivision (1);

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

(C) unless the user provided direction using an online tool, the user consented to disclosure of the content of an electronic communication; or

(D) disclosure of the content of an electronic communication of the user is reasonably necessary for administration of the estate.

Added by Acts 2017, 85th Leg., R.S., Ch. 400 (S.B. 1193), Sec. 1, eff. September 1, 2017.

Sec. 2001.102. DISCLOSURE OF OTHER DIGITAL ASSETS OF DECEASED USER. (a) Unless the deceased 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 catalog of electronic communications sent or received by the user and digital assets, other than the content of an electronic communication, 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; and

(3) a certified copy of letters testamentary or of administration, a small estate affidavit filed under Section [205.001](#), or other court order.

(b) In addition to the items required to be given to the custodian under Subsection (a), the personal representative shall provide the following if requested by the custodian:

(1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the deceased user's account;

(2) evidence linking the account to the user;

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

(4) a finding by the court that:

(A) the deceased user had a specific account with the custodian, identifiable by the information specified in Subdivision (1); or

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

Added by Acts 2017, 85th Leg., R.S., Ch. 400 (S.B. [1193](#)), Sec. 1, eff. September 1, 2017.

SUBCHAPTER D. PROCEDURES FOR DISCLOSURE OF DIGITAL ASSETS OF PRINCIPAL

Sec. 2001.131. DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF PRINCIPAL. (a) To the extent a power of attorney expressly grants an agent authority over the content of an electronic communication sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content of an electronic communication 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 an electronic communication of the principal; and

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

(b) In addition to the items required to be given to the custodian under Subsection (a), the agent shall provide the following if requested by the custodian:

(1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(2) evidence linking the account to the principal.

Added by Acts 2017, 85th Leg., R.S., Ch. 400 (S.B. [1193](#)), Sec. 1, eff. September 1, 2017.

Sec. 2001.132. DISCLOSURE OF OTHER DIGITAL ASSETS OF PRINCIPAL. (a) 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 catalog of electronic communications sent or received by the principal and digital assets of the principal, other than the content of an electronic communication, 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 that gives the agent specific authority over digital assets or general authority to act on behalf of the principal; and

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

(b) In addition to the items required to be given to the custodian under Subsection (a), the agent shall provide the following if requested by the custodian:

(1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(2) evidence linking the account to the principal.

Added by Acts 2017, 85th Leg., R.S., Ch. 400 (S.B. 1193), Sec. 1, eff. September 1, 2017.

SUBCHAPTER E. DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST

Sec. 2001.151. 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 catalog of electronic communications of the trustee and the content of an electronic communication.

Added by Acts 2017, 85th Leg., R.S., Ch. 400 (S.B. 1193), Sec. 1, eff. September 1, 2017.

Sec. 2001.152. DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS HELD IN TRUST WHEN TRUSTEE IS NOT ORIGINAL USER.

(a) 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 or a certification of trust under Section 114.086, Property Code, that includes consent to disclosure of the content of an electronic communication to the trustee; and

(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.

(b) In addition to the items required to be given to the custodian under Subsection (a), the trustee shall provide the following if requested by the custodian:

(1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(2) evidence linking the account to the trust.

Added by Acts 2017, 85th Leg., R.S., Ch. 400 (S.B. 1193), Sec. 1, eff. September 1, 2017.

Sec. 2001.153. DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE IS NOT ORIGINAL USER. (a) 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 catalog 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 in which the trust has a right or interest, other than the content of an electronic communication, 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 or a certification of trust under Section 114.086, Property Code; and

(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.

(b) In addition to the items required to be given to the custodian under Subsection (a), the trustee shall provide the following if requested by the custodian:

(1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(2) evidence linking the account to the trust.

Added by Acts 2017, 85th Leg., R.S., Ch. 400 (S.B. 1193), Sec. 1, eff. September 1, 2017.

SUBCHAPTER F. DISCLOSURE OF DIGITAL ASSETS TO GUARDIAN

Sec. 2001.171. DISCLOSURE OF DIGITAL ASSETS TO GUARDIAN.

(a) After an opportunity for a hearing under Title 3, the court may grant the guardian of a ward access to the digital assets of the ward.

(b) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to the guardian of a ward the catalog of electronic communications sent or received by the ward and any digital assets in which the ward has a right or interest, other than the content of an electronic communication, if the guardian gives the custodian:

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

(2) a certified copy of the court order that gives the guardian authority over the digital assets of the ward.

(c) In addition to the items required to be given to the custodian under Subsection (b), the guardian shall provide the following if requested by the custodian:

(1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the ward; or

(2) evidence linking the account to the ward.

(d) The guardian of a ward may request a custodian of the digital assets of the ward to suspend or terminate an account of the ward 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 ward's digital assets.

Added by Acts 2017, 85th Leg., R.S., Ch. 400 (S.B. [1193](#)), Sec. 1, eff. September 1, 2017.

SUBCHAPTER G. DUTY AND AUTHORITY OF FIDUCIARY AND OTHERS REGARDING DIGITAL ASSETS

Sec. 2001.201. FIDUCIARY DUTY AND AUTHORITY. (a) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

(1) the duty of care;

(2) the duty of loyalty; and

(3) the duty of confidentiality.

(b) A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

(1) except as otherwise provided by Section [2001.051](#), 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; and

(4) may not be used to impersonate the user.

(c) A fiduciary with authority over the property of a decedent, ward, principal, or settlor has the right to access any digital asset in which the decedent, ward, principal, or settlor has or 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, ward, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including all laws of this state governing unauthorized computer access.

(e) A fiduciary with authority over the tangible personal property of a decedent, ward, 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 applicable computer fraud and unauthorized computer access laws, including all laws of this state governing unauthorized computer access.

Added by Acts 2017, 85th Leg., R.S., Ch. 400 (S.B. [1193](#)), Sec. 1, eff. September 1, 2017.

Sec. 2001.202. AUTHORITY TO TERMINATE ACCOUNT. (a) 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.

(b) A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in physical or electronic form, and accompanied by:

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

(2) one of the following giving the fiduciary authority over the account:

(A) a certified copy of letters testamentary or of administration, a small estate affidavit filed under Section [205.001](#), or other court order;

(B) a power of attorney; or

(C) the trust instrument.

(c) In addition to the items required to accompany a termination request under Subsection (b), the fiduciary shall provide the following if requested by the custodian:

(1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

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

(3) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in Subdivision (1).

Added by Acts 2017, 85th Leg., R.S., Ch. 400 (S.B. [1193](#)), Sec. 1, eff. September 1, 2017.

SUBCHAPTER H. CUSTODIAN COMPLIANCE AND IMMUNITY REGARDING DIGITAL ASSETS

Sec. 2001.231. CUSTODIAN COMPLIANCE AND IMMUNITY. (a) Not later than 60 days after receipt of the information required under Subchapter C, D, E, F, or G, a custodian shall comply with a request under this chapter 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.

(c) A custodian may notify the user that a request for disclosure or to terminate an account was made under this chapter.

(d) A custodian may deny a request under this chapter 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 request.

(e) This chapter does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this chapter to obtain a court order that:

(1) specifies that an account belongs to the ward or principal;

(2) specifies that there is sufficient consent from the ward or principal to support the requested disclosure; and

(3) contains a finding required by a law other than this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 400 (S.B. [1193](#)), Sec. 1, eff. September 1, 2017.

Sec. 2001.232. IMMUNITY FROM LIABILITY. A custodian and the custodian's officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 400 (S.B. [1193](#)), Sec. 1, eff. September 1, 2017.