

ALERT

September 14, 2017

UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT PASSES IN NJ

By: Meredith L. Grocott, Esq.

On September 13, 2017, Governor Christie signed into law the Uniform Fiduciary Access to Digital Assets Act (“Act”). The uniform law had bipartisan support and unanimously passed both houses of the Legislature. The Act authorizes fiduciaries, such as agents under a Power of Attorney, guardians, trustees, or executors of estates, to manage digital assets much in the same way they have had the authority to manage traditional tangible assets.

The Act defines a digital asset as “an electronic record in which an individual has a right or interest.” The definitions specifically excludes “an underlying asset or liability unless the asset or liability is itself an electronic record.” It is important to note that the Act does not apply to digital assets of an employer used by the employee in the ordinary course of business. Except with respect to a trust, unless the user (the person who has the online account) consents, electronic communications, such as the contents of e-mails and text messages, are not disclosed absent a court order. The user’s consent may be contained in a Power of Attorney specifically giving authority to the agent to obtain such information.

Most, if not all, custodians of digital assets have service agreements to which the user has consented when establishing the online account or acquiring the digital asset. The Act does not supersede the terms of the service agreement.

The Act sets forth certain defaults regarding disclosure, all of which can be altered by the controlling document. For example, with respect to a trust, the default is disclosure of both digital assets as well as content of electronic communication. Regarding estates, the Act provides that unless the user prohibited disclosure or a court order directs otherwise, the custodian of digital assets is obligated to disclose to the estate representative of a deceased user a catalogue of electronic communications sent or received and digital assets. This information is often necessary in order for the estate representative to fulfill his or her duties. For example, some digital assets, such as Bitcoin, have monetary value and can impact estate administration and taxes.

Florham Park
220 Park Avenue
Florham Park, NJ 07932
(973) 539-1000

Paramus
115 West Century Road
Suite 100
Paramus, NJ 07652
(201) 262-1600

Sparta
351 Sparta Avenue
Sparta, NJ 07871
(973) 295-3670

New York
116 West 23rd Street
Suite 500
New York, NY 10011
(212) 386-7628

The Act also allows a user to name a designated recipient to manage the digital asset. The Act sets forth certain responsibilities of the fiduciary or designated recipient. For example, the fiduciary or designated recipient may not impersonate the user and has a duty of confidentiality.

In our ever increasing digital and online world, management of digital assets will continue to impact individuals and estates. The Act highlights the need to discuss your specific wishes and intents when executing planning documents such as a Power of Attorney, trust, or Last Will and Testament as the default disclosures under the Act may not be consistent with what you want. If you have any questions on how the Act may impact you, please feel free to contact any member of the Estate, Gift & Charitable Planning practice group or the Elder and Special Needs Law practice group.

DISCLAIMER: This Alert is designed to keep you aware of recent developments in the law. It is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of the client.