

Fiduciary Access to Digital Assets and Accounts: Revised Model Statute Adopted in Oregon

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Oregon became the first state to adopt the [Revised Uniform Fiduciary Access to Digital Assets Act](#) (“Revised UFADAA”) when Governor Kate Brown signed [Oregon Senate Bill 1554](#) into law on March 3, 2016. The law will become effective on January 1, 2017.

In 2015, the Uniform Law Commission issued the Revised UFADAA in an effort to address concerns from privacy advocates, lawmakers, and online service providers regarding the version released in 2014. The model statute is designed to ensure that account holders can retain control of their digital property and plan for its ultimate disposition after their death, and to avoid circumstances where online service providers delete accounts of decedent account holders without authorization or refuse to hand over access and information to permitted fiduciaries. The Revised UFADAA seeks to balance the administrative burden on companies that service digital assets and accounts with the protection of the account holder’s privacy rights after death.

For example, the Revised UFADAA includes the following concepts:

- Fiduciaries can access and manage certain digital property such as computer files stored in the cloud, web domains, and virtual currency.
- Fiduciaries cannot access certain digital communications such as email, text messages, and social media accounts, unless the original account holder expressly consented to the disclosure (e.g., in a will, trust, power of attorney, or other record).
- Account holders can also create legally enforceable instructions for the disposition of their digital assets after death by using online tools provided by online service providers and either naming a person to be granted access or directing the service to delete the digital assets at that time.
- If the original account holder has not given express directions regarding disclosure to a fiduciary after death, the service provider’s terms of use will control whether a fiduciary can access the account. Or, if the terms of use are silent, the default provisions of the Revised UFADAA will control.

- Fiduciaries do not have the same rights to access joint accounts.
- Companies will have the right to assess a reasonable administrative charge to comply with requests for access to digital assets and to reject requests that are unduly burdensome.

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