

IC 32-39-2

Chapter 2. Fiduciary's Access to Digital Assets

IC 32-39-2-1

User direction concerning disclosure of digital asset

Sec. 1. (a) A user may use an online tool to direct the custodian that carries, maintains, processes, receives, or stores the user's digital assets:

- (1) to disclose; or
- (2) not to disclose;

some or all of the user's digital assets, including the content of electronic communications to a designated recipient. If the online tool allows the user to modify or delete a direction at all times, a direction by a user to the custodian regarding disclosure through use of 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 a direction under subsection (a) or if the custodian has not provided an online tool, the user, in a will, trust, power of attorney, or other record, may:

- (1) allow; or
- (2) prohibit;

disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

(c) A user's:

- (1) direction through the use of an online tool under subsection (a); or
- (2) provision in a will, trust, power of attorney, or other record under subsection (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.

As added by P.L.137-2016, SEC.14.

IC 32-39-2-2

Rights of custodian, user, and fiduciary or designated recipient under terms-of-service agreement; modification or elimination of fiduciary's access

Sec. 2. (a) This article does not change or impair a right of:

- (1) a custodian; or
- (2) a user;

under a terms-of-service agreement to access and use digital assets of the user.

(b) This article does not give a fiduciary or designated recipient any new or expanded rights other than the rights held by the user:

- (1) for whom the fiduciary or designated recipient acts;
 - (2) who is represented by the fiduciary or designated recipient;
- or

(3) whose estate the fiduciary represents or acts for.

(c) A fiduciary's access to a user's digital assets may be modified or eliminated:

- (1) by the user;
- (2) by federal law; or
- (3) by a terms-of-service agreement;

if the user has not given a direction under section 1(a) of this chapter or allowed or prohibited disclosure through a will, trust, power of attorney, or other record under section 1(b) of this chapter.

As added by P.L.137-2016, SEC.14.

IC 32-39-2-3

Custodian's disclosure of user's digital assets

Sec. 3. (a) When disclosing digital assets of a user under this chapter, the custodian, at the custodian's sole discretion, may:

- (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 of a record of any digital asset that, on the date on which the custodian received the request for disclosure, the user could have accessed if the user:
 - (A) were alive;
 - (B) had full capacity; and
 - (C) had 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 need not disclose under this chapter a digital asset that has been deleted by a user.

(d) Subject to subsection (e), if:

- (1) a user directs a custodian to disclose to a fiduciary or designated recipient; or
- (2) a fiduciary or designated recipient requests disclosure by a custodian of;

some, but not all, of the user's digital assets under this chapter, the custodian need not disclose the digital assets if segregation of the digital assets would impose an undue burden on the custodian.

(e) If a custodian believes that a direction or request for the disclosure of some but not all of a user's digital assets as described in subsection (d) would impose an undue burden on the custodian, the custodian or fiduciary may seek an order from a court for the custodian:

- (1) to disclose:
 - (A) a subset of the user's digital assets limited by date of the user's digital assets;
 - (B) all of the user's digital assets; or

- (C) none of the user's digital assets;
to the fiduciary or designated recipient; or
- (2) to disclose all of the user's digital assets to the court for
review in camera.

As added by P.L.137-2016, SEC.14.

IC 32-39-2-4

Disclosure to personal representative of content of deceased user's electronic communication

Sec. 4. If a deceased user consented to, or a court directs, disclosure of the contents of electronic communications 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 personal representative gives the custodian the following:

- (1) A written request for disclosure in physical or electronic form.
- (2) A certified or authenticated copy of the death certificate of the user.
- (3) A copy of the letters (as defined in IC 29-1-1-3(a)(17)) of the personal representative or of the order of no supervision or order of unsupervised administration issued to the personal representative under IC 29-1-7.5.
- (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 electronic communications.
- (5) If requested by the custodian:
 - (A) a number, username, address, or other unique subscriber identifier or account identifier assigned by the custodian to identify the user's account;
 - (B) evidence linking the account to the user; or
 - (C) a finding by the court that:
 - (i) the user had a specific account with the custodian, identifiable by the information specified in clause (A);
 - (ii) disclosure of the content of electronic communications of the user would not violate 18 U.S.C. 2701 et seq., 47 U.S.C. 222, or other applicable law;
 - (iii) unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or
 - (iv) disclosure of the content of electronic communications of the user is reasonably necessary for administration of the user's estate.

As added by P.L.137-2016, SEC.14.

IC 32-39-2-5

Disclosure to personal representative of deceased user's other

digital assets

Sec. 5. Unless the user prohibited disclosure of the user's digital assets or a court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user, if the personal representative gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified or authenticated copy of the death certificate of the user;
- (3) a copy of the letters (as defined in IC 29-1-1-3(a)(17)) of the personal representative or of the order of no supervision or order of unsupervised administration issued to the personal representative under IC 29-1-7.5; or
- (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber identifier or account identifier assigned by the custodian to identify the user's account;
 - (B) evidence linking the account to the user;
 - (C) an affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the user's estate; or
 - (D) a finding by the court that:
 - (i) the user had a specific account with the custodian, identifiable by the information specified in clause (A); or
 - (ii) disclosure of the user's digital assets is reasonably necessary for administration of the user's estate.

As added by P.L.137-2016, SEC.14.

IC 32-39-2-6**Disclosure to principal's attorney in fact of content of principal's electronic communications**

Sec. 6. To the extent that a power of attorney expressly grants an attorney in fact authority over the content of electronic communications sent or received by the principal, and unless directed otherwise by the principal or a court, a custodian shall disclose to the principal's attorney in fact the content of the electronic communications of the principal if the attorney in fact gives the custodian:

- (1) a written request for disclosure of the electronic communications in physical or electronic form;
- (2) an original or copy of the power of attorney expressly granting the attorney in fact authority over the content of electronic communications of the principal;
- (3) a certification by the attorney in fact, under penalty of perjury, that the power of attorney is in effect; and
- (4) if requested by the custodian:

- (A) a number, username, address, or other unique subscriber identifier or account identifier assigned by the custodian to identify the principal's account; or
- (B) evidence linking the account to the principal.

As added by P.L.137-2016, SEC.14.

IC 32-39-2-7

Disclosure to principal's attorney in fact of principal's other digital assets

Sec. 7. Unless otherwise ordered by a court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an attorney in fact having specific authority over the principal's digital assets or general authority to act on behalf of the principal a catalogue of electronic communications sent or received by the principal and the digital assets, other than the content of electronic communications, of the principal if the attorney in fact gives the custodian:

- (1) a written request for disclosure of the catalogue of electronic communications and the digital assets in physical or electronic form;
- (2) an original or a copy of the power of attorney giving the attorney in fact specific authority over the principal's digital assets or general authority to act on behalf of the principal;
- (3) a certification by the attorney in fact, under penalty of perjury, that the power of attorney is in effect; and
- (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber identifier or account identifier assigned by the custodian to identify the principal's account; or
 - (B) evidence linking the account to the principal.

As added by P.L.137-2016, SEC.14.

IC 32-39-2-8

Disclosure of digital assets held in trust to trustee that is an original user

Sec. 8. Unless otherwise ordered by a court or provided in the trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account that is held in trust, including:

- (1) a catalogue of electronic communications of the trustee; and
- (2) the content of the electronic communications of the trustee.

As added by P.L.137-2016, SEC.14.

IC 32-39-2-9

Disclosure of contents of electronic communications held in trust to trustee that is not an original user

Sec. 9. Unless otherwise ordered by a court, directed by the user, or provided in the 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 user or a 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 of the content of the electronic communication in physical or electronic form;
- (2) a certified copy of the trust instrument or a certification of the trust under IC 30-4-4-5 that includes consent to disclosure to the trustee of the content of electronic communications carried, maintained, processed, received, or stored in the account of the trust;
- (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; and
- (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber identifier or account identifier assigned by the custodian to identify the trust's account; or
 - (B) evidence linking the account to the trust.

As added by P.L.137-2016, SEC.14.

IC 32-39-2-10

Disclosure of other digital assets held in trust to trustee that is not an original user

Sec. 10. Unless otherwise ordered by the court, directed by the user, or provided in the trust, a custodian shall disclose, to a trustee that is not an original user of the account, a catalogue of electronic communications sent or received by an original user or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

- (1) a written request for disclosure of the catalogue of electronic communications and digital assets in physical or electronic form;
- (2) a certified copy of the trust instrument or a certification of the trust under IC 30-4-4-5;
- (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; and
- (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber identifier or account identifier assigned by the custodian to identify the trust's account; or
 - (B) evidence linking the account to the trust.

As added by P.L.137-2016, SEC.14.

IC 32-39-2-11

Disclosure of digital assets to guardian of protected person

Sec. 11. (a) After an opportunity for a hearing under IC 29-3, a court may grant a guardian access to the digital assets of the protected person.

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

- (1) a written request for disclosure of the catalogue of electronic communications and the digital assets in physical or electronic form;
- (2) a certified copy of the court order giving the guardian authority over the digital assets of the protected person; and
- (3) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber identifier or account identifier assigned by the custodian to identify the account of the protected person; or
 - (B) evidence linking the account to the protected person.

(c) A guardian with general authority to manage the assets of a protected person may, for good cause, request that the custodian of the digital assets of the protected person suspend or terminate an account of the protected person. A request made under this subsection must be accompanied by a certified copy of the court order giving the guardian authority over the protected person's property.

As added by P.L.137-2016, SEC.14.

IC 32-39-2-12

Duties and authority of fiduciary with respect to digital assets of decedent, protected person, principal, or settlor

Sec. 12. (a) The legal duties imposed on a fiduciary charged with managing tangible property, including:

- (1) the duty of care;
- (2) the duty of loyalty; and
- (3) the duty of confidentiality;

also apply to a fiduciary charged with managing digital assets.

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

- (1) except as otherwise provided in section 1 of this chapter, is subject to the applicable terms of service;
- (2) is subject to other applicable law, including copyright law;
- (3) 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, protected person, principal, or settlor has the right to access any digital asset:

(1) in which the decedent, protected person, principal, or settlor had a right or interest; and

(2) 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, protected person, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including IC 24-4.8-2, IC 24-5-22, IC 35-43-1-7, IC 35-43-1-8, IC 35-43-2-3, and IC 35-45-13.

(e) A fiduciary with authority over the tangible, personal property of a decedent, protected person, principal, or settlor:

(1) has the right to access the property and any digital asset stored in the property; and

(2) is an authorized user for the purpose of computer fraud and unauthorized computer access laws, including IC 24-4.8-2, IC 24-5-22, IC 35-43-2-3, and IC 35-45-13.

(f) 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.

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

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

(2) a copy of:

(A) the letters (as defined in IC 29-1-1-3(a)(17)) of the personal representative or of the order of no supervision or order of unsupervised administration issued to the personal representative under IC 29-1-7.5;

(B) the court order;

(C) the power of attorney; or

(D) the trust;

giving the fiduciary authority over the account; and

(3) if requested by the custodian:

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

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

(C) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in clause (A).

As added by P.L.137-2016, SEC.14.

IC 32-39-2-13

Custodian compliance with request for disclosure of digital assets or termination of account; immunity from liability

Sec. 13. (a) Not more than sixty (60) days after receipt of the

information required under sections 4 through 11 of this chapter, a custodian shall comply with a request under this chapter from a fiduciary or designated recipient for:

- (1) the disclosure of digital assets; or
- (2) the termination of an account.

If the custodian fails to comply with the request, the fiduciary or designated recipient may apply to a court for an order directing compliance.

(b) An order directing compliance for which a fiduciary or designated recipient applies under subsection (a) must contain a finding that compliance is not in violation of 18 U.S.C. 2702.

(c) A custodian may notify a user that a request for disclosure of the user's digital assets or to terminate an account of the user has been 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 that occurs after the custodian's receipt of the request.

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

- (1) specifies that the account belongs to the protected person or principal;
- (2) specifies that there is sufficient consent from the protected person or principal to support the requested disclosure; and
- (3) contains a finding required by law other than this chapter.

(f) A custodian and its officers, employees, and agents are immune from liability for an act done or omission made in good faith in compliance with this chapter.

As added by P.L.137-2016, SEC.14.

IC 32-39-2-14

Consideration of need for uniformity among enacting states

Sec. 14. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the Revised Uniform Fiduciary Access to Digital Assets Act.

As added by P.L.137-2016, SEC.14.

IC 32-39-2-15

Relation to Electronic Signatures in Global and National Commerce Act

Sec. 15. This chapter:

- (1) modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.; but
- (2) does not:
 - (A) modify, limit, or supersede Section 101(c) of the

Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001(c); or

(B) authorize electronic delivery of any of the notices described in Section 103(b) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7003(b).

As added by P.L.137-2016, SEC.14.