

Digital Worlds and Analog Kids

Central Arizona Estate Planning Council
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Uniform Fiduciary Access to Digital Assets Act

Arizona recently enacted the “Uniform Fiduciary Access to Digital Assets Act.” If you think that sounds like a mouthful, that’s actually the name given as its “Short title”! There’s the government for you.

The act is a set of 18 statutes that attempt to deal with the legal issues involved for a Trustee, Personal Representative, or Agent under a Power of Attorney who is dealing with “digital assets.” The term “digital assets” can include a lot of different things: your ownership and intellectual property rights in social media accounts, your access to online bill payments or money processing, your rights to use software or listen to music, and your ability to view e-mails and other similar information.

Uniform laws like this are created by think tanks of lawyers and other professionals to be helpful in dealing with specific issues. They come up with a model, and then state legislatures can choose to enact them or adapt them for their own jurisdictions. This particular law is a valiant attempt to deal with the complex landscape of digital assets. In fact, Bogutz & Gordon is updating its estate planning documents to include references to the new law and to deal with these types of assets in general.

Overall, both the new state law and the provisions many estate planners are adding to documents are intended to grant fiduciaries the right to digital assets that the original owner had. Generally, an Agent, Trustee, or Personal Representative has the power to deal with all your stuff if you become incapacitated and when you die - whether real estate, stocks, bonds, bank accounts, and any other similar traditional assets. The point of this law is to ensure that a fiduciary has the same type of general rights and duties with respect to digital assets as well.

One comforting provision in all of these laws is to ensure that the fiduciary doesn’t commit criminal computer acts while trying to do his or her job. Before this law, there was the possibility that son or daughter, acting as Personal Representative for deceased parent, could be guilty of fraud for accessing the parent’s digital account using the parent’s password. So, simply doing their job in good faith and looking up the online brokerage statement could have been a criminal act! This act should lay that issue to rest, because it makes clear that any person acting as a fiduciary is considered an authorized user and won’t be guilty of criminal conduct in Arizona.

Even with a law that gives fiduciaries access and rights to digital assets and estate planning documents that specifically give these powers, there are limitations to recovering information or exercising these abilities. From a technical perspective, almost all software, online services, and similar offerings require you to explicitly or implicitly agree to specific terms of service or user agreement. That becomes a binding contract that will supercede state law or estate planning documents. So Facebook or iTunes can generally respond, with legal validity, that they don’t have to talk to your Agent or a Trustee if that’s covered in the terms you agreed to.

There is also the practical problem of getting the person on the other end of the phone or the other side of the chat box to understand your legal rights to access mom or dad's account. Even if you have the legal right to do so, if the company's support infrastructure isn't well versed with this issue, you may not be able to get what you need.

It can be easy to forget how new these "rights" are. We are generally talking about things that didn't exist at all 20 years ago and were barely developed and available 10 years ago. That's an incredibly young landscape, and the law has had to quickly develop to try to deal with this burgeoning field that impacts so many people so deeply. There's no guarantee the new law or new provisions in estate planning documents will solve the digital issues encountered by a fiduciary, but they at least provide a better set of tools to try.

While for many individuals, online access to Facebook or Twitter for a decedent may seem like a minor issue, at most being able to clean up or delete an inactive account. But as probate practitioners we should all be aware of the nature of the most problematic estates. The ones, bluntly, where family members hate each other and want to fight about everything. We discuss below the illogical and inefficient manner in which people will argue over worthless tangible personal property. Imagine the potential court arguments over who gets to delete or save social media content, and how it could become something that yields an active contest in court. Provisions of this act are sure to be used in those cases in ways we can't really imagine until we see how angry people are at each other.

Imagine the disputes if the Personal Representative is able to go onto Facebook and say that the user is deceased, and that he is survived by his three loving children. And simply not mention the decedent's surviving spouse? Think some people will be dragging this act into court over that issue.

THE ACT ITSELF

14-13101. "Short" title

This chapter may be cited as the revised uniform fiduciary access to digital assets act.

14-13102. Definitions

In this chapter, unless the context otherwise requires:

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 under a durable or nondurable power of attorney.
3. "Carries" means engages in the transmission of an electronic communication.
4. "Catalogue of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication and the electronic address of the person.
5. "Conservator" means a person appointed by a court to manage the estate of a living individual and includes a limited conservator and a fiduciary as defined in section 14-5651, subsection K.
6. "Content of an electronic communication" means information concerning the substance or meaning of the communication that meets all of the following requirements:
 - (a) Has been sent or received 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.
 - (c) Is not readily accessible to the public.
7. "Court" means the superior court.
8. "Custodian" means a person that carries, maintains, processes, receives or stores a digital asset of a user.
9. "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.
10. "Digital asset" means an electronic record in which an individual has a right or interest. Digital asset does not include an underlying asset or liability unless the asset or liability is itself an electronic record.
11. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.
12. "Electronic communication" has the same meaning prescribed in 18 United States Code section 2510(12).
13. "Electronic-communication service" means a custodian that provides to a user the ability to send or receive an electronic communication.

14. "Fiduciary" means an original, additional or successor personal representative, conservator, agent, trustee or a fiduciary as defined in section 14-5651, subsection K.
15. "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases or the like.
16. **"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.**
17. "Person" means an individual, an estate, a business or nonprofit entity, a public corporation, a government or governmental subdivision, agency or instrumentality or any other legal entity.
18. "Personal representative" means an executor, an administrator, a special administrator or person that performs substantially the same function under law of this state other than this chapter.
19. "Power of attorney" means a record that grants an agent authority to act in the place of a principal.
20. "Principal" means an individual who grants authority to an agent in a power of attorney.
21. "Protected person" means an individual for whom a conservator has been appointed. Protected person includes an individual for whom an application for the appointment of a conservator is pending.
22. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form.
23. "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 in 18 United States Code section 2510(14).
24. "Terms-of-service agreement" means an agreement that controls the relationship between a user and a custodian.
25. "Trustee" means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. Trustee includes a successor trustee.
26. "User" means a person that has an account with a custodian.
27. "Will" includes a codicil, testamentary instrument that only appoints an executor and instrument that revokes or revises a testamentary instrument.

14-13103. Applicability

A. This chapter applies to all of the following:

1. A fiduciary acting under a will or power of attorney executed *before, on or after August 6, 2016*.
2. A personal representative acting for a decedent who died *before, on or after August 6, 2016*.
3. A conservatorship proceeding commenced *before, on or after August 6, 2016*.
4. A trustee acting under a trust created *before, on or after August 6, 2016*.

B. 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.

C. 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.

14-13104. User direction for disclosure of digital assets

A. A user may use an online tool to direct the custodian to disclose to a designated recipient or not to disclose some or all of the user's digital assets, including the content of electronic communications. 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 of this section or if the custodian has not provided an online tool, **the user may allow or prohibit in a will, trust, power of attorney or other record 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 direction under subsection A or B of this section 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.

14-13105. 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, 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 14-13104.

14-13106. Procedure for disclosing digital assets

A. When disclosing digital assets of a user under this chapter, the custodian, at its sole discretion, may do any of the following:

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.
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 need not 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 need not 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 any of the following:

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.
4. All of the user's digital assets to the court for review in camera.

14-13107. Disclosure of content of electronic communications of **deceased user**

If a *deceased user consented 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 representative gives the custodian all of the following:

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 the letters testamentary, a small-estate affidavit or a court order.
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, any of the following:
 - (a) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account.
 - (b) Evidence linking the account to the user.
 - (c) A finding by the court of one or more of the following:
 - (i) The user had a specific account with the custodian, identifiable by the information specified in subdivision (a) of this paragraph.
 - (ii) Disclosure of the content of electronic communications of the user would not violate 18 United States Code sections 2701 through 2712, 47 United States Code section 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.
 - (iv) Disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

14-13108. Disclosure of other digital assets of **deceased user**

Unless the 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 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 representative gives the custodian all of the following:

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 the letters testamentary, a small-estate affidavit or a court order.
4. If requested by the custodian any of the following:
 - (a) A number, username, address or other unique subscriber 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 estate.
- (d) A finding by the court of either of the following:
 - (I) The user had a specific account with the custodian, identifiable by the information specified in subdivision (a) of this paragraph.
 - (ii) Disclosure of the user's digital assets is reasonably necessary for administration of the estate.

14-13109. Disclosure of content of electronic communications *of principal*

To the extent a power of attorney expressly grants an agent authority over the content of electronic communications 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 if the agent gives the custodian all of the following:

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 electronic communications of the principal.
3. A certification by the agent, under penalty of perjury, that the power of attorney is in effect.
4. If requested by the custodian any of the following:
 - (a) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's account.
 - (b) Evidence linking the account to the principal.

14-13110. Disclosure of other digital assets of principal

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 catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian all of the following:

1. A written request for disclosure in physical or electronic form.
2. An original or a 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.
3. A certification by the agent, under penalty of perjury, that the power of attorney is in effect.
4. If requested by the custodian any of the following:
 - (a) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's account.
 - (b) Evidence linking the account to the principal.

14-13111. 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 catalogue of electronic communications of the trustee and the content of electronic communications.

14-13112. Disclosure of contents of electronic communications held in trust when trustee is not original user

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 all of the following:

1. A written request for disclosure in physical or electronic form.
2. A certified copy of the trust instrument or a certification of the trust under section 14-11013 that includes consent to disclosure of the content of electronic communications to the trustee.
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.
4. If requested by the custodian any of the following:
 - (a) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the trust's account.
 - (b) Evidence linking the account to the trust.

14-13113. Disclosure of other digital assets held in trust when trustee is not original user

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 catalogue 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, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian all of the following:

1. A written request for disclosure in physical or electronic form.
2. A certified copy of the trust instrument or a certification of the trust under section 14-11013.
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.
4. If requested by the custodian any of the following:
 - (a) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the trust's account.
 - (b) Evidence linking the account to the trust.

14-13114. Disclosure of digital assets to conservator of protected person

A. After an opportunity for a hearing under chapter 5, article 4 of this title, the court may grant a conservator access to the digital assets of a protected person.

B. Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a conservator the catalogue of electronic communications sent or received by a 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 conservator gives the custodian all of the following:

1. A written request for disclosure in physical or electronic form.
 2. A certified copy of the court order that gives the conservator authority over the digital assets of the protected person.
 3. If requested by the custodian any of the following:
 - (a) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person.
 - (b) Evidence linking the account to the trust.
- C. A conservator with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate an account of the protected person for good cause. A request made under this subsection must be accompanied by a certified copy of the court order giving the conservator authority over the protected person's property.

14-13115. 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 all of the following, if applicable:

1. The duty of care.
2. The duty of loyalty.
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 in section 14-13104, 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.
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 in which the decedent, protected person, principal or settlor 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, protected person, principal or settlor for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including section 13-2316.**

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 it.
2. Is an authorized user for the purpose of computer-fraud and unauthorized-computer-access laws, including section 13-2316.

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 a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied by all of the following:

1. If the user is deceased, a certified copy of the death certificate of the user.

2. A certified copy of the letters testamentary of the representative, small-estate affidavit, court order, power of attorney or trust giving the fiduciary authority over the account.
3. If requested by the custodian any of the following:
 - (a) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account.
 - (b) Evidence linking the account to the user.
 - (c) A finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subdivision (a) of this paragraph.

14-13116. Custodian compliance and immunity

A. **Not later than sixty days after receipt of the information required under section 14-13107, 14-13108, 14-13109, 14-13110, 14-13111, 14-13112, 14-13113, 14-13114 or 14-13115, 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 of this section directing compliance must contain a finding that compliance is not in violation of 18 United States Code 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 fiduciary's 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 does any of the following:

1. Specifies that an 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.
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 or omission done in good faith in compliance with this chapter.

14-13117. Uniformity of application and construction

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

14-13118. Relation to electronic signatures in global and national commerce act

This chapter modifies, limits and supersedes the electronic signatures in global and national commerce act, 15 United States Code sections 7001 through 7031, but does not modify, limit or supersede 15 United States Code section 7001(c) or authorize electronic delivery of any of the notices described in 15 United States Code section 7003(b).

SAMPLE TRUST POWERS LANGUAGE:

Digital Assets. The Trustee shall specifically also have all rights, powers, and authority to deal with any and all "Digital Assets" which the Settlor holds. "Digital Assets" shall include, without limitation, the legal, practical, and technical authority to control or manage any and all personal electronic devices, online accounts, digital assets, and digital intellectual property. By way of illustration and not limitation, this shall include the rights to access and control any personal electronic devices, including computers, telephones, or any other device; social media profile or page which the Settlor owns, licenses, and/or controls, including Facebook, Twitter, Instagram, and Google plus, and any or all similar accounts; any and all electronic commerce sites, whether in the name of the Settlor or in the name of a company or d/b/a designation which the Settlor owns or controls, including eBay, Craigslist; control and manage any loyalty program credits or awards, including airline miles, credit card awards, or any retail loyalty programs; control and manage any digital media accounts, including Netflix; any offsite or other "cloud" storage of documents, files, computer backup, or digital information, including Google Drive, Dropbox; any or all financial accounts the Settlor may have online, as well as access or control of any traditional financial accounts through electronic portals, including but not limited to any bank or brokerage company, electronic tax filings, utility accounts, loan or debt organization accounts, personal finance programs such as Quicken, or any online financial accounts such as Paypal; control and manage any internet assets such as blogs or domain names; and, any and all accounts I have established with any online retailers or sellers of any sort whatsoever. The Trustee shall have the right to retrieve passwords; edit or remove content; reset information; delete pages and/or profiles or other information; take action under any account or profile; transfer funds; withdraw and/or deposit money or other assets; and otherwise, without limitation, take absolutely any actions and have any powers that I would have had with respect to any Digital Assets. Any company managing such digital accounts is specifically authorized and directed to deal with the Trustee on the Settlor's behalf.

The Settlor, pursuant to this power and this Agreement, hereby specifically assigns, effective upon Settlor's death or incapacity, all of the Settlor's individually held rights to the trust estate held under this Agreement.

Arizona's Uniform Fiduciary Access to Digital Assets Act specifically applies to this Trust Agreement as set forth in A.R.S. §14-13103(A)(4). Pursuant to A.R.S. §14-13111, 14-13112, and 14-13113, a custodian of digital assets or electronic communications shall disclose to the Trustee any digital asset held in trust, including a catalogue of electronic communications of the Trustee and the content of electronic communications, whether or not the currently acting Trustee is the original user.

Pursuant to A.R.S. §14-13115, the Trustee shall be an authorized user of the property of the Settlor, for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including A.R.S. §13-2316.

SAMPLE FINANCIAL POWER OF ATTORNEY:

Digital Assets. The Agent shall specifically also have all rights, powers, and authority to deal with any and all "Digital Assets" which the Principal holds. "Digital Assets" shall include, without limitation, the legal, practical, and technical authority to control or manage any and all personal electronic devices, online accounts, digital assets, and digital intellectual property. By way of illustration and not limitation, this shall include the rights to access and control any personal electronic devices, including computers, telephones, or any other device; social media profile or page which the Principal owns, licenses, and/or controls, including Facebook, Twitter, Instagram, and Google plus, and any or all similar accounts; any and all electronic commerce sites, whether in the name of the Principal or in the name of a company or d/b/a designation which the Principal owns or controls, including eBay, Craigslist; control and manage any loyalty program credits or awards, including airline miles, credit card awards, or any retail loyalty programs; control and manage any digital media accounts, including Netflix; any offsite or other "cloud" storage of documents, files, computer backup, or digital information, including Google Drive, Dropbox; any or all financial accounts the Principal may have online, as well as access or control of any traditional financial accounts through electronic portals, including but not limited to any bank or brokerage company, electronic tax filings, utility accounts, loan or debt organization accounts, personal finance programs such as Quicken, or any online financial accounts such as Paypal; control and manage any internet assets such as blogs or domain names; and, any and all accounts the Principal has established with any online retailers or sellers of any sort whatsoever. Agent shall have the right to retrieve passwords; edit or remove content; reset information; delete pages and/or profiles or other information; take action under any account or profile; transfer funds; withdraw and/or deposit money or other assets; and otherwise, without limitation, take absolutely any actions and have any powers that the Principal would have had with respect to any Digital Assets. Any company managing such digital accounts is specifically authorized and directed to deal with the Agent on the Principal's behalf.

This Section specifically grants the Agent authority over the content of electronic communications sent or received by the Principal, as set forth in A.R.S. §14-13109 and any custodian of electronic communications shall disclose to Agent the electronic communications of the Principal upon the required request for same under Arizona law. The Agent shall also have the specific authority to receive a catalogue of electronic communications sent or received by the Principal, *and* digital assets, pursuant §14-13110.

Arizona's Uniform Fiduciary Access to Digital Assets Act specifically applies to this Power of Attorney as set forth in A.R.S. §14-13103(A)(1).

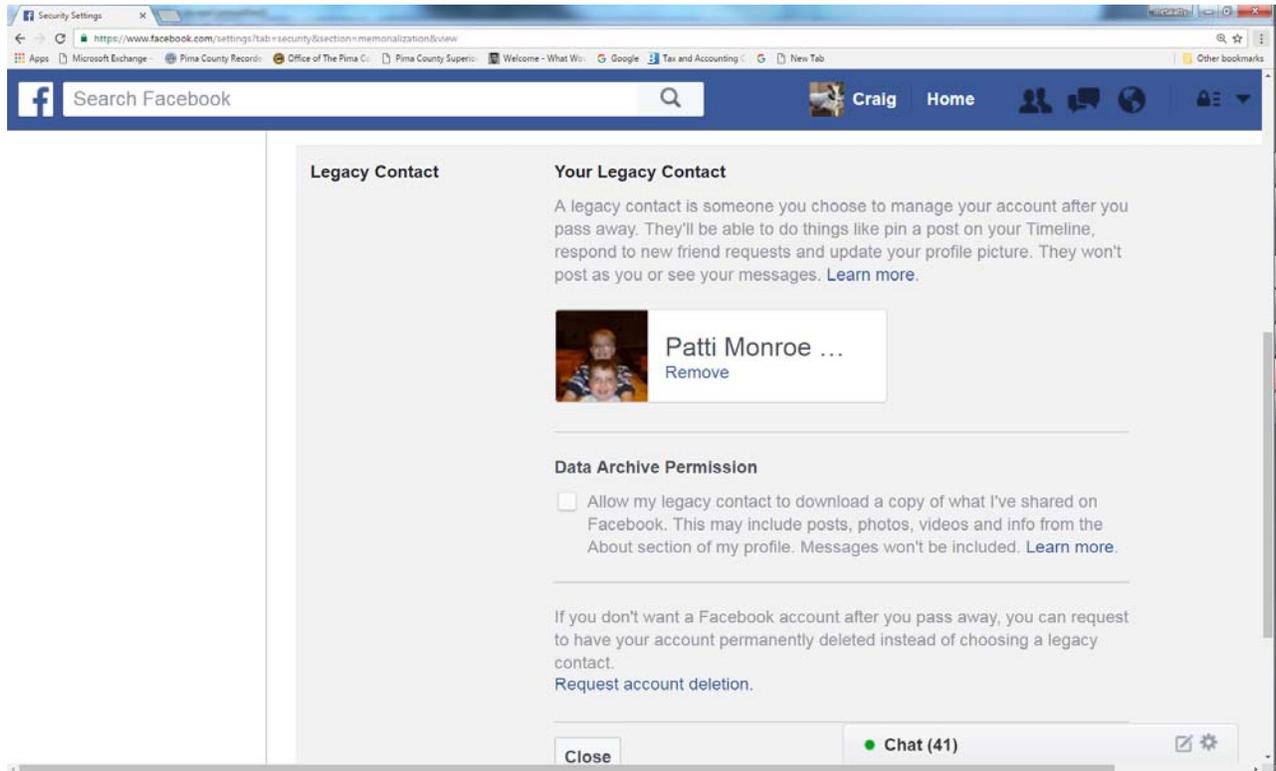
Pursuant to A.R.S. §14-13115, the Agent shall be an authorized user of the property of the Principal for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including A.R.S. §13-2316.

SAMPLE LANGUAGE FOR WILL

Digital Assets. My Personal Representative shall specifically also have all rights, powers, and authority to deal with any and all "Digital Assets" which the Principal holds. "Digital Assets" shall include, without limitation, the legal, practical, and technical authority to control or manage any and all personal electronic devices, online accounts, digital assets, and digital intellectual property. By way of illustration and not limitation, this shall include the rights to access and control any personal electronic devices, including computers, telephones, or any other device; social media profile or page which the Principal owns, licenses, and/or controls, including Face book, Twitter, Instagram, and Google plus, and any or all similar accounts; any and all electronic commerce sites, whether in the name of the Principal or in the name of a company or d/b/a designation which the Principal owns or controls, including eBay, Craigslist; control and manage any loyalty program credits or awards, including airline miles, credit card awards, or any retail loyalty programs; control and manage any digital media accounts, including Netflix; any offsite or other "cloud" storage of documents, files, computer backup, or digital information, including Google Drive, Dropbox; any or all financial accounts the Principal may have online, as well as access or control of any traditional financial accounts through electronic portals, including but not limited to any bank or brokerage company, electronic tax filings, utility accounts, loan or debt organization accounts, personal finance programs such as Quicken, or any online financial accounts such as Paypal; control and manage any internet assets such as blogs or domain names; and, any and all accounts I have established with any online retailers or sellers of any sort whatsoever. My Personal Representative shall have the right to retrieve passwords; edit or remove content; reset information; delete pages and/or profiles or other information; take action under any account or profile; transfer funds; withdraw and/or deposit money or other assets; and otherwise, without limitation, take absolutely any actions and have any powers that I would have had with respect to any Digital Assets. Any company managing such digital accounts is specifically authorized and directed to deal with the Personal Representative on the Principal's behalf.

Arizona's Uniform Fiduciary Access to Digital Assets Act specifically applies to my Personal Representative as set forth in A.R.S. §14-13103(A)(2). Any custodian shall disclose information to my Personal Representation as set forth in A.R.S. §14-13108. Pursuant to A.R.S. 14-13115, the Personal Representative shall be an authorized user of the property of the Decedent for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including A.R.S. 13-2316.

Online Tool Example:



Analog Kids: Tangible Personal Property

For most estate administrations, tangible personal property is a minor issue. Occasionally, an estate will have tangible personal property of great value, significant artwork, collections, etc., that will entail additional work and analysis, but, despite the fact such assets must be dealt with carefully, they are items that can be officially appraised and accounted for.

But for a small number of estate and trust administrations, of which this audience will be all too familiar, family acrimony and antipathy will result in litigation, and one of the more problematic areas can become tangible personal property of nominal value. Indeed, for individuals determined to fight against their sibling who is Trustee, but when most of the money and financial assets are clearly defined, arguing over TPP may be one of the few remaining outlets for emotion.

It's an easy setting for a beneficiary to accuse the Trustee or Personal Representative of not handling the assets properly. Did you sell them for enough? Did you give my brother more than you gave me? Why didn't I get a chance to get that item? And perhaps the most insoluble issue, "There were rings in that home? Where are they? You must have taken them?" In such situations it may be impossible for a fiduciary to adequately prove a negative against a testator.

Also keep in mind the specific provisions and general intent of A.R.S. §14-1104, specifically which states:

The fiduciary must prudently manage costs, preserve the assets of the ward or protected person for the benefit of the ward or protected person and protect against incurring any costs that exceed probable benefits to the ward, protected person, decedent's estate or trust, except as otherwise directed by a governing instrument or court order.

Does it make sense to pay someone \$500 to appraise \$200 worth of jewelry? Or even \$1,000 worth of jewelry?

One possible suggestion is to consider in drafting documents a provision like the following to give the fiduciary discretion to avoid this type of litigation. Again, it would not be something to use when there is a home full of Picasso's, but consider what's the worst a Trustee could do with this type of power in the more typical setting, and that a Trustee needs to be someone in whom a certain amount of faith is placed to do things appropriately.

**SAMPLE LANGUAGE FOR DISTRIBUTION OF TANGIBLE
PERSONAL PROPERTY UPON DEATH IN TRUST**

The Trustee shall distribute my tangible personal property as follows:

- A. If I leave a signed written list of which the Trustee has knowledge making gifts of tangible personal property, then such property shall be distributed in accordance with such list.
- B. If no list is found or to the extent that such a list is ineffective to dispose of all tangible personal property owned by the trust, then the Trustee shall distribute and/or sell the remaining tangible personal property as the Trustee deems appropriate in its sole and absolute discretion. Distribution may include any combination of (I) in-kind distribution of one or more items to any of the residuary beneficiaries, including the Trustee, with no obligation to equalize the value of in-kind distributions, (ii) donation of items to charitable organizations, (iii) sale of items, and (iv) disposal of items. The sales proceeds from any items shall be distributed as part of the residue of this trust estate. The Trustee shall have no duty to account for or report the value of any tangible personal property items distributed in kind or items which were disposed.
- C. In the event Trustee shall fail to locate a list within one (1) month after my death, it shall be conclusively presumed that no such document exists and if said document is later found, it shall be deemed void and of no effect.