

1. Governor Signs Digital Fiduciary Act

The Governor signed legislation recognizing a fiduciary heir's right to obtain control of a decedent's digital assets.

The legislation was proposed in 2014 by the National Conference of Commissioners on Uniform State Laws. The commission said 23 states already have enacted a version of the legislation, while 18 others are in the process of doing so.

The state Assembly gave final legislative passage to A-3433, known as the Uniform Fiduciary Access to Digital Assets Act, in July. The bill passed both houses of the Legislature without opposition.

"If a custodial party wants to guard their digital assets, they should be able to without regulatory barriers. Digital property such as email accounts, social media accounts and Internet-based currency is just as important as any other asset a person may have," said the lead sponsor, Assembly Majority Leader Louis Greenwald, D-Camden. "This will help individuals protect digital properties as they would their physical assets."

Under the UFADAA, the traditional power of a fiduciary to manage a person's tangible property when that person dies or loses the ability to manage his own property would be extended to include digital assets.

The act defines the term "digital assets" as a person's digital property and electronic communications.

Some examples of digital assets are financial accounts, such as online bank accounts; email accounts and social media accounts; computer files; web domains; and virtual currency.

The UFADAA allows fiduciaries to manage digital property but restricts a fiduciary's access to electronic communications such as email, text messages and social media accounts unless the original user consented to such access in a will, trust, power of attorney or other record, the sponsors said.

The act covers four types of fiduciaries: Executors or administrators of deceased persons' estates, court-appointed guardians of incapacitated persons, agents appointed under powers of attorney, and trustees.

The bill does not apply to digital assets of an employer used by an employee.

Also under the UFADAA, fiduciaries for digital assets are subject to the same fiduciary duties that normally apply to tangible assets. For example, an executor would not be authorized to publish the decedent's confidential communications or impersonate the decedent by sending email from the decedent's account.

The sponsors noted that a fiduciary's management of digital assets may also be governed by other law. For example, a fiduciary may not copy or distribute digital files in violation of copyright law, and may not exceed the user's authority under the account's terms of service.

To gain access to digital assets, a fiduciary will be required to send a request to the custodian, with a copy of the document granting fiduciary authority, such as a letter of appointment, court order or certification of trust.

<http://www.njlawjournal.com/id=1202797922811>

This law, as amended, would enact the "Uniform Fiduciary Access to Digital Assets Act" (UFADAA). The model act was promulgated by the Uniform Law Commission in 2014 and revised by the commission in 2015.

Under the law, the traditional power of a fiduciary to manage a person's tangible property when that person dies or loses the ability to manage his own property would be extended to allow the fiduciary to manage digital assets. The law defines the term "digital assets" to mean a person's digital property and electronic communications. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

The law allows fiduciaries to manage digital property, such as computer files, web domains, and virtual currency, but restricts a fiduciary's access to electronic communications such as email, text messages, and social media accounts unless the original user (i.e., accountholder) consented in a will, trust, power of attorney, or other record.

The law encompasses four types of fiduciaries: (1) executors or administrators of deceased persons' estates; (2) court-appointed guardians of incapacitated persons; (3) agents appointed under powers of attorney; and (4) trustees.

The law would not apply to digital assets of an employer used by an employee during the ordinary course of business.

The law distinguishes between a "catalogue of electronic communications" (information that identifies each person with which a user has had an electronic communication, and the time and date of that communication) and the "content of an electronic communication" (information concerning the substance or meaning of the communication). The law provides that generally a fiduciary would have access to a catalogue of the user's communications, but not the content, unless the user consented to the disclosure of the content.

Under the law, a "custodian" is a person or entity that carries, maintains, processes, receives, or stores digital assets. The law provides that if a custodian provides an "online tool," separate from the general terms of service, that allows the user to name another person to have access to the user's digital assets or to direct the custodian to delete the user's digital assets, the user's online instructions would be enforceable.

If the custodian does not provide an online tool or if the user declines to use the online tool provided, the user may give directions for the disposition of digital assets in a will, trust, power of attorney, or other written record.

If the user has not provided any direction, either online or in an estate plan, the terms of service for the user's account would determine whether a fiduciary may access the user's digital assets. If the terms of service do not address fiduciary access, the default rules presented in the law would apply.

Under the law, fiduciaries for digital assets would be subject to the same fiduciary duties that normally apply to tangible assets. Thus, for example, an executor would not be authorized to publish the decedent's confidential communications or impersonate the decedent by sending email from the decedent's account. A fiduciary's management of digital assets may also be limited by other law. For example, a fiduciary may not copy or distribute digital files in violation of copyright law, and may not exceed the user's authority under the account's terms of service.

In order to gain access to digital assets, a fiduciary would be required to send a request to the custodian, accompanied by a copy of the document granting fiduciary authority, such as a letter of appointment, court order, or certification of trust.

2. Fun Upcoming Running Races & Charity events selected by Kenneth Vercammen 10/3/17 Edison Library Will Seminar

10/ 7/17 Metuchen Fair [not a race] 1pm, then stop over Hailey's Harp

10/7 Keyport Screamin Country Jamboree- Spider Daniels Band 3:15

10/8 Rook Run Long Branch 10am \$\$

10/8 NJ VETFEST MUSIC FESTIVAL 4:30PM – Little Jimmy & the Starlites – Classic Oldies, Soul, and MOTOWN

5:45PM – Round Trip – Classic Rock from 60s, 70s & 80s

7PM – World Within – A tribute to The Grateful Dead and The Band

Marlboro Municipal Complex

1979 Township Drive
Marlboro, NJ 07746

Oct 9 at 7 PM South Brunswick Library Wills, Estate Planning & Probate Seminar Mon open to the public

October 12, 2017 Piscataway Library Kennedy Branch

Wills & Power of Attorney Seminar at 7pm

500 Hoes Lane Piscataway NJ 08854

Piscataway J.F. Kennedy Memorial Library

Open to the public. You do not need to be a township resident

Oct 14 2017 Military Law Symposium- to help Veterans

Rutgers College Avenue Student Center, 126 College Ave New Brunswick, NJ 08901 [the Barn]

Time: 9:00 AM - 3:00 PM ET

This a free seminar for NJ Bar members. Pre-registration is required.

10/ 15/17 Race Against Hunger 5k Roosevelt Park 9am

10/ 15 East Brunswick 5k & 10k 10am RVRT new start EB Community Arts Center 721 Cranbury Rd. in East Brunswick) well run event www.ebrr.org, post race we go to Lori's Lakeside on Farrington Lake, North Brunswick

3. Recent cases

GPS tracking device by police not barred

State v McDuffie

The court examined defendants' attack on the State's exercised privilege, refraining from disclosing information regarding details related to a global positioning system (GPS) tracking device used to prove their involvement in two burglaries. The court rejected defendants' constitutional attacks and upheld the privilege granted by N.J.R.E. 516 and N.J.S.A. 2A:84A-28, defining the guidelines reviewed when weighing disclosure in light of the asserted privilege. These include: (1) whether defendant demonstrates a particularized need for disclosure related to advance a stated defense; (2) whether the opportunity to cross-examine the officer, asserting non-disclosure based on privilege, satisfies a defendant's need to challenge the credibility of the testifying witness; (3) whether law enforcement provided required corroborating evidence extrinsic to the GPS, to protect a defendant's rights of confrontation and fair trial; and (4) whether a defendant has the opportunity to provide expert testimony to attack the evidence without disclosure of the requested information. Docket A-3634-14T3

4 State v Tringali

The State alleged that, acting in Florida, defendant paid an accomplice to launch spam attacks on a website that was integral to a New Jersey internet-based business, for the purpose of harming the business owner. The Appellate Division reversed an order dismissing the indictment charging defendant with the offenses of disrupting or impairing computer services, N.J.S.A. 2C:20-25(b), and impersonating another for the purpose of obtaining a benefit or depriving another of a benefit, N.J.S.A. 2C:21-17(a)(1). As to both offenses, the harmful result to the victim is an "element" of the offense, within the meaning of the territorial jurisdiction statute, N.J.S.A. 2C:1-3(a)(1) and -3(g). Because the prosecutor produced some evidence that the New Jersey victims suffered harm in this State, which was an element of each computer crime statute, New Jersey has territorial jurisdiction to prosecute defendant for those offenses. Therefore, the trial court erred in dismissing those counts of the indictment for lack of territorial jurisdiction.

A-1262-15T1