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SB-1458 The Revised Uniform Fiduciary Access to Digital Assets Act. (2023-2024)

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Senate Bill No. 1458

CHAPTER 799

An act to amend Sections 871, 872, 880, and 881 of, and to add Sections 879.1, 879.2, and 879.3 to, the Probate Code, relating to estates.

[Approved by Governor September 27, 2024. Filed with Secretary of State September 27, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1458, Allen. The Revised Uniform Fiduciary Access to Digital Assets Act.

Existing law, the Revised Uniform Fiduciary Access to Digital Assets Act, generally authorizes a decedent's fiduciary to access and manage digital assets and electronic communications, as specified. The act authorizes a user, defined to mean a person who has an account with a custodian, to use an online tool to direct the custodian to disclose or not disclose the user's digital assets to a designated recipient, which is defined to mean a person chosen by a user using an online tool to administer digital assets of the user. The act specifies that, if a user has not used an online tool to give that direction, the user may give direction regarding the disclosure of digital assets in a will, trust, power of attorney, or other record to a fiduciary. The act defines "fiduciary" for purposes of the act to mean an original, additional, or successor personal representative or trustee. Under existing law, the act applies in certain situations, including when a fiduciary is acting under a will.

This bill would add conservator and agent to the definition of "fiduciary" for purposes of these provisions. The bill would also define "agent," "conservator," "conservatee," and "principal" for purposes of the act. This bill would also make the act applicable if a fiduciary is acting under a power of attorney or to a conservator, as specified.

The bill would require a custodian to disclose to an agent the content of electronic communications or the catalogue of electronic communications sent or received by a principal and digital assets, other than the content of electronic communications, as specified. The bill would require a custodian to disclose to a conservator the catalogue of electronic communications sent or received by a conservatee and digital assets, other than the content of electronic communications, as specified.

Existing law imposes the legal duties of care, loyalty, and confidentiality on a fiduciary charged with digital assets. Existing law gives a fiduciary specific authorities when acting within the scope of their duties, including making the fiduciary an authorized user of the property of the decedent or settlor, as specified. Existing law authorizes a fiduciary to request that a custodian terminate a user's account and requires that request to include specific information, including a certified copy of the letter of appointment of the representative, a small-estate affidavit, a court order, a certified copy of the trust instrument, or the certification of the trust, as specified.

This bill would extend that authority to a fiduciary with respect to the property of a conservatee or principal. The bill would also authorize a fiduciary, or an affiant acting with respect to a deceased user, as specified, to submit a request for termination with a power of attorney.

Existing law requires a custodian to comply with a request from a fiduciary or designated recipient to disclose digital assets or terminate an account within 60 days after the receipt of information, as specified. Existing law specifies that it does not limit a custodian's ability to obtain, or require a fiduciary or designated recipient to obtain, a court order that makes specific findings, including that the account belongs to the decedent, principal, or trustee and that there is sufficient consent from the decedent, principal, or settlor to support the disclosure.

This bill would also authorize a custodian to, or require a fiduciary or designated recipient to, obtain a court order that finds that the account belongs to, and that there is sufficient consent from, the conservatee. The bill would also make technical and conforming changes.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 871 of the Probate Code is amended to read:

871. As used in this part, the following terms have the following meanings:

(a) "Account" means an arrangement under a terms-of-service agreement in which the custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.

(b) "Carries" means engages in the transmission of electronic communications.

(c) "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.

(d) "Content of an electronic communication" means information concerning the substance or meaning of the communication, which meets all of the following requirements:

(1) Has been sent or received by a user.

(2) 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.

(3) Is not readily accessible to the public.

(e) (1) "Court" means the superior court presiding over the judicial proceedings that have been initiated under this code to administer the estate of the deceased user or, if none, the superior court sitting in the exercise of jurisdiction under this code in the county of the user's domicile.

(2) The court, as defined in this section, shall have exclusive jurisdiction over proceedings brought under this part.

(f) "Custodian" means a person who carries, maintains, processes, receives, or stores a digital asset of a user.

(g) "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.

(h) (1) "Digital asset" means an electronic record in which an individual has a right or interest.

(2) The term "digital asset" does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

(i) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(j) "Electronic communication" has the same meaning as the definition in Section 2510(12) of Title 18 of the United States Code.

(k) "Electronic communication service" means a custodian who provides to a user the ability to send or receive an electronic communication.

(l) "Fiduciary" means an original, additional, or successor personal representative, conservator, agent, or trustee.

(m) "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases, or other items with like characteristics.

(n) "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.

(o) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(p) "Personal representative" means an executor, administrator, special administrator, or person who performs substantially the same function under any other law.

(q) "Power of attorney" means a record that grants an agent authority to act in the place of the principal.

(r) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form.

(s) "Remote-computing service" means a custodian who provides to a user computer processing services or the storage of digital assets by means of an electronic communications system as defined in Section 2510(14) of Title 18 of the United States Code.

(t) "Terms-of-service agreement" means an agreement that controls the relationship between a user and a custodian.

(u) (1) "Trustee" means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another.

(2) The term "trustee" includes a successor trustee.

(v) "User" means a person who has an account with a custodian.

(w) "Will" includes a codicil, a testamentary instrument that only appoints an executor, or an instrument that revokes or revises a testamentary instrument.

(x) "Agent" means an attorney-in-fact granted authority over financial matters under a durable or nondurable power of attorney.

(y) (1) "Conservator" means a person appointed by a court to manage the estate of a living individual.

(2) The term "conservator" includes a limited conservator.

(z) "Conservatee" means an individual for whom a conservator has been appointed.

(aa) "Principal" means an individual who grants authority to an agent in a power of attorney.

SEC. 2. Section 872 of the Probate Code is amended to read:

872. (a) This part shall apply to all of the following:

(1) A fiduciary acting under a will executed before, on, or after January 1, 2017.

(2) A personal representative acting for a decedent who died before, on, or after January 1, 2017.

(3) A trustee acting under a trust created before, on, or after January 1, 2017.

(4) A custodian of digital assets for a user if the user resides in this state or resided in this state at the time of the user's death.

(5) A conservator appointed before, on, or after January 1, 2025.

(6) A fiduciary acting under a power of attorney executed before, on, or after January 1, 2025.

(b) This part does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

SEC. 3. Section 879.1 is added to the Probate Code, to read:

879.1. 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 the content of electronic communications to the agent if the agent gives the custodian all of the following:

(a) A written request for disclosure in physical or electronic form.

(b) An original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal.

(c) A certification by the agent, under penalty of perjury, that the power of attorney is in effect.

(d) If requested by the custodian, either of the following:

(1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account.

(2) Evidence linking the account to the principal.

SEC. 4. Section 879.2 is added to the Probate Code, to read:

879.2. 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:

(a) A written request for disclosure in physical or electronic form.

(b) An original or 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.

(c) A certification by the agent, under penalty of perjury, that the power of attorney is in effect.

(d) If requested by the custodian, either of the following:

(1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account.

(2) Evidence linking the account to the principal.

SEC. 5. Section 879.3 is added to the Probate Code, to read:

879.3. (a) After a noticed hearing, the court may grant a conservator access to the digital assets of a conservatee.

(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 conservatee and digital assets, other than the content of electronic communications, in which the conservatee 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 conservatee.

(3) If requested by the custodian, either 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 conservatee.

(B) Evidence linking the account to the conservatee.

(c) The provisions of this part are subject to Sections 2351 and 2351.5.

SEC. 6. Section 880 of the Probate Code is amended to read:

880. (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:

(1) The duty of care.

(2) The duty of loyalty.

(3) The duty of confidentiality.

(b) All of the following shall apply to a fiduciary's or designated recipient's authority with respect to a digital asset of a user:

(1) Except as otherwise provided in Section 873, a fiduciary's or designated recipient's authority is subject to the applicable terms-of-service agreement.

(2) A fiduciary's or designated recipient's authority is subject to other applicable law, including copyright law.

(3) A fiduciary's authority is limited by the scope of the fiduciary's duties.

(4) A fiduciary's or designated recipient's authority may not be used to impersonate the user.

(c) (1) A fiduciary with authority over the property of a decedent or settlor has the right of access to any digital asset in which the decedent or settlor had a right or interest that is not held by a custodian or subject to a terms-of-service agreement.

(2) This subdivision does not require a custodian to share passwords or decrypt protected devices.

(d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, conservatee, principal, or settlor for the purpose of applicable computer-fraud and unauthorized-computer-access laws.

(e) The following shall apply to a fiduciary with authority over the tangible, personal property of a decedent, conservatee, principal, or settlor:

(1) (A) The fiduciary has the right to access the property and any digital asset stored in it.

(B) This subdivision does not require a custodian to share passwords or decrypt protected devices.

(2) The fiduciary is an authorized user for purposes of any applicable computer-fraud and unauthorized-computer-access laws.

(f) A custodian may disclose information in an account to a fiduciary of the user if the information is required to terminate an account used to access digital assets licensed to the user.

(g) A fiduciary of a user, or an affiant acting under Section 13101 with respect to a deceased user, may request a custodian to terminate the user's account. A request for termination shall be in writing, in either physical or electronic form, and accompanied by all of the following:

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

(B) If the user is a conservatee, a court order authorizing the conservator to request termination of the user's account.

(2) A certified copy of the letter of appointment of the representative, a small-estate affidavit under Section 13101, a court order, a power of attorney, a certified copy of the trust instrument, or a certification of the trust under Section 18100.5 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 subparagraph (A).

SEC. 7. Section 881 of the Probate Code is amended to read:

881. (a) Not later than 60 days after receipt of the information required under Sections 876 to 879.3, inclusive, a custodian shall comply with a request under this part from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply with a request, the fiduciary or designated recipient may apply to the court for an order directing compliance.

(b) An order under subdivision (a) directing compliance shall contain a finding that compliance is not in violation of Section 2702 of Title 18 of the United States Code.

(c) A custodian may notify a user that a request for disclosure of digital assets or to terminate an account was made pursuant to this part.

(d) A custodian may deny a request under this part 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 date of death of the user.

(e) This part does not limit a custodian's ability to obtain, or to require a fiduciary or designated recipient requesting disclosure or account termination under this part to obtain, a court order that makes all of the following findings:

(1) The account belongs to the decedent, principal, conservatee, or trustee.

(2) There is sufficient consent from the decedent, principal, conservatee, or settlor to support the requested disclosure.

(3) A specific factual finding required by any other applicable law in effect at that time, including, but not limited to, a finding that disclosure is not in violation of Section 2702 of Title 18 of the United States Code.

(f) (1) A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith and in compliance with this part.

(2) The protections specified in paragraph (1) do not apply in a case of gross negligence or willful or wanton misconduct of the custodian or its officers, employees, or agents.