

FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (EXCERPT)
Act 59 of 2016

***** 700.1002.new THIS NEW SECTION IS EFFECTIVE JUNE 27, 2016 *****

700.1002.new Definitions.

Sec. 2. As used in this act:

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

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

(c) "Carries" means engaging in the transmission of an electronic communication.

(d) "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.

(e) "Conservator" means a person that is appointed by a court to manage all or part of the estate of a protected person. Conservator includes, but is not limited to, any of the following:

(i) A conservator as that term is defined in section 1103 of the estates and protected individuals code, 1998 PA 386, MCL 700.1103.

(ii) A plenary guardian as that term is defined in section 600 of the mental health code, 1974 PA 258, MCL 330.1600.

(iii) A partial guardian as that term is defined in section 600 of the mental health code, 1974 PA 258, MCL 330.1600.

(iv) A special fiduciary appointed to take possession of and administer a protected person's property.

(v) A special conservator appointed under section 5408 of the estates and protected individuals code, 1998 PA 386, MCL 700.5408.

(vi) A guardian if no conservator has been appointed.

(f) "Content of an electronic communication" means information concerning the substance or meaning of an electronic communication to which all of the following apply:

(i) The information has been sent or received by a user.

(ii) The information is in electronic storage by a digital custodian providing an electronic communication service to the public or is carried or maintained by a digital custodian providing a remote-computing service to the public.

(iii) The information is not readily accessible to the public.

(g) "Court" means the probate court or, when applicable, the circuit court.

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

(i) "Developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a.

(j) "Digital asset" means an electronic record in which a user 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.

(k) "Digital custodian" means a person that carries, maintains, processes, receives, or stores a digital asset of a user.

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

(m) "Electronic communication" means that term as defined in 18 USC 2510.

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

(o) "Electronic communication system" means that term as defined in 18 USC 2510.

(p) "Fiduciary" means a person who is an original, additional, or successor personal representative, conservator, agent, or trustee.

(q) "Guardian" means that term as defined in section 1104 of the estates and protected individuals code, 1998 PA 386, MCL 700.1104.

(r) "Governing instrument" means a will, a trust, an instrument creating a power of attorney, or other dispositive or nominative instrument.

(s) "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

(t) "Interested person" or "person interested in an estate" means those terms as defined in section 1105 of

the estates and protected individuals code, 1998 PA 386, MCL 700.1105.

(u) "Legally incapacitated individual" means that term as defined in section 1105 of the estates and protected individuals code, 1998 PA 386, MCL 700.1105.

(v) "Letters" means that term as described in section 1105 of the estates and protected individuals code, 1998 PA 386, MCL 700.1105.

(w) "Minor" means that term as defined in section 1106 of the estates and protected individuals code, 1998 PA 386, MCL 700.1106.

(x) "Online tool" means an electronic service provided by a digital custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the digital custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

(y) "Person" means that term as defined in section 1106 of the estates and protected individuals code, 1998 PA 386, MCL 700.1106.

(z) "Personal representative" means that term as defined in section 1106 of the estates and protected individuals code, 1998 PA 386, MCL 700.1106. Personal representative also includes a special fiduciary appointed to take possession of and administer the property of a decedent's estate.

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

(bb) "Principal" means a person that grants authority to an agent in a power of attorney.

(cc) "Proceeding" means that term as defined in section 1106 of the estates and protected individuals code, 1998 PA 386, MCL 700.1106.

(dd) "Protected individual" means that term as defined in section 1106 of the estates and protected individuals code, 1998 PA 386, MCL 700.1106.

(ee) "Protected person" includes any of the following:

(i) A protected individual.

(ii) A legally incapacitated individual.

(iii) A minor for whom a guardian has been appointed but no conservator has been appointed.

(iv) An individual who has a developmental disability.

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

(gg) "Remote-computing service" means a digital custodian that provides to a user computer processing services or the storage of digital assets by means of an electronic communications system.

(hh) "Settlor" means that term as defined in section 7103 of the estates and protected individuals code, 1998 PA 386, MCL 700.7103.

(ii) "Special fiduciary" means a special fiduciary appointed by the court under sections 1308, 1309, 7704, 7815, and 7901 of the estates and protected individuals code, 1998 PA 386, MCL 700.1308, 700.1309, 700.7704, 700.7815, and 700.7901.

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

(kk) "Trust" means that term as defined in section 1107 of the estates and protected individuals code, 1998 PA 386, MCL 700.1107.

(ll) "Trustee" means that term as defined in section 1107 of the estates and protected individuals code, 1998 PA 386, MCL 700.1107. Trustee also includes a special fiduciary that controls all or part of a trust.

(mm) "User" means a person that has an account with a digital custodian.

(nn) "Will" means that term as defined in section 1108 of the estates and protected individuals code, 1998 PA 386, MCL 700.1108.

History: 2016, Act 59, Eff. June 27, 2016.