

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

***** 700.1015.new THIS NEW SECTION IS EFFECTIVE JUNE 27, 2016 *****

700.1015.new Duties and authority of fiduciary.

Sec. 15. (1) The legal duties imposed on a fiduciary charged with managing tangible personal property apply to the management of digital assets, including all of the following:

- (a) The duty of care.
- (b) The duty of loyalty.
- (c) The duty of confidentiality.

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

- (a) Except as otherwise provided in section 4, it is subject to the applicable terms-of-service agreement.
- (b) It is subject to other applicable laws, including copyright law.
- (c) For a fiduciary, it is limited to the scope of the fiduciary's duties.
- (d) It may not be used to impersonate the user.

(3) 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 digital custodian or subject to a terms-of-service agreement.

(4) 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, but not limited to, all of the following:

- (a) Section 5 of 1979 PA 53, MCL 752.795.
- (b) Section 540 of the Michigan penal code, 1931 PA 328, MCL 750.540.

(c) Section 157n of the Michigan penal code, 1931 PA 328, MCL 750.157n, to the extent that the property is a financial transaction device as that term is defined in section 157m of the Michigan penal code, 1931 PA 328, MCL 750.157m.

(5) All of the following apply to a fiduciary with authority over tangible personal property of a decedent, protected person, principal, or settlor:

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

(b) The fiduciary is an authorized user for the purposes of computer fraud and unauthorized computer access laws, including, but not limited to, all of the following:

- (i) Section 5 of 1979 PA 53, MCL 752.795.
- (ii) Section 540 of the Michigan penal code, 1931 PA 328, MCL 750.540.

(iii) Section 157n of the Michigan penal code, 1931 PA 328, MCL 750.157n, to the extent that the tangible personal property is a financial transaction device as that term is defined in section 157m of the Michigan penal code, 1931 PA 328, MCL 750.157m.

(6) A digital 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.

(7) A fiduciary of a user may request a digital 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:

- (a) If the user is deceased, a copy of the death certificate of the user.
- (b) A certified copy of the letters of authority of the personal representative, small-estate affidavit, or court order, power of attorney, or trust giving the fiduciary authority over the account.
- (c) If requested by the digital custodian, any of the following:

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

- (ii) Evidence linking the account to the user.

(iii) A finding of the court that the user had a specific account with the digital custodian, identifiable by the information specified in subparagraph (i).

- (8) A fiduciary is immune from liability for an action done in good faith in compliance with this act.

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