



The Uniform Law Commission

The Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA)

Coping With Death and Incapacity in a Digital Age

Benjamin Orzeske
Uniform Law Commission
111 N. Wabash Avenue, Suite 1010
Chicago, Illinois 60602
(312) 450-6621
borzeske@uniformlaws.org



Our Drafting Process

- The ULC is a non-partisan, non-profit organization founded in 1892 and comprised of volunteer commissioners appointed by all 50 states, + DC, PR, and USVI.
- Uniform acts are drafted by committees of commissioners from diverse legal backgrounds and geographic areas.
- All drafting is done in public meetings with all stakeholders invited to participate.
- Follow the work of any committee on www.uniformlaws.org.



Why is RUFADAA necessary?

The nature of our property in the digital age has changed:

- Snail Mail → E-mail
- Photos in Albums → Photos on the Web
- Files in File Cabinets → Files in the Cloud
- Paper Statements → Electronic Statements
- Business Real Estate → Business Web Site
- Contacts in a Rolodex → Contacts on your Phone
- Money in the Bank → Bitcoins



RUFADAA – the Overview

- Provides default rules only; the owner controls the disposition of all property, whether tangible or digital.
- Integrated with federal privacy law.
- Provides access rules for four common types of fiduciaries:
 - Executors of decedents' estates;
 - Guardians/Conservators of protected persons;
 - Agents under a power of attorney; and
 - Trustees.



RUFADAA – Challenges to Access

- Passwords and Encryption
- Restrictive Terms-of-Service and Privacy Policies
- Federal and State Laws on Unauthorized Access
- The Electronic Communications Privacy Act of 1986 (ECPA).





RUFADAA vs. ECPA – the Compromise

- Fiduciaries have default access to:
 - ✓ The records (NOT content) of electronic communications
 - ✓ Other digital assets (documents, photos, blogs, etc.)
- Fiduciaries may access the **CONTENT** of electronic communications only with the consent of the user.

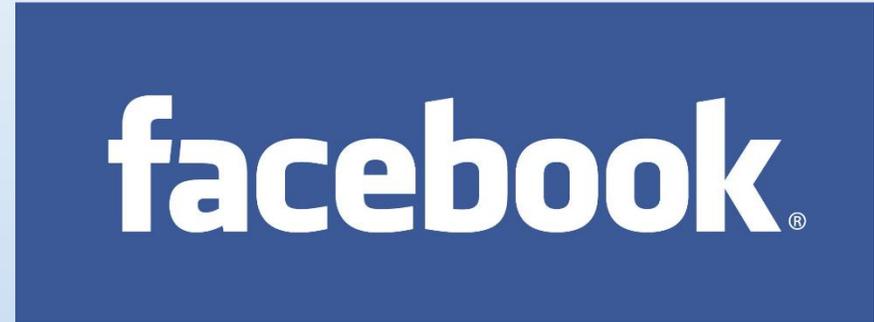




RUFADAA – Online Tools for Access



Inactive
Account
Manager



Legacy
Contact



RUFADAA – A legal path forward

ESTATE PLANNERS:

- Include instructions for handling digital assets in your standard documents.
- Consider recommending strategic separation of online accounts into private accounts and accounts accessible to a fiduciary.
- Advise clients to take advantage of online tools to designate a beneficiary for their digital assets.

Steps for Fiduciaries to Review Decedent Accounts Under the Revised Uniform Fiduciary Access to Digital Assets Act

