DC BAR
DISTRICT OF COLUMBIA BAR
Taxation Section

D.C. Bar Taxation Section Statement of Support for the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA)

The views expressed herein represent only those of the Taxation Section[1] of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors.

The D.C. Bar Taxation Section Steering Committee has considered the Revised Uniform Fiduciary Access to Digital Assets Act ("RUFADAA"). RUFADAA updates state fiduciary law for the Internet age by providing for fiduciary management of digital assets in accordance with the user's estate plan, while at the same time ensuring that a user's private electronic communications remain private. The Steering Committee supports enactment of RUFADAA in the District of Columbia, as such act would allow D.C. residents to better plan for the management and disposition of their digital assets in the event of their incapacity or death. Additionally, the Steering Committee supports an early enactment of RUFADAA in D.C. as a means of building support for the enactment of RUFADAA in other states, thereby securing nationwide uniformity on this important legal issue.

Today, access to an individual's digital assets is governed by a terms of service ("TOS") agreement between the company storing those assets on its server (the "custodian") and the user. These agreements typically grant only the user lawful access to such assets. This creates a problem, however, when a user is no longer capable of accessing or managing such assets due to incapacity or death.

RUFADAA addresses this issue by providing access to digital assets for four types of fiduciaries: (i) executors of a decedent's estate, (ii) court-appointed guardians or conservators, (iii) agents appointed under powers of attorney, and (iv) trustees. Such access is determined under a multi-tiered priority system. First, any online tool provided by the custodian that allows the user to grant another person access to his or her digital assets or to direct the deletion of such assets will control. Second, if no such online tool is available or utilized by the user, then the user may direct the management and distribution of his or her digital assets through a will, trust, power of attorney, or other written record. Third, in the absence of both of the above options, the TOS agreement's terms will determine a fiduciary's access. Finally, if none of the above scenarios apply, then RUFADAA's default rules will control. Under RUFADAA's default rules, a fiduciary may never access the content of electronic communications without the user's consent, but, when necessary, a fiduciary may have a right to access a catalogue of the user's electronic communications. With respect to other non-communication forms of digital assets, such assets are treated as intangible personal property. For example, a broad authorization to gain access to one's business files will grant access to all paper and electronic files.

RUFADAA provides much-needed updates to state fiduciary law, and successfully balances a fiduciary's need for access with a user's concerns for privacy. Accordingly, the Steering Committee supports enactment of RUFADAA in the District of Columbia.

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[1] On January 7, 2016, the Steering Committee of the Taxation Section voted without dissent (8-0), with one abstention, to adopt this public statement.