

By: Taylor of Collin

S.B. No. 1193

A BILL TO BE ENTITLED

AN ACT

relating to the adoption of the Texas Revised Uniform Fiduciary  
Access to Digital Assets Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Estates Code is amended by adding Title 4 to  
read as follows:

TITLE 4. DIGITAL ASSETS

CHAPTER 2001. TEXAS REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL  
ASSETS ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2001.001. SHORT TITLE. This chapter may be cited as  
the Texas Revised Uniform Fiduciary Access to Digital Assets Act.

Sec. 2001.002. DEFINITIONS. In this chapter:

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

(2) "Agent" means an attorney in fact granted  
authority to act for a principal under a durable or other power of  
attorney. The term does not include an agent under a medical power  
of attorney.

(3) "Carries" means to engage in the transmission of  
an electronic communication.

(4) "Catalog of electronic communications" means

1 information that identifies each person with whom a user has had an  
2 electronic communication, the time and date of the communication,  
3 and the electronic address of the person.

4 (5) "Content of an electronic communication" means  
5 information concerning the substance or meaning of an electronic  
6 communication that:

7 (A) has been sent, uploaded, received, or  
8 downloaded by a user;

9 (B) is in electronic storage by a custodian  
10 providing an electronic communication service to the public or is  
11 carried or maintained by a custodian providing a remote computing  
12 service to the public; and

13 (C) is not readily accessible to the public.

14 (6) "Custodian" means a person that carries,  
15 maintains, processes, receives, or stores a digital asset of a  
16 user.

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

19 (8) "Digital asset" means an electronic record in  
20 which an individual has a right or interest. The term does not  
21 include an underlying asset or liability unless the asset or  
22 liability is itself an electronic record.

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

26 (10) "Electronic communication" has the meaning  
27 assigned by 18 U.S.C. Section 2510(12), as it existed on January 1,

1 2017.

2 (11) "Electronic communication service" means a  
3 custodian that provides to a user the ability to send or receive an  
4 electronic communication.

5 (12) "Fiduciary" means an original, additional, or  
6 successor personal representative, guardian, agent, or trustee.

7 (13) "Guardian" has the meaning assigned by Section  
8 1002.012, except that the term does not include a guardian of the  
9 person of a ward.

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

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

17 (16) "Person" has the meaning assigned by Section  
18 311.005, Government Code.

19 (17) "Personal representative," notwithstanding  
20 Section 22.031, means:

21 (A) an executor or independent executor;

22 (B) an administrator, independent administrator,  
23 or temporary administrator;

24 (C) a successor to an executor or administrator  
25 listed in Paragraph (A) or (B); or

26 (D) a person who performs functions  
27 substantially similar to those performed by the persons listed in

1 Paragraph (A), (B), or (C) under the laws of this state, other than  
2 this chapter.

3 (18) "Power of attorney" means a record that grants an  
4 agent authority to act in the place of a principal with regard to  
5 property matters, including a durable power of attorney as provided  
6 by Subtitle P, Title 2. The term does not include a medical power of  
7 attorney.

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

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

13 (21) "Remote computing service" means a custodian that  
14 provides to a user computer processing services or the storage of  
15 digital assets by means of an electronic communications system, as  
16 defined by 18 U.S.C. Section 2510(14), as it existed on January 1,  
17 2017.

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

20 (23) "Trustee" has the meaning assigned by Section  
21 [111.004](#), Property Code.

22 (24) "User" means a person who has an account with a  
23 custodian.

24 Sec. 2001.003. APPLICABILITY. (a) This chapter applies to  
25 a custodian if the user resides in this state or resided in this  
26 state at the time of the user's death.

27 (b) This chapter does not apply to a digital asset of an

1 employer used by an employee in the ordinary course of the  
2 employer's business.

3 Sec. 2001.004. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

4 In applying and construing this chapter, consideration must be  
5 given to the need to promote uniformity of the law, with respect to  
6 the subject matter of this chapter, among states that enact a law  
7 based on the uniform act on which this chapter is based.

8 Sec. 2001.005. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL

9 AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and  
10 supersedes the federal Electronic Signatures in Global and National  
11 Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify,  
12 limit, or supersede Section 101(c) of that Act (15 U.S.C. Section  
13 7001(c)) or authorize electronic delivery of any of the notices  
14 described in Section 103(b) of that Act (15 U.S.C. Section  
15 7003(b)).

16 SUBCHAPTER B. GENERAL PROCEDURES FOR ACCESS TO DIGITAL ASSETS

17 Sec. 2001.051. USER DIRECTION FOR DISCLOSURE OF DIGITAL

18 ASSETS. (a) A user may use an online tool to direct the custodian  
19 to disclose or not to disclose to a designated recipient some or all  
20 of the user's digital assets, including the content of an  
21 electronic communication. If the online tool allows the user to  
22 modify or delete a direction at all times, a direction regarding  
23 disclosure using an online tool overrides a contrary direction by  
24 the user in a will, trust, power of attorney, or other record.

25 (b) If a user has not used an online tool to give direction  
26 under Subsection (a) or if the custodian has not provided an online  
27 tool, the user may allow or prohibit disclosure to a fiduciary of

1 some or all of the user's digital assets, including the content of  
2 an electronic communication sent or received by the user, in a will,  
3 trust, power of attorney, or other record.

4 (c) A user's direction under Subsection (a) or (b) overrides  
5 a contrary provision in a terms-of-service agreement that does not  
6 require the user to act affirmatively and distinctly from the  
7 user's assent to the terms of service.

8 Sec. 2001.052. TERMS-OF-SERVICE AGREEMENT. (a) This  
9 chapter does not change or impair a right of a custodian or a user  
10 under a terms-of-service agreement to access and use digital assets  
11 of the user.

12 (b) This chapter does not give a fiduciary or designated  
13 recipient any new or expanded rights other than those held by the  
14 user for whom, or for whose estate or trust, the fiduciary or  
15 designated recipient acts or represents.

16 (c) A fiduciary's or designated recipient's access to  
17 digital assets may be modified or eliminated by a user, by federal  
18 law, or by a terms-of-service agreement if the user has not provided  
19 direction under Section 2001.051.

20 Sec. 2001.053. PROCEDURE FOR DISCLOSING DIGITAL ASSETS.  
21 (a) When disclosing digital assets of a user under this chapter,  
22 the custodian may, at the custodian's sole discretion:

23 (1) grant a fiduciary or designated recipient full  
24 access to the user's account;

25 (2) grant a fiduciary or designated recipient partial  
26 access to the user's account sufficient to perform the tasks with  
27 which the fiduciary or designated recipient is charged; or

1           (3) provide a fiduciary or designated recipient a copy  
2 in a record of any digital asset that, on the date the custodian  
3 received the request for disclosure, the user could have accessed  
4 if the user were alive and had full capacity and access to the  
5 account.

6           (b) A custodian may assess a reasonable administrative  
7 charge for the cost of disclosing digital assets under this  
8 chapter.

9           (c) A custodian is not required to disclose under this  
10 chapter a digital asset deleted by a user.

11           (d) If a user directs or a fiduciary requests a custodian to  
12 disclose under this chapter some, but not all, of the user's digital  
13 assets, the custodian is not required to disclose the assets if  
14 segregation of the assets would impose an undue burden on the  
15 custodian. If the custodian believes the direction or request  
16 imposes an undue burden, the custodian or fiduciary may seek an  
17 order from the court to disclose:

18                   (1) a subset limited by date of the user's digital  
19 assets;

20                   (2) all of the user's digital assets to the fiduciary  
21 or designated recipient;

22                   (3) none of the user's digital assets; or

23                   (4) all of the user's digital assets to the court for  
24 review in camera.

25           SUBCHAPTER C. PROCEDURES FOR DISCLOSURE OF DIGITAL ASSETS OF  
26   DECEASED USER

27           Sec. 2001.101. DISCLOSURE OF CONTENT OF ELECTRONIC

1 COMMUNICATIONS OF DECEASED USER. (a) If a deceased user consented  
2 to or a court directs disclosure of the content of an electronic  
3 communication of the user, the custodian shall disclose to the  
4 personal representative of the estate of the user the content of an  
5 electronic communication sent or received by the user if the  
6 representative gives the custodian:

7 (1) a written request for disclosure in physical or  
8 electronic form;

9 (2) a certified copy of the death certificate of the  
10 user;

11 (3) a certified copy of letters testamentary or of  
12 administration, a small estate affidavit filed under Section  
13 205.001, or other court order; and

14 (4) unless the user provided direction using an online  
15 tool, a copy of the user's will, trust, power of attorney, or other  
16 record evidencing the user's consent to disclosure of the content  
17 of an electronic communication if the user consented to the  
18 disclosure.

19 (b) In addition to the items required to be given to the  
20 custodian under Subsection (a), the personal representative shall  
21 provide the following if requested by the custodian:

22 (1) a number, user name, address, or other unique  
23 subscriber or account identifier assigned by the custodian to  
24 identify the deceased user's account;

25 (2) evidence linking the account to the user; or

26 (3) a finding by the court that:

27 (A) the deceased user had a specific account with



1 the custodian, identifiable by the information specified in  
2 Subdivision (1);

3 (B) disclosure of the content of an electronic  
4 communication of the user would not violate 18 U.S.C. Section 2701  
5 et seq., 47 U.S.C. Section 222, or other applicable law;

6 (C) unless the user provided direction using an  
7 online tool, the user consented to disclosure of the content of an  
8 electronic communication; or

9 (D) disclosure of the content of an electronic  
10 communication of the user is reasonably necessary for  
11 administration of the estate.

12 Sec. 2001.102. DISCLOSURE OF OTHER DIGITAL ASSETS OF  
13 DECEASED USER. (a) Unless the deceased user prohibited disclosure  
14 of digital assets or the court directs otherwise, a custodian shall  
15 disclose to the personal representative of the estate of a deceased  
16 user a catalog of electronic communications sent or received by the  
17 user and digital assets, other than the content of an electronic  
18 communication, of the user if the representative gives the  
19 custodian:

20 (1) a written request for disclosure in physical or  
21 electronic form;

22 (2) a certified copy of the death certificate of the  
23 user; and

24 (3) a certified copy of letters testamentary or of  
25 administration, a small estate affidavit filed under Section  
26 205.001, or other court order.

27 (b) In addition to the items required to be given to the

1 custodian under Subsection (a), the personal representative shall  
2 provide the following if requested by the custodian:

3 (1) a number, user name, address, or other unique  
4 subscriber or account identifier assigned by the custodian to  
5 identify the deceased user's account;

6 (2) evidence linking the account to the user;

7 (3) an affidavit stating that disclosure of the user's  
8 digital assets is reasonably necessary for administration of the  
9 estate; or

10 (4) a finding by the court that:

11 (A) the deceased user had a specific account with  
12 the custodian, identifiable by the information specified in  
13 Subdivision (1); or

14 (B) disclosure of the user's digital assets is  
15 reasonably necessary for administration of the estate.

16 SUBCHAPTER D. PROCEDURES FOR DISCLOSURE OF DIGITAL ASSETS OF  
17 PRINCIPAL

18 Sec. 2001.131. DISCLOSURE OF CONTENT OF ELECTRONIC  
19 COMMUNICATIONS OF PRINCIPAL. (a) To the extent a power of  
20 attorney expressly grants an agent authority over the content of an  
21 electronic communication sent or received by the principal and  
22 unless directed otherwise by the principal or the court, a  
23 custodian shall disclose to the agent the content of an electronic  
24 communication if the agent gives the custodian:

25 (1) a written request for disclosure in physical or  
26 electronic form;

27 (2) an original or copy of the power of attorney

1 expressly granting the agent authority over the content of an  
2 electronic communication of the principal; and

3 (3) a certification by the agent, under penalty of  
4 perjury, that the power of attorney is in effect.

5 (b) In addition to the items required to be given to the  
6 custodian under Subsection (a), the agent shall provide the  
7 following if requested by the custodian:

8 (1) a number, user name, address, or other unique  
9 subscriber or account identifier assigned by the custodian to  
10 identify the principal's account; or

11 (2) evidence linking the account to the principal.

12 Sec. 2001.132. DISCLOSURE OF OTHER DIGITAL ASSETS OF  
13 PRINCIPAL. (a) Unless otherwise ordered by the court, directed by  
14 the principal, or provided by a power of attorney, a custodian shall  
15 disclose to an agent with specific authority over digital assets or  
16 general authority to act on behalf of a principal a catalog of  
17 electronic communications sent or received by the principal and  
18 digital assets of the principal, other than the content of an  
19 electronic communication, if the agent gives the custodian:

20 (1) a written request for disclosure in physical or  
21 electronic form;

22 (2) an original or copy of the power of attorney that  
23 gives the agent specific authority over digital assets or general  
24 authority to act on behalf of the principal; and

25 (3) a certification by the agent, under penalty of  
26 perjury, that the power of attorney is in effect.

27 (b) In addition to the items required to be given to the

1 custodian under Subsection (a), the agent shall provide the  
2 following if requested by the custodian:

3 (1) a number, user name, address, or other unique  
4 subscriber or account identifier assigned by the custodian to  
5 identify the principal's account; or

6 (2) evidence linking the account to the principal.

7 SUBCHAPTER E. DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST

8 Sec. 2001.151. DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST  
9 WHEN TRUSTEE IS ORIGINAL USER. Unless otherwise ordered by the  
10 court or provided in a trust, a custodian shall disclose to a  
11 trustee that is an original user of an account any digital asset of  
12 the account held in trust, including a catalog of electronic  
13 communications of the trustee and the content of an electronic  
14 communication.

15 Sec. 2001.152. DISCLOSURE OF CONTENT OF ELECTRONIC  
16 COMMUNICATIONS HELD IN TRUST WHEN TRUSTEE IS NOT ORIGINAL USER.

17 (a) Unless otherwise ordered by the court, directed by the user,  
18 or provided in a trust, a custodian shall disclose to a trustee that  
19 is not an original user of an account the content of an electronic  
20 communication sent or received by an original or successor user and  
21 carried, maintained, processed, received, or stored by the  
22 custodian in the account of the trust if the trustee gives the  
23 custodian:

24 (1) a written request for disclosure in physical or  
25 electronic form;

26 (2) a certified copy of the trust instrument or a  
27 certification of trust under Section 114.086, Property Code, that

1 includes consent to disclosure of the content of an electronic  
2 communication to the trustee; and

3 (3) a certification by the trustee, under penalty of  
4 perjury, that the trust exists and the trustee is a currently acting  
5 trustee of the trust.

6 (b) In addition to the items required to be given to the  
7 custodian under Subsection (a), the trustee shall provide the  
8 following if requested by the custodian:

9 (1) a number, user name, address, or other unique  
10 subscriber or account identifier assigned by the custodian to  
11 identify the trust's account; or

12 (2) evidence linking the account to the trust.

13 Sec. 2001.153. DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN  
14 TRUST WHEN TRUSTEE IS NOT ORIGINAL USER. (a) Unless otherwise  
15 ordered by the court, directed by the user, or provided in a trust,  
16 a custodian shall disclose to a trustee that is not an original user  
17 of an account a catalog of electronic communications sent or  
18 received by an original or successor user and stored, carried, or  
19 maintained by the custodian in an account of the trust and any  
20 digital assets in which the trust has a right or interest, other  
21 than the content of an electronic communication, if the trustee  
22 gives the custodian:

23 (1) a written request for disclosure in physical or  
24 electronic form;

25 (2) a certified copy of the trust instrument or a  
26 certification of trust under Section [114.086](#), Property Code; and

27 (3) a certification by the trustee, under penalty of

1 perjury, that the trust exists and the trustee is a currently acting  
2 trustee of the trust.

3 (b) In addition to the items required to be given to the  
4 custodian under Subsection (a), the trustee shall provide the  
5 following if requested by the custodian:

6 (1) a number, user name, address, or other unique  
7 subscriber or account identifier assigned by the custodian to  
8 identify the trust's account; or

9 (2) evidence linking the account to the trust.

10 SUBCHAPTER F. DISCLOSURE OF DIGITAL ASSETS TO GUARDIAN

11 Sec. 2001.171. DISCLOSURE OF DIGITAL ASSETS TO GUARDIAN.

12 (a) After an opportunity for a hearing under Title 3, the court may  
13 grant the guardian of a ward access to the digital assets of the  
14 ward.

15 (b) Unless otherwise ordered by the court or directed by the  
16 user, a custodian shall disclose to the guardian of a ward the  
17 catalog of electronic communications sent or received by the ward  
18 and any digital assets in which the ward has a right or interest,  
19 other than the content of an electronic communication, if the  
20 guardian gives the custodian:

21 (1) a written request for disclosure in physical or  
22 electronic form; and

23 (2) a certified copy of the court order that gives the  
24 guardian authority over the digital assets of the ward.

25 (c) In addition to the items required to be given to the  
26 custodian under Subsection (b), the guardian shall provide the  
27 following if requested by the custodian:

1           (1) a number, user name, address, or other unique  
2 subscriber or account identifier assigned by the custodian to  
3 identify the account of the ward; or

4           (2) evidence linking the account to the ward.

5           (d) The guardian of a ward may request a custodian of the  
6 digital assets of the ward to suspend or terminate an account of the  
7 ward for good cause. A request made under this section must be  
8 accompanied by a certified copy of the court order giving the  
9 guardian authority over the ward's digital assets.

10 SUBCHAPTER G. DUTY AND AUTHORITY OF FIDUCIARY AND OTHERS REGARDING  
11 DIGITAL ASSETS

12           Sec. 2001.201. FIDUCIARY DUTY AND AUTHORITY. (a) The  
13 legal duties imposed on a fiduciary charged with managing tangible  
14 property apply to the management of digital assets, including:

15           (1) the duty of care;

16           (2) the duty of loyalty; and

17           (3) the duty of confidentiality.

18           (b) A fiduciary's or designated recipient's authority with  
19 respect to a digital asset of a user:

20           (1) except as otherwise provided by Section 2001.051,  
21 is subject to the applicable terms of service;

22           (2) is subject to other applicable law, including  
23 copyright law;

24           (3) in the case of a fiduciary, is limited by the scope  
25 of the fiduciary's duties; and

26           (4) may not be used to impersonate the user.

27           (c) A fiduciary with authority over the property of a

1 decedent, ward, principal, or settlor has the right to access any  
2 digital asset in which the decedent, ward, principal, or settlor  
3 has or had a right or interest and that is not held by a custodian or  
4 subject to a terms-of-service agreement.

5 (d) A fiduciary acting within the scope of the fiduciary's  
6 duties is an authorized user of the property of the decedent, ward,  
7 principal, or settlor for the purpose of applicable computer fraud  
8 and unauthorized computer access laws, including all laws of this  
9 state governing unauthorized computer access.

10 (e) A fiduciary with authority over the tangible personal  
11 property of a decedent, ward, principal, or settlor:

12 (1) has the right to access the property and any  
13 digital asset stored in it; and

14 (2) is an authorized user for the purpose of  
15 applicable computer fraud and unauthorized computer access laws,  
16 including all laws of this state governing unauthorized computer  
17 access.

18 Sec. 2001.202. AUTHORITY TO TERMINATE ACCOUNT. (a) A  
19 custodian may disclose information in an account to a fiduciary of  
20 the user when the information is required to terminate an account  
21 used to access digital assets licensed to the user.

22 (b) A fiduciary of a user may request a custodian to  
23 terminate the user's account. A request for termination must be in  
24 writing, in physical or electronic form, and accompanied by:

25 (1) if the user is deceased, a certified copy of the  
26 death certificate of the user; and

27 (2) one of the following giving the fiduciary



1 authority over the account:

2 (A) a certified copy of letters testamentary or  
3 of administration, a small estate affidavit filed under Section  
4 205.001, or other court order;

5 (B) a power of attorney; or

6 (C) the trust instrument.

7 (c) In addition to the items required to accompany a  
8 termination request under Subsection (b), the fiduciary shall  
9 provide the following if requested by the custodian:

10 (1) a number, user name, address, or other unique  
11 subscriber or account identifier assigned by the custodian to  
12 identify the user's account;

13 (2) evidence linking the account to the user; or

14 (3) a finding by the court that the user had a specific  
15 account with the custodian, identifiable by the information  
16 specified in Subdivision (1).

17 SUBCHAPTER H. CUSTODIAN COMPLIANCE AND IMMUNITY REGARDING DIGITAL

18 ASSETS

19 Sec. 2001.231. CUSTODIAN COMPLIANCE AND IMMUNITY. (a) Not  
20 later than 60 days after receipt of the information required under  
21 Subchapter C, D, E, F, or G, a custodian shall comply with a request  
22 under this chapter from a fiduciary or designated recipient to  
23 disclose digital assets or terminate an account. If the custodian  
24 fails to comply, the fiduciary or designated recipient may apply to  
25 the court for an order directing compliance.

26 (b) An order under Subsection (a) directing compliance must  
27 contain a finding that compliance is not in violation of 18 U.S.C.

1 Section 2702.

2 (c) A custodian may notify the user that a request for  
3 disclosure or to terminate an account was made under this chapter.

4 (d) A custodian may deny a request under this chapter from a  
5 fiduciary or designated recipient for disclosure of digital assets  
6 or to terminate an account if the custodian is aware of any lawful  
7 access to the account following the receipt of the request.

8 (e) This chapter does not limit a custodian's ability to  
9 obtain or require a fiduciary or designated recipient requesting  
10 disclosure or termination under this chapter to obtain a court  
11 order that:

12 (1) specifies that an account belongs to the ward or  
13 principal;

14 (2) specifies that there is sufficient consent from  
15 the ward or principal to support the requested disclosure; and

16 (3) contains a finding required by a law other than  
17 this chapter.

18 Sec. 2001.232. IMMUNITY FROM LIABILITY. A custodian and  
19 the custodian's officers, employees, and agents are immune from  
20 liability for an act or omission done in good faith in compliance  
21 with this chapter.

22 SECTION 2. Section [752.051](#), Estates Code, is amended to  
23 read as follows:

24 Sec. 752.051. FORM. The following form is known as a  
25 "statutory durable power of attorney":

26 STATUTORY DURABLE POWER OF ATTORNEY  
27 NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING.

1 THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P,  
2 TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE  
3 POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT  
4 AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS  
5 FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO  
6 DO SO.

7 You should select someone you trust to serve as your agent  
8 (attorney in fact). Unless you specify otherwise, generally the  
9 agent's (attorney in fact's) authority will continue until:

- 10 (1) you die or revoke the power of attorney;
- 11 (2) your agent (attorney in fact) resigns or is unable  
12 to act for you; or
- 13 (3) a guardian is appointed for your estate.

14 I, \_\_\_\_\_ (insert your name and address), appoint  
15 \_\_\_\_\_ (insert the name and address of the person appointed) as  
16 my agent (attorney in fact) to act for me in any lawful way with  
17 respect to all of the following powers that I have initialed below.

18 TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN  
19 FRONT OF (O) [~~(N)~~] AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS  
20 LISTED IN (A) THROUGH (N) [~~(M)~~].

21 TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE  
22 POWER YOU ARE GRANTING.

23 TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE  
24 POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

- 25 \_\_\_\_\_ (A) Real property transactions;
- 26 \_\_\_\_\_ (B) Tangible personal property transactions;
- 27 \_\_\_\_\_ (C) Stock and bond transactions;

- 1          \_\_\_\_\_ (D) Commodity and option transactions;
- 2          \_\_\_\_\_ (E) Banking and other financial institution
- 3 transactions;
- 4          \_\_\_\_\_ (F) Business operating transactions;
- 5          \_\_\_\_\_ (G) Insurance and annuity transactions;
- 6          \_\_\_\_\_ (H) Estate, trust, and other beneficiary transactions;
- 7          \_\_\_\_\_ (I) Claims and litigation;
- 8          \_\_\_\_\_ (J) Personal and family maintenance;
- 9          \_\_\_\_\_ (K) Benefits from social security, Medicare, Medicaid,
- 10 or other governmental programs or civil or military service;
- 11          \_\_\_\_\_ (L) Retirement plan transactions;
- 12          \_\_\_\_\_ (M) Tax matters;
- 13          \_\_\_\_\_ (N) Digital assets and the content of an electronic
- 14 communication;
- 15          \_\_\_\_\_ (O) [~~(N)~~] ALL OF THE POWERS LISTED IN (A) THROUGH (N)
- 16 [~~(M)~~]. YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER
- 17 POWER IF YOU INITIAL LINE (O) [~~(N)~~].

SPECIAL INSTRUCTIONS:

Special instructions applicable to gifts (initial in front of  
the following sentence to have it apply):

\_\_\_\_ I grant my agent (attorney in fact) the power to apply my  
property to make gifts outright to or for the benefit of a person,  
including by the exercise of a presently exercisable general power  
of appointment held by me, except that the amount of a gift to an  
individual may not exceed the amount of annual exclusions allowed  
from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS

1 LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

2 \_\_\_\_\_

3 \_\_\_\_\_

4 \_\_\_\_\_

5 \_\_\_\_\_

6 \_\_\_\_\_

7 \_\_\_\_\_

8 \_\_\_\_\_

9 \_\_\_\_\_

10 \_\_\_\_\_

11 UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS  
12 EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

13 CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE  
14 ALTERNATIVE NOT CHOSEN:

15 (A) This power of attorney is not affected by my subsequent  
16 disability or incapacity.

17 (B) This power of attorney becomes effective upon my  
18 disability or incapacity.

19 YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY  
20 IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

21 IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT  
22 YOU CHOSE ALTERNATIVE (A).

23 If Alternative (B) is chosen and a definition of my  
24 disability or incapacity is not contained in this power of  
25 attorney, I shall be considered disabled or incapacitated for  
26 purposes of this power of attorney if a physician certifies in  
27 writing at a date later than the date this power of attorney is

1 executed that, based on the physician's medical examination of me,  
2 I am mentally incapable of managing my financial affairs. I  
3 authorize the physician who examines me for this purpose to  
4 disclose my physical or mental condition to another person for  
5 purposes of this power of attorney. A third party who accepts this  
6 power of attorney is fully protected from any action taken under  
7 this power of attorney that is based on the determination made by a  
8 physician of my disability or incapacity.

9 I agree that any third party who receives a copy of this  
10 document may act under it. Revocation of the durable power of  
11 attorney is not effective as to a third party until the third party  
12 receives actual notice of the revocation. I agree to indemnify the  
13 third party for any claims that arise against the third party  
14 because of reliance on this power of attorney.

15 If any agent named by me dies, becomes legally disabled,  
16 resigns, or refuses to act, I name the following (each to act alone  
17 and successively, in the order named) as successor(s) to that  
18 agent: \_\_\_\_\_.

19 Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
20 \_\_\_\_\_

21 (your signature)

22 State of \_\_\_\_\_

23 County of \_\_\_\_\_

24 This document was acknowledged before me on \_\_\_\_\_(date) by  
25 \_\_\_\_\_

26 (name of principal)

1 \_\_\_\_\_

2 (signature of notarial officer)

3 (Seal, if any, of notary) \_\_\_\_\_

4 (printed name)

5 My commission expires: \_\_\_\_\_

6 IMPORTANT INFORMATION FOR AGENT (ATTORNEY IN FACT)

7 Agent's Duties

8 When you accept the authority granted under this power of  
9 attorney, you establish a "fiduciary" relationship with the  
10 principal. This is a special legal relationship that imposes on you  
11 legal duties that continue until you resign or the power of attorney  
12 is terminated or revoked by the principal or by operation of law. A  
13 fiduciary duty generally includes the duty to:

- 14 (1) act in good faith;
- 15 (2) do nothing beyond the authority granted in this  
16 power of attorney;
- 17 (3) act loyally for the principal's benefit;
- 18 (4) avoid conflicts that would impair your ability to  
19 act in the principal's best interest; and
- 20 (5) disclose your identity as an agent or attorney in  
21 fact when you act for the principal by writing or printing the name  
22 of the principal and signing your own name as "agent" or "attorney  
23 in fact" in the following manner:

24 (Principal's Name) by (Your Signature) as Agent (or as  
25 Attorney in Fact)

26 In addition, the Durable Power of Attorney Act (Subtitle P,  
27 Title 2, Estates Code) requires you to:

1           (1) maintain records of each action taken or decision  
2 made on behalf of the principal;

3           (2) maintain all records until delivered to the  
4 principal, released by the principal, or discharged by a court; and

5           (3) if requested by the principal, provide an  
6 accounting to the principal that, unless otherwise directed by the  
7 principal or otherwise provided in the Special Instructions, must  
8 include:

9                   (A) the property belonging to the principal that  
10 has come to your knowledge or into your possession;

11                   (B) each action taken or decision made by you as  
12 agent or attorney in fact;

13                   (C) a complete account of receipts,  
14 disbursements, and other actions of you as agent or attorney in fact  
15 that includes the source and nature of each receipt, disbursement,  
16 or action, with receipts of principal and income shown separately;

17                   (D) a listing of all property over which you have  
18 exercised control that includes an adequate description of each  
19 asset and the asset's current value, if known to you;

20                   (E) the cash balance on hand and the name and  
21 location of the depository at which the cash balance is kept;

22                   (F) each known liability;

23                   (G) any other information and facts known to you  
24 as necessary for a full and definite understanding of the exact  
25 condition of the property belonging to the principal; and

26                   (H) all documentation regarding the principal's  
27 property.



1 Termination of Agent's Authority

2           You must stop acting on behalf of the principal if you learn  
3 of any event that terminates this power of attorney or your  
4 authority under this power of attorney. An event that terminates  
5 this power of attorney or your authority to act under this power of  
6 attorney includes:

7           (1) the principal's death;

8           (2) the principal's revocation of this power of  
9 attorney or your authority;

10           (3) the occurrence of a termination event stated in  
11 this power of attorney;

12           (4) if you are married to the principal, the  
13 dissolution of your marriage by court decree of divorce or  
14 annulment;

15           (5) the appointment and qualification of a permanent  
16 guardian of the principal's estate; or

17           (6) if ordered by a court, the suspension of this power  
18 of attorney on the appointment and qualification of a temporary  
19 guardian until the date the term of the temporary guardian expires.

20 Liability of Agent

21           The authority granted to you under this power of attorney is  
22 specified in the Durable Power of Attorney Act (Subtitle P, Title 2,  
23 Estates Code). If you violate the Durable Power of Attorney Act or  
24 act beyond the authority granted, you may be liable for any damages  
25 caused by the violation or subject to prosecution for  
26 misapplication of property by a fiduciary under Chapter 32 of the  
27 Texas Penal Code.

1 THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER  
2 THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL  
3 RESPONSIBILITIES OF AN AGENT.

4 SECTION 3. Subchapter C, Chapter 752, Estates Code, is  
5 amended by adding Section 752.1145 to read as follows:

6 Sec. 752.1145. DIGITAL ASSET TRANSACTIONS. (a) In this  
7 section, "digital asset" has the meaning assigned by Section  
8 2001.002.

9 (b) The language conferring authority with respect to  
10 digital assets in a statutory durable power of attorney empowers  
11 the attorney in fact or agent, without further reference to a  
12 specific digital asset, to access digital assets as provided in  
13 Chapter 2001.

14 SECTION 4. Section 752.115, Estates Code, is amended to  
15 read as follows:

16 Sec. 752.115. EXISTING INTERESTS; FOREIGN INTERESTS. The  
17 powers described by Sections 752.102-752.1145 [~~752.102-752.114~~]  
18 may be exercised equally with respect to an interest the principal  
19 has at the time the durable power of attorney is executed or  
20 acquires later, whether or not:

- 21 (1) the property is located in this state; or  
22 (2) the powers are exercised or the durable power of  
23 attorney is executed in this state.

24 SECTION 5. Section 1151.101, Estates Code, is amended by  
25 amending Subsection (a) and adding Subsection (c) to read as  
26 follows:

27 (a) Subject to Subsection (b), the guardian of the estate of

1 a ward is entitled to:

2 (1) possess and manage all property belonging to the  
3 ward;

4 (2) collect all debts, rentals, or claims that are due  
5 to the ward;

6 (3) enforce all obligations in favor of the ward;  
7 ~~[and]~~

8 (4) bring and defend suits by or against the ward; and

9 (5) access the ward's digital assets as provided by  
10 Chapter 2001.

11 (c) In this section, "digital asset" has the meaning  
12 assigned by Section 2001.002.

13 SECTION 6. Subchapter A, Chapter 113, Property Code, is  
14 amended by adding Section 113.031 to read as follows:

15 Sec. 113.031. DIGITAL ASSETS. (a) In this section,  
16 "digital asset" has the meaning assigned by Section 2001.002,  
17 Estates Code.

18 (b) A trustee may access digital assets as provided by  
19 Chapter 2001, Estates Code.

20 SECTION 7. Chapter 2001, Estates Code, as added by this Act,  
21 applies to:

22 (1) a fiduciary acting under a will or power of  
23 attorney executed before, on, or after the effective date of this  
24 Act;

25 (2) a personal representative acting for a decedent  
26 who died before, on, or after the effective date of this Act;

27 (3) a guardian appointed to act for a ward in a

1 guardianship proceeding commenced before, on, or after the  
2 effective date of this Act; and

3           (4) a trustee acting under a trust created before, on,  
4 or after the effective date of this Act.

5           SECTION 8. This Act takes effect September 1, 2017.