

1 AN ACT

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

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

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

7 TITLE 4. DIGITAL ASSETS

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

10 SUBCHAPTER A. GENERAL PROVISIONS

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

13 Sec. 2001.002. DEFINITIONS. In this chapter:

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

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

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

24 (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:

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

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

27 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.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1193 passed the Senate on
April 19, 2017, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1193 passed the House on
May 19, 2017, by the following vote: Yeas 144, Nays 0, two
present not voting.

Chief Clerk of the House

Approved:

Date

Governor