



UPON AN INDIVIDUAL'S DEATH, IS A FIDUCIARY (E.G., EXECUTOR, PERSONAL REPRESENTATIVE, TRUSTEE, AGENT, ATTORNEY-IN-FACT, OR GUARDIAN) PERMITTED TO ACCESS THE DECEDENT'S DIGITAL ASSETS?

In July 2015, the National Conference of Commissioners on Uniform State Laws revised a model law, referred to as the “Revised Uniform Fiduciary Access to Digital Assets Act” (RUFADAA), to help states enact uniform legislation nationwide. At present, 47 states have enacted this uniform Act that allows a fiduciary to “step into the shoes” of the decedent. What a fiduciary may access depends upon the type of information sought and what the decedent authorized during life. Pursuant to the uniform Act, a fiduciary may access a catalog of “non-content” information (i.e., the outside of the envelope) without the express prior consent of the decedent. However, to grant access to “content” information upon death (e.g., the letter inside the envelope), the user/decedent has options:

- First, the user may use the ISP’s online tool to provide direction to the fiduciary, which will supersede a will, trust or power of attorney.
- Second, in the absence of the online tool, the user may provide a written direction in a will, trust or power of attorney.
- Finally, if there is no written direction, the ISP’s terms of service agreement controls.
- If the ISP’s terms of service are silent about fiduciary access, the default rules of RUFADAA apply.