



RUFADAA vs. UFADAA – What Changed?

In 2014, the Uniform Law Commission approved the original version of the Uniform Fiduciary Access to Digital Assets Act (UFADAA), which met with strong opposition from technology firms and privacy advocates during the 2015 legislative sessions. Revised UFADAA is the result of extensive discussions and negotiations with those opponents. The major differences are:

1. **Default privacy for electronic communications.** Under the original UFADAA, fiduciaries who had access to a represented person's paper mail would also have had access to that person's electronic communications (email, text messages, etc.), unless the person had prohibited such access. Opponents argued email is different from paper mail because of its automatic archiving feature; fiduciaries would not only have access to current mail, but potentially to a lengthy history of the user's communications. It is also unclear whether email providers are permitted to release the content of a user's communications under federal privacy laws. Revised UFADAA has the opposite default rule. Fiduciaries will not have access to the content of a user's electronic communications unless the user consented. Fiduciaries will still have default access to other types of digital assets and to a catalogue of electronic communications consisting of a list of messages sent or received, showing only the addresses of the sender and recipient and the date and time sent. The catalogue should provide sufficient information for most fiduciaries to perform necessary tasks.
2. **Three-tier hierarchy for user directions.** Under the original UFADAA, terms of service that prevented fiduciary access to digital assets were deemed void unless the user had agreed to the restriction separately from the user's agreement to the general terms of service. Opponents argued that state legislatures should not overturn private contract provisions lightly, and the provision set a bad legal precedent. Revised UFADAA uses a three-tier system of priority for user directions regarding fiduciary access:
 - a. A user's direction using an online tool to address a specific set of digital assets overrides a general direction in the user's will, trust, or power of attorney.
 - b. A user's written direction in a will, trust, power of attorney, or other record overrides a general direction in a terms-of-service agreement.
 - c. If a user provides no specific direction under (a) or (b), the terms of service or Revised UFADAA's default rules will govern fiduciary access.
3. **Greater court involvement when necessary.** Under the original UFADAA, custodians of a user's digital assets were required to grant access to any validly appointed fiduciary for the user that submitted a request. However, opponents pointed out that the providers of some online accounts may not know the identities of their users, and would have no way to determine whether a request for access was a valid request from a fiduciary or an attempt at identity theft. Revised UFADAA requires the fiduciary to provide additional information with the request for access, including a specific email address or account number used to identify the user. Custodians can also deny access in certain cases unless a court verifies that fiduciary access is legal and necessary.

Revised UFADAA also clarifies a fiduciary's duties with respect to a user's digital assets and provides that custodians may choose the method of disclosing digital assets. For more information, contact ULC Legislative Counsel Benjamin Orzeske at (312) 450-6621 or borzeske@uniformlaws.org.