

§10-115. Fiduciary duty and authority

1. Fiduciary's legal duties. The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

- A. The duty of care; [PL 2019, c. 417, Pt. A, §107 (NEW).]
- B. The duty of loyalty; and [PL 2019, c. 417, Pt. A, §107 (NEW).]
- C. The duty of confidentiality. [PL 2019, c. 417, Pt. A, §107 (NEW).]

[PL 2019, c. 417, Pt. A, §107 (NEW).]

2. Limitations on fiduciary's or designated recipient's authority. A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

- A. Except as otherwise provided in section 10-104, is subject to the applicable terms of service agreement; [PL 2019, c. 417, Pt. A, §107 (NEW).]
- B. Is subject to other applicable law, including copyright law; [PL 2019, c. 417, Pt. A, §107 (NEW).]
- C. In the case of a fiduciary, is limited by the scope of the fiduciary's duties; and [PL 2019, c. 417, Pt. A, §107 (NEW).]
- D. May not be used to impersonate the user. [PL 2019, c. 417, Pt. A, §107 (NEW).]

[PL 2019, c. 417, Pt. A, §107 (NEW).]

3. Right to access. A fiduciary with authority over the property of a decedent, protected person, principal or settlor has the right to access any digital asset in which the decedent, protected person, principal or settlor had a right or interest and that is not held by a custodian or subject to a terms of service agreement.

[PL 2019, c. 417, Pt. A, §107 (NEW).]

4. Authorized user. A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including Title 17-A, chapter 18.

[PL 2019, c. 417, Pt. A, §107 (NEW).]

5. Fiduciary's authority to access; authorized user. A fiduciary with authority over the tangible, personal property of a decedent, protected person, principal or settlor:

- A. Has the right to access the property and any digital asset stored in it; and [PL 2019, c. 417, Pt. A, §107 (NEW).]
- B. Is an authorized user for the purpose of computer fraud and unauthorized computer access laws, including Title 17-A, chapter 18. [PL 2019, c. 417, Pt. A, §107 (NEW).]

[PL 2019, c. 417, Pt. A, §107 (NEW).]

6. Disclosure of information to terminate account. A custodian may disclose information in an account to a fiduciary of a user when the information is required to terminate an account used to access digital assets licensed to the user.

[PL 2019, c. 417, Pt. A, §107 (NEW).]

7. Request for termination. A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied by:

- A. If the user is deceased, a copy of the death certificate of the user; [PL 2019, c. 417, Pt. A, §107 (NEW).]

B. A copy of the letters of appointment of the personal representative or court order, power of attorney or trust giving the fiduciary authority over the account; and [PL 2019, c. 417, Pt. A, §107 (NEW).]

C. If requested by the custodian:

- (1) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
- (2) Evidence linking the account to the user; or
- (3) A finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subparagraph (1). [PL 2019, c. 417, Pt. A, §107 (NEW).]

[PL 2019, c. 417, Pt. A, §107 (NEW).]

SECTION HISTORY

PL 2019, c. 417, Pt. A, §107 (NEW).

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