

The Files Are **In** The Computer?

Administering Digital Assets Under RUFADAA

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Introduction re Digital Assets

- Matthew Mellon
- James Howells
- Hypothetical Young Couple today

Today's Theme: The Time (to learn about Digital Assets) Is Now



Outline for Today's Presentation

- 01 What Are “Digital Assets” and Why Do We Care?
- 02 RUFADAA – What, Why, and How
- 03 RUFADAA In Practice – Administration
- 04 RUFADAA In Practice – Litigation
- 05 RUFADAA In Practice – Planning
- 06 Hypos and Questions

Outline for Today's Presentation

- 01 **What Are “Digital Assets” and Why Do We Care?**
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What Are “Digital Assets” and Why Do We Care?

What Is a “Digital Asset”?

Broad Statutory Definition:

- “‘Digital asset’ means an electronic record in which an individual has a right or interest.” (Prob. Code § 871(h)(1))
- “However, the term ‘digital asset’ does not include an underlying asset or liability unless the asset or liability is itself an electronic record.” (Prob. Code § 871(h)(2).)



What Is a “Digital Asset”?

- **Digital Assets:**

- Cryptocurrencies/NFTs;
- Digital photos, movies, word docs, and other files;
- Email accounts, handles/usernames, and ‘actual’ emails (i.e., electronic messages);
- Social media accounts, handles, messages, and content;
- Cloud-storage accounts and files;
- Loyalty rewards, airline miles, gift-card balances; and
- Blogs, website domains, digital content, and other digital intellectual property

- **NOT Digital Assets:**

- Digital records about non-digital assets (e.g., electronic records about fiat currency stored in a financial institution, about title to a real property, or about ownership of a corporation)
 - Underlying asset or liability must itself be “electronic” or digital

What Is a “Digital Asset”?



- Importantly... Terms And Conditions May Apply — i.e., custodians' user agreements may limit lifetime and post-death ownership rights)

What Is a “Digital Asset”?

Examples Where Post-Death Ownership of Digital Assets May Be Limited

- ▶ iTunes — “Apps made available through the App Store are **licensed**, not sold, to you.” (iTunes EULA, § O [emph. added, here and below].)
- ▶ Amazon Prime Video — “. . . Amazon grants you a non-exclusive, non-transferable, non-sublicensable, **limited license** . . .” (Terms of Use, § 4(h).)
- ▶ Google Play — “. . . you will have the non-exclusive right. . . to store, access, view, use, and display copies of the applicable Content. . . **for your personal, non-commercial use only.**” (T.O.S., § 4.)
- ▶ Facebook — “Legacy contact” may manage a memorialized profile for a deceased user, and may also submit request for removal of profile. Also, for Memorialized pages, “Content the person shared (example: photos, posts) stays on Facebook and is visible. . . To the audience it was shared with.”
- ▶ Gmail — “Google reserves right to delete an inactive Google Account and its activity and data if you’re inactive across Google for at least two years. In many cases, Google can also work with immediate family members and representatives to close a decedent’s personal account where appropriate. **In certain circumstances, we may provide content from a deceased user’s account.**”

Why Do We Care About Digital Assets?



Why Do We Care About Digital Assets?

Increased Digitization of Our Daily Lives

TIRED

- Letters➡
- Journals/diaries➡
- Books/magazines➡
- Printed photos/albums➡
- VHS/DVD/Blu-Ray➡
- Cassettes/CDs➡
- Stocks/bonds/index funds/commodities➡

WIRED

- Emails, instant messages
- Blogs, social media websites
- E-books
- Digital photos/albums
- Digital movies
- Digital Music (iTunes, Apple)
- Bitcoin/crypto and other forms of decentralized finance

Why Do We Care About Digital Assets?

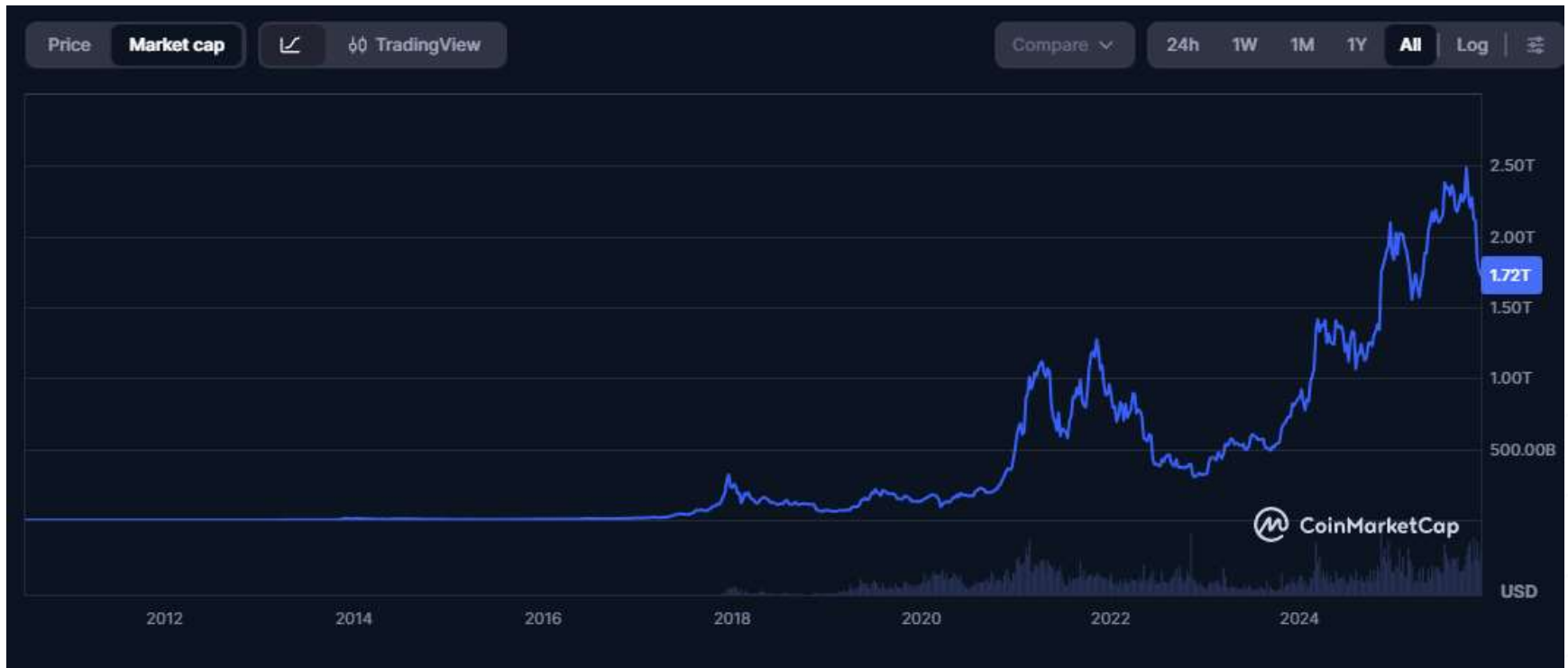
Increased Value of Digital Assets



Market Cap of All Cryptos (2014–Present)

Why Do We Care About Digital Assets?

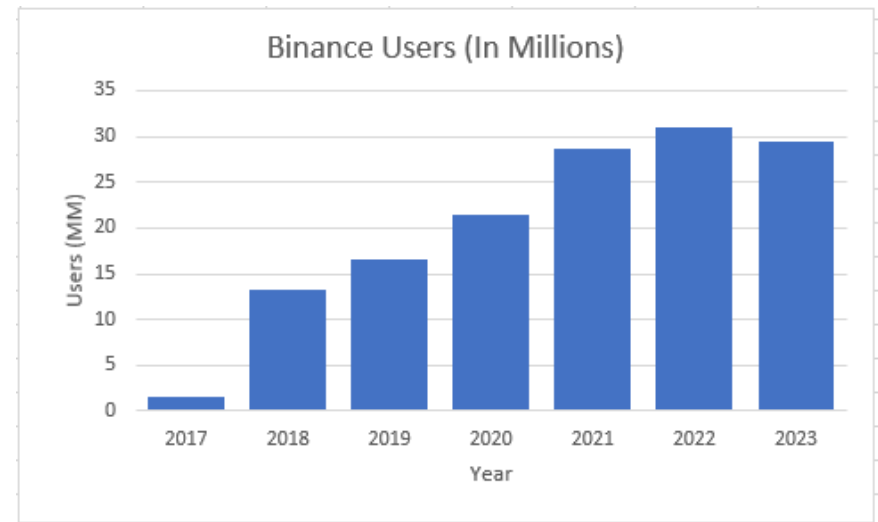
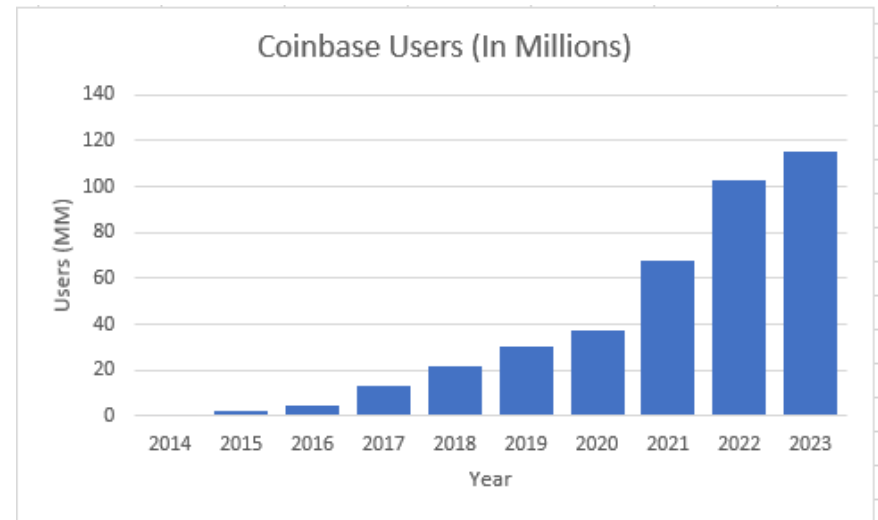
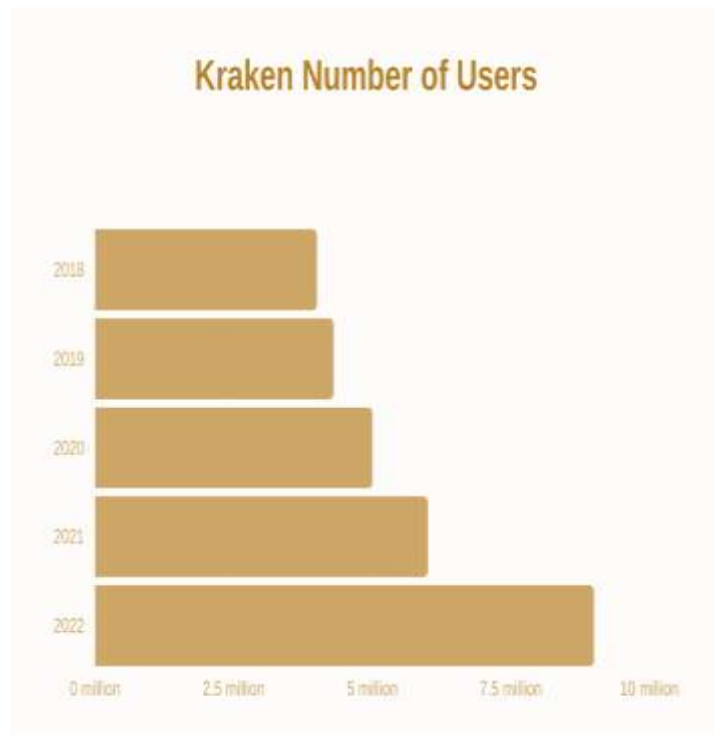
Increased Value of Digital Assets



Market Cap of Bitcoin (2012–Present)

Why Do We Care About Digital Assets?

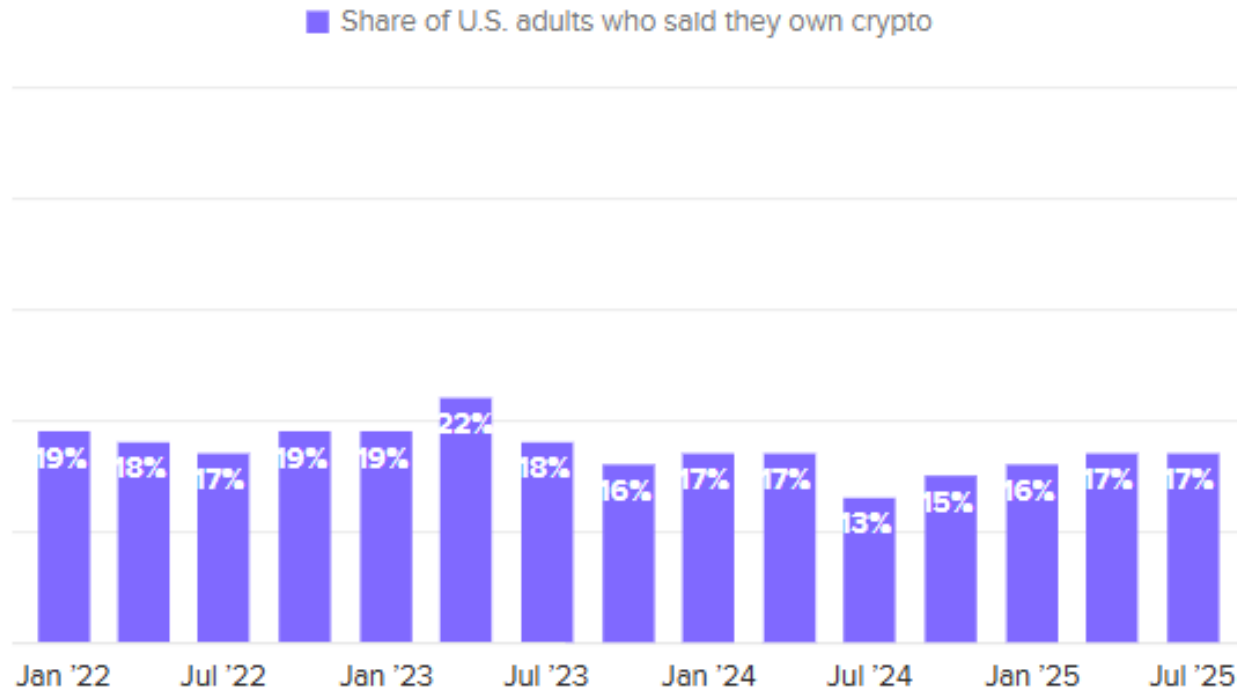
Increased Prevalence In Ownership Of Digital Assets



Of Users On Major U.S. Crypto Exchanges

Share of U.S. Adults Who Say They Own Crypto

ADOPTION: Increasing number of Self-Reported Users



Outline for Today's Presentation

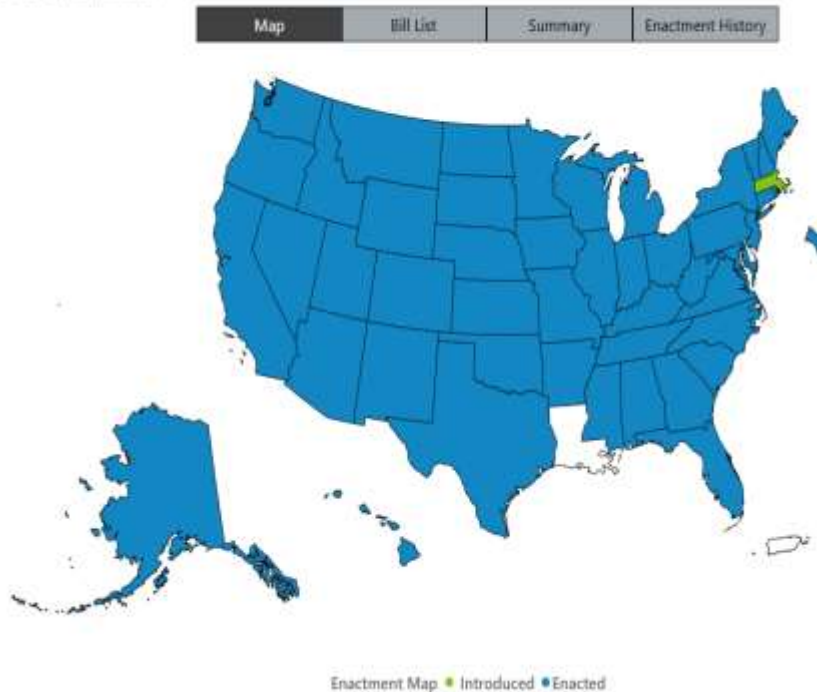
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RUFADAA – the Revised Uniform Fiduciary Access to Digital Assets Act

What Is RUFADAA, Generally?

2015 | Fiduciary Access to Digital Assets Act, Revised
Probate, Trusts, & Estates | Technology



- In short: Set of uniform statutes codifying fiduciaries' rights w/r/t digital assets of a decedent
- First promulgated by Uniform Law Commission in 2015
- Initially codified in CA in 2016, effective 1/1/2017
- Now enacted in one form or another by 47 states (with some differences)
 - Holdouts: LA, DE, and MA
- Amended recently (in 2024) in CA and elsewhere
 - Extensions/clarifications re applicability to conservatees and agents under POAs
- Applies to all fiduciaries, PRs, trustees, conservators, and attorneys-in-fact in CA

What Is RUFADAA, Generally?

RUFADAA does four (4) overarching things:

- 1) enables a holder (a.k.a. “user”) of digital assets to “give direction regarding the disclosure of digital assets,” either “in a will, trust, power of attorney, or other record” or using “an online tool” with a third-party holder (a.k.a. “custodian”) of digital assets;
- 2) “authorize[s] a decedent’s personal representative or trustee to access and manage digital assets and electronic communications;”
- 3) “require[s] a custodian of the digital assets to comply with a fiduciary’s request for disclosure of digital assets or to terminate an account;” and
- 4) “make[s] custodians immune from liability for an act or omission done in good faith compliance with these provisions”
 - (2016 Cal. Legislative Counsel’s Digest of AB 691)

Why Did We Need RUFADAA?

Before RUFADAA:

- 1) No clear rules for decedents to direct post-death disposition of digital assets;
- 2) Even with clear directions from users, it was unclear whether PRs or trustees could access decedents' digital assets/accounts without potential liability under wiretap and other laws;
- 3) No clear mechanism for PRs or trustees to compel access to digital-asset accounts or turnover of digital assets;
- 4) Also unclear whether third-party custodians might incur potential liability for good-faith attempts to comply with decedent's directives, in good faith and in compliance with these provisions

How Does RUFADAA Accomplish Its Objectives?

01

Enabling Directions re Post-Death Access/Disposition (Prob. C. § 873(a)–(c))

- Three ways a settlor can give or withhold consent and directions re digital assets in three ways:
 - a. Online Tool; or, failing that*,
 - b. Will, Trust, POA, or other Record; or, failing (a) or (b)
 - c. Terms-Of-Service Agreement

*This hierarchy/priority matters (See also Prob. C. § 874.)



How Does RUFADAA Accomplish Its Objectives?

IMPORTANT: RUFADAA

Distinguishes Between (i) “Ordinary”
Digital Assets and (ii) the Contents
Of Electronic Communications

Why Did We Need RUFADAA?

RUFADAA Distinction re Contents of Electronic Comms

- **Default rule:** No post-death disclosure of electronic communications unless you have express consent from deceased user
- **Why:** LOTS of concern by Legislators (and constituents and lobbyists) re people reading their emails without limitation after death
 - Among others, concerns re privacy
 - Also difficult to imply consent retroactively, in absence of prior rule/expectation
- **Consolation Prize in Absent of Disclosure of Contents: A “Catalogue of Communications”**
 - Statutory Definition: “Info[] that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person” (Prob. C § 871(c).)
 - i.e., a privilege log w/out subject
 - Purpose: help fiduciary identify potential other sources of information to whom subpoenas can be directed

How Does RUFADAA Accomplish Its Objectives?

02

Authorizing Fiduciary Access

- Disclosure of Digital Assets
 - Prob. C. § 877(a)–(c): Unless prohibited by user or court, custodian “shall” disclose to PR (i) catalogue of electronic comms and (ii) digital assets other than contents of electronic comms if PR provides:
 - a. Written request for disclosure;
 - b. Certified copy of user’s death certificate;
 - c. Certified copy of letter of appointment, small estate affidavit, or court order; and
 - d. Any “additional evidence” that custodian may request by statute. . . . (*cont’d on next page*)

How Does RUFADAA Accomplish Its Objectives?

02

Authorizing Fiduciary Access

- Disclosure of Digital Assets (cont'd)
 - “Additional Evidence” that May Be Demanded Before Disclosing Assets (§ 877(d)(1)–(3)):
 - 1) A number, username, address, or other unique account identifier;
 - 2) Evidence linking the account to the user;
 - 3) A court order finding either:
 - a. That the user had an account with custodian, identifiable by (1) above; and
 - b. That disclosure of the user’s digital assets is rsbly necessary for estate admin

How Does RUFADAA Accomplish Its Objectives?

02

Authorizing Fiduciary Access

- Disclosure of Contents of Digital Comms.
 - Prob. C. § 876(a)–(c): If a user consented or a court directs, custodian “shall” disclose to PR the content of an electronic comm sent/received by user if PR :
 - a. Written request for disclosure;
 - b. Certified copy of user’s death certificate;
 - c. Certified copy of letter of appointment, small estate affidavit, or court order; and
 - d. Unless user consented in an online tool, a copy of the will, trust, POA, or other record consent doc
 - e. Any “additional evidence” that custodian may request by statute. . . . (*cont’d on next page*)

How Does RUFADAA Accomplish Its Objectives?

02

Authorizing Fiduciary Access

- Disclosure of Contents of Digital Comms. (cont'd)
 - “Additional Evidence” That May A Custodian May Demand Before Disclosing Comms (§ 876(e)(1)–(3)):
 - 1) A number, username, address, or other unique account identifier;
 - 2) Evidence linking the account to the user;
 - 3) A court order finding either that:
 - a. user had an account with custodian, identifiable by (1) above;
 - b. disclosure of the user’s digital assets is rsbly necessary for estate admin;
 - c. user consented to disclosure of comms; and
 - d. disclosure of user’s comms is rsbly necessary

How Does RUFADAA Accomplish Its Objectives?

02

Authorizing Fiduciary Access

- Disclosure of Contents of Digital Comms. & Digital Assets to Other Fiduciaries
 - Where User is a Trustor of a Trust:
 - Prob. Code § 878 and 879 are mirror images of Prob. Code §§ 876 and 877
 - Main differences:
 - “Personal representative” → “Trustee”
 - “Letters of Appointment” → “A certified copy of the trust instrument or a certification of trust under Section 18100.5” & “a certification by the Trustee, under penalty of perjury, that the trust exists and that the trustee is a currently acting trustee of the trust.” (Prob. C. §§ 878(c)–(d) and 879(c)–(d))

How Does RUFADAA Accomplish Its Objectives?

02

Authorizing Fiduciary Access

- Disclosure of Contents of Digital Comms. & Digital Assets to Other Fiduciaries (cont'd)
 - Where User is a **Principal under Power of Atty:**
 - Prob. Code § 879.1 and 879.2 are mirror images of Prob. Code §§ 876 and 877
 - Main differences:
 - “Personal representative” → “Agent [under a POA] with Specific Authority Over Digital Assets”
 - “Letters of Appointment” → “A certified copy of the power of attorney expressly granting authority over content of electronic comms of the principal” & “a certification by the agent, under penalty of perjury, that the POA is in effect.” (Prob. C. §§ 879.1(b)–(c) and 879.2(b)–(c))

How Does RUFADAA Accomplish Its Objectives?

02

Authorizing Fiduciary Access

- Disclosure of Contents of Digital Comms. & Digital Assets to Other Fiduciaries (cont'd)
 - Where User is a **Conservatee under a Conservatorship**:
 - Prob. C. § 879.3(a) – “After a noticed hearing, ct may grant conservator access to digital assets of conservatee.”
 - Prob. C. § 879.3(b) – Unless otherwise ordered by ct or directed by user, custodian “shall” disclose catalogue of electronic comms and digital assets if conservator provides:
 - 1) Written request for disclosure;
 - 2) Copy of order giving conservator authority over digital assets
 - 3) If requested, (A) a number, username, address, or other unique identifier for the account and (B) evidence linking the account to the conservatee (Prob. C. §§ 879.3(a)–(b))

How Does RUFADAA Accomplish Its Objectives?

02

Authorizing Fiduciary Access

- Immunization of Appropriate, *Disclosed* Access By Fiduciary
 - “A fiduciary acting within the scope of the fiduciary’s duties is an authorized user of the property of the decedent, conservatee, principal, or settlor for the purpose of applicable computer-fraud and unauthorized-computer-access laws.” (Prob. C. § 880(d); see *also* Prob. C. § 880(e)(2) (same re “fiduciary with authority over tangible, personal property of a decedent, conservatee, principal, or settlor”))

How Does RUFADAA Accomplish Its Objectives?

02

Authorizing Fiduciary Access

- Immunization of Appropriate, *Disclosed* Access By Fiduciary (*cont'd*)
 - HOWEVER, “A fiduciary’s or designated recipient’s authority may not be used to impersonate the user.” (Prob. C § 880(b)(4))
 - In other words, your client should disclose their fiduciary capacity and request under RUFADAA, not just enter in passwords and login details for the settlor/principal.
 - Not legal advice, but extralegal post-death access probably happens more than anyone is comfortable admitting, and it’s unclear under RUFADAA what (if any) consequences are or should be
 - See also Prob. C. § 881 (“... Custodian may deny request. . . [for] disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the [user]’s date of death.”)

How Does RUFADAA Accomplish Its Objectives?

03 Empowering PRs, Trustees, and Other Fiduciaries To Compel Access And Turnover Of Digital Accounts And Assets

- Subject to Custodians’ right to request “additional information”, Custodians “shall comply” with properly supported requests for disclosure or termination (under Sections 876–879.3) within 60 days (Prob. C. § 881(a))
 - See also Prob. C. § 881(e) (This part does not limit a custodian’s ability to obtain, or to require a fiduciary or designated recipient requesting disclosure or account termination... to obtain a court order that makes [various enumerated] findings”)
- If Custodian fails to disclose as required, requesting fiduciary “may apply to the court for an order directing compliance.” (*Ibid.*)

How Does RUFADAA Accomplish Its Objectives?

03

Empowering PRs, Trustees, and Other Fiduciaries To Compel Access And Turnover Of Digital Accounts And Assets

- NB: Some leading custodians are requiring court orders for ANY disclosure (incl. for disclosure of digital assets or for catalogue of electronic comms.)
 - Technically, Prob. C. section 877 does not always require this, but some custodians are always asking, regardless of circumstances
- As a result: Don't expect automatic compliance and be prepared to file a petition for RUFADAA findings or a motion to compel (more on this later)

How Does RUFADAA Accomplish Its Objectives?

03 Empowering PRs, Trustees, and Other Fiduciaries To Compel Access And Turnover Of Digital Accounts And Assets

- **What About Digital Assets Not Held By A Custodian?**
 - “A fiduciary with authority over the property of a decedent or settlor has the right of access to any digital asset in which the decedent or settlor had a right or interest that is not held by a custodian or terms-of-service agreement.” (Prob. C. § 880(c)(1))
 - E.g., digital assets stored locally on a computer or local hard drive

How Does RUFADAA Accomplish Its Objectives?

04

Immunizing Custodians for Good-Faith Compliance With RUFADAA

- General rule: Custodians and their “officers, employees, and agents are immune from liability for an act or omission done in good faith and in compliance with this Part [i.e., RUFADAA].” (Prob. C. § 881(f)(1))
- Exception: the foregoing “protections . . . do not apply in a case of gross negligence or willful or want misconduct of the custodian or its officers, employees, or agents” (Prob. C. § 881(f)(2))

How Does RUFADAA Accomplish Its Objectives?

04

Immunizing Custodians for Good-Faith Compliance With RUFADAA

- When disclosing digital assets, Custodians:
 - May (i) grant full access to user's account; (ii) grant partial access (sufficient to perform necessary tasks); and/or (iii) provide copies of record of any digital asset that user could access if alive. (Prob. C. § 875(a))
 - May assess rsbl cost of disclosure (Prob. C. § 875(b));
 - May notify a user that a request for disclosure or to terminate under RUFADAA has been made (Prob. C. § 880(c))
- Custodians need not disclose user-deleted assets (Prob. C. § 875(c));
- Custodians have options re complying w/ unduly burdensome directions re partial disclosure (Prob. C. § 875(d))

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Marshaling

RUFADAA In Practice – Administration

- 1) Fiduciaries are only ones w/ rights to access and compel disclosure under RUFADAA, and as such, it is incumbent on them to marshal any digital assets of value (nobody else can)
- 2) When investigating correspondence and records re financial accounts, also look out for evidence re digital assets and accounts
 - Financial statements, billing invoices, tax records, renewal/termination requests
 - Email Accounts or, In Absence Of Consent, Catalogues Of Comms
- 3) Prepare letters and supporting documentation to send to custodians
 - Info re accounts, death certificate, operative estate instrument, affidavit or court order, etc.
- 4) Be prepared to follow up and, in many cases, to file a petition for findings or motion to compel access or disclosure

Post-Marshaling, Generally

RUFADAA In Practice – Administration

- Post-marshaling = largely beyond the scope of RUFADAA once you have gained access
- Big picture, w/r/t digital-asset administration, want to emphasize a few things:
 - 1) Custody (esp. professional custody for high-value or “irreplaceable” assets);
 - 2) Investment management (“ “ “ “);
 - 3) Taxes;
 - 4) Valuation and tax (for digital financial assets); and
 - 5) Distribution.

Post-Marshaling: 1. Custody

RUFADAA In Practice – Administration

- 1) Unless they held themselves out as such, fiduciaries generally are not expected to be experts, including on an emerging asset like digital assets.
 - (See Prob. C. § 16014 (Trustee generally “has duty to apply the full extent of the trustee’s skills” unless “settlor has relied on trustee’s representations of having special skills,” in which case “the trustee is held to the standard of the skills represented.”))
- 2) However, if a fiduciary knows there may be digital assets of considerable value, they must generally exercise the same care, skill, and caution in holding and managing those assets as a reasonably prudent person would. (See Prob. C. §§ 16040(a), 16045 *et seq.*, and 9600)
- 3) RUFADAA does not require fiduciaries to provide for custody without assistance from an agent or professional. But someone must, if not them.
 - May need to hire an agent, appoint a co-fiduciary, or decline appt. altogether, depending on circumstances re digital assets
- 4) For high-value collections of digital assets, fiduciaries should consider professional custodians (esp. for cryptocurrency assets); risk v. reward

RUFADAA In Practice – Administration

Post-Marshaling: 2. Investment Management

Uniform Prudent Investor Act (UPIA) for Trustees

- 1) Codified at Prob. C. §§ 16045–54
- 2) Different standard of care than trustee's ordinary duty of care: trustees must invest assets and make investment decisions as a reasonably prudent investor would (Prob. C. § 16047.)
 - a. Evaluate assets on portfolio level, not in isolation; seek greater returns for more risk; etc.
 - b. Duty to diversify unless, under circumstances, it is prudent not to do so. (Prob. C. § 16048)
- 3) Must address inception assets (Prob. C. § 16049)
- 4) May delegate investment decisions, if prudent (Prob. C. § 16052)
- 5) Trustee may modify UPIA (Prob. C. § 16046(b))

Post-Marshaling: 2. Investment Management (*cont'd*)

RUFADAA In Practice – Administration

COMPARE Personal Reps' Duties re Estate Assets

- 1) PRs are not governed by UPIA, which applies to trustees
- 2) Instead, PRs must “use ordinary care and diligence” “in managing and controlling the estate” (Prob. C. § 9600(a))
- 3) Power vs. Duty – PR “shall exercise a power to the extent that ordinary care and diligence require that the power be exercised” (Prob. C. § 9600(b)(1))
- 4) Professional PRs must apply skill and knowledge ordinarily possessed by such professional fiduciaries in similar circumstances (*Estate of Beach* (1975) 15 Cal.3d 623, 631)

RUFADAA In Practice – Administration

Post-Marshaling: 3. Taxes

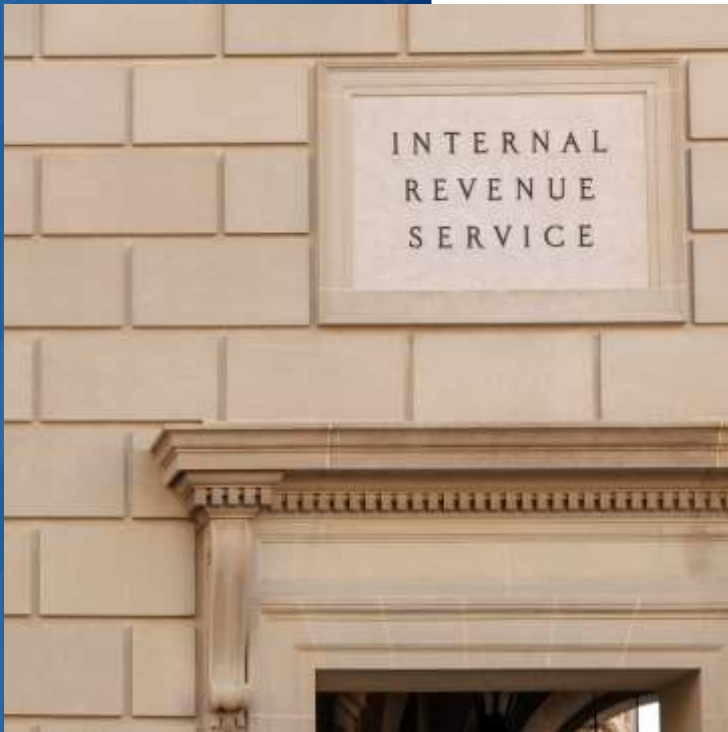
- Some “digital assets” may also be “virtual currencies” and thus subject to taxation
 - “Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value.” - IRS Notice 2014-21.
 - Emails and family photos vs. cryptos and decentralized investments
- Sources re Virtual Currency taxation:
 - IRS Notices, Revenue Procedures, and Internal Revenue Code Guidance
- There may be considerable fights with taxing authorities re proper DOD and other valuations (see, e.g., *Estate of Mellon*); may need to be ready for extensive tax-court litigation for sufficiently valuable digital assets

RUFADAA In Practice – Administration

Taxes (*cont'd*)

IRS Notice 2014-21

- Crypto is property for tax purposes
- Short- and long-term capital-gains rules apply
- FMV is amount realized measured in USD, as listed on exchange
- All crypto transactions are taxable events
 - Including payment for goods/services



RUFADAA In Practice – Administration

Taxes (*cont'd*)

IRS Notice 2019-24

- Standard basis = FIFO, unless TP can specifically identify
- Hard fork + airdrop of new crypto = income and taxable event; Soft fork = no income or taxable event
- Intra-wallet transfers = not income/taxable
- Deductions for Charitable Contributions (depending on length of ownership)



RUFADAA In Practice – Administration

Taxes

- **IRS Rev. Proc. 2024-28** (*NB: Originally effective 6/2024, temporarily relief through 12/31/25*)
 - In short, does 2 things:
 - Confirms req'ts to establish tax basis of crypto sold; otherwise, default = FIFO on **account-by-account (or wallet-by-wallet) basis** (per Internal Rev. Code §1.1012-1(j)(3)(ii))
 - Previously, IRS did not prohibit “universal” or “one-account” method; under 2024-28, that is no longer allowed, and basis must be calculated on wallet-by-wallet basis
 - “Snapshot as of [1/1/25] And Safe Harbor”, as transitional relief for those previously using universal method (one-time, irrevocable allocation of unused basis to a wallet)

Crypto Planning and Administrative Issues

Preparing For Taxes – Best Practices

01

Make sure you have a competent tax professional lined up to deal with crypto

02

Talk to that professional ASAP about compiling information for IRS Rev. Proc. 2024-28

- Otherwise, all transactions are presumed to have zero basis → overcalculation of capital gains taxes

03

Keep contemporaneous records of all crypto transactions

- E.g., date, time, exchange, price (crypto & fiat), fees

04

Use API-based tax services, but double check

05

Monitor gains/losses to avoid surprises in tax season

Post-Marshaling: 4. Valuation

RUFADAA In Practice – Administration

- Valuing digital assets typically entails looking at the trading price in USD on the date in question (DOD, date of sale, etc.), usually by reference to the site where the asset was held/traded and also by reference to other available trading platforms
 - E.g., price of BTC on Coinbase is \$80k, but on Kraken, Binance, and elsewhere, price is \$85k (e.g., due to liquidity or other issues) → valuation will probably be somewhere between \$80k and \$85k
- Estate fiduciaries may need to assist probate referees

Post-Marshaling: 5. Distribution

RUFADAA In Practice – Administration

- Distributing digital assets can be tricky – fiduciaries should feel comfortable seeking assistance, esp. for high-value digital assets
 - Custodians generally will not assume responsibility for making transfers or distributions, so the actual making of distributions will likely fall on the fiduciary
- Can distribute in-kind or liquidate, but basically all liquidations (or swaps/sales/conversions) of “virtual currencies” are taxable events, so beware distributions of virtual currencies
- Meanwhile, no taxes are owed on emails or other digital assets with a nominal financial value
 - Query our emails versus a movie star’s

RUFADAA In Practice – Administration

Fiduciary Duties

- Same general rules apply re fiduciary duties:
 - Prob. C. § 880(a): “The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including all of the following: (1) the duty of care; (2) the duty of loyalty; [and] (3) the duty of confidentiality.”
- Fiduciary’s authority under RUFADAA “is subject to other applicable law, including copyright law,” and “is limited by the scope of the fiduciary’s duties.” (See Prob. C. § 880(b)(2)–(3))
- *See also In re Marriage of DeSouza* re applicability of fiduciary duties to digital assets like cryptocurrencies (albeit in context of divorcing spouses)

RUFADAA In Practice – Administration

Request For Termination of User's Account

- Fiduciary or small-estate affiant under Prob. Code section 13101 “may request a custodian to terminate the user’s account” (Prob. C. § 880(g))
- Procedure is similar to that for requesting disclosure of assets; must be in writing, in physical or electronic form and must be accompanied by all of the following:
 - 1) If the user is deceased, a death certificate;
 - 2) If the user is a conservatee, a court order authorizing the conservator to request termination of the account;
 - 3) A certified letter of appointment, small-estate affidavit, court order, power of attorney, certified copy of trust instrument, or certification of trust giving the fiduciary over the account; and
 - 4) If requested by the custodian (A) a number, username, address, or other unique identifier for the account, (B) evidence linking the account to the user, and (C) a court “finding” that the user had an account with the custodian identifiable by the unique identifier in (A)

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- 05 RUFADAA In Practice – Planning
- 06 Hypos and Questions

RUFADAA and Litigation

Some General Thoughts

- Uncharted territory:
Virtually no published cases in CA re RUFADAA or digital assets
- Leading exception is a divorce case (*In re Marriage of DeSouza* (2020) 54 Cal.App.5th 25)
 - Upshot: possible to breach duties w/ digital assets; potentially stiff penalties for breaches
 - Even still, no reference to RUFADAA and no published citing references to *Marriage of DeSouza* (let alone in T&E context)
- If there is litigation re validity of trust/will or fiduciary AND trust/estate has meaningful amount of digital assets, consider special trustee or special administrator to handle marshaling and related admin issues;
 - Too valuable & volatile to wait years for lit to resolve
 - See *Estate of Mellon*
- Don't underestimate power of catalogue of comms in ordinary civil/probate litigation

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- 02 RUFADAA – What, Why, and How
- 03 RUFADAA In Practice – Administration
- 04 RUFADAA In Practice – Litigation
- 05 RUFADAA In Practice – Planning**
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RUFADAA and Planning

Some General Thoughts

- No excuse NOT to include RUFADAA provisions
 - Re designated fiduciary, preference re comms, devolution of digital certain digital assets/accounts,
- Consider discussing pros/consents re consent to disclosure of electronic comms
 - Query whether conditional consent is possible under RUFADAA
- Titling Digital Assets & Accounts
 - Not always possible to retitle digital assets in name of trustee or personal representative (though many crypto sites are better)
- If all else fails, Heggstad should work (and has!)
- Make sure settlor leaves breadcrumbs, but decentralize!
- Accounts, email addresses, assets, etc.
- Planners beware of liability for failing to take even basic steps re RUFADAA

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Bonus Slide: Key Tools for Trustees, Executors, and their Counsel

- **850/Heggstad Petition**
 - Uses: Re-titling crypto assets, e.g., from estate of decedent to decedent's living trust pursuant to general assignment (may allow one to avoid probate); also, lawsuit allows discovery (e.g., subpoenas)
- **Professional Custodians Or, Failing That, Cold-Storage Wallets (incl. Hardware Wallets)**
 - Uses: Safeguarding custody of crypto assets during admin
- **Crypto Tax Software**
 - Uses: Helping CPAs reconstruct crypto transaction histories and calculate taxes using API-based tools
- **IRS Home Page re Crypto/Digital Assets: <https://www.irs.gov/businesses/small-businesses-self-employed/digital-assets>**
 - Uses: Finding and referencing complete set of official guidance, publications, FAQs, and other IRS materials governing taxation of crypto assets



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