

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 1062*

Short Title: Fiduciary Access to Digital Assets. (Public)

Sponsors: Representative Bryan.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary IV

May 11, 2016

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL
3 ASSETS ACT AND MAKE CONFORMING AMENDMENTS TO THE GENERAL
4 STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.
5 The General Assembly of North Carolina enacts:

6
7 **PART I. REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT**

8 **SECTION 1.** The General Statutes are amended by adding a new Chapter to read:

9 **"Chapter 36F.**

10 **"Revised Uniform Fiduciary Access to Digital Assets Act.**

11 **"§ 36F-1. Short title.**

12 This Chapter may be cited as the Revised Uniform Fiduciary Access to Digital Assets Act.

13 **"§ 36F-2. Definitions.**

14 The following definitions apply in this Chapter:

- 15 (1) Account. – An arrangement under a terms-of-service agreement in which a
16 custodian carries, maintains, processes, receives, or stores a digital asset of the
17 user or provides goods or services to the user.
- 18 (2) Agent. – An attorney-in-fact granted authority under a durable or nondurable
19 power of attorney.
- 20 (3) Carries. – Engages in the transmission of an electronic communication.
- 21 (4) Catalogue of electronic communications. – Information that identifies each
22 person with which a user has had an electronic communication, the time and
23 date of the communication, and the electronic address of the person.
- 24 (5) Reserved.
- 25 (6) Content of an electronic communication. – Information concerning the
26 substance or meaning of the communication which meets all of the following:
27 a. Has been sent or received by a user.
28 b. Is in electronic storage by a custodian providing an
29 electronic-communication service to the public or is carried or
30 maintained by a custodian providing a remote-computing service to the
31 public.
32 c. Is not readily accessible to the public.
- 33 (7) Court. – The clerk of superior court or superior court judge, as provided in
34 G.S. 1-7, or other court having competent jurisdiction over the estate, trust,



- 1 fiduciary, or user, as applicable, or other matters relating to the content of this
2 Chapter.
- 3 (8) Custodian. – A person that carries, maintains, processes, receives, or stores a
4 digital asset of a user.
- 5 (9) Designated recipient. – A person chosen by a user using an online tool to
6 administer digital assets of the user.
- 7 (10) Digital asset. – An electronic record in which an individual has a right or
8 interest. The term does not include an underlying asset or liability unless the
9 asset or liability is itself an electronic record.
- 10 (11) Electronic. – Relating to technology having electrical, digital, magnetic,
11 wireless, optical, electromagnetic, or similar capabilities.
- 12 (12) Electronic communication. – Has the meaning set forth in 18 U.S.C. §
13 2510(12).
- 14 (13) Electronic-communication service. – A custodian that provides to a user the
15 ability to send or receive an electronic communication.
- 16 (14) Fiduciary. – An original, additional, or successor personal representative,
17 guardian, agent, or trustee.
- 18 (14a) Guardian. – A person appointed by a court to manage the estate of a living
19 individual. The term includes a general guardian, a guardian of the estate, an
20 interim guardian, and a standby guardian appointed under Chapter 35A of the
21 General Statutes.
- 22 (15) Information. – Data, text, images, videos, sounds, codes, computer programs,
23 software, databases, or the like.
- 24 (16) Online tool. – An electronic service provided by a custodian that allows the
25 user, in an agreement distinct from the terms-of-service agreement between the
26 custodian and user, to provide directions for disclosure or nondisclosure of
27 digital assets to a third person.
- 28 (17) Person. – An individual, estate, business or nonprofit entity, public corporation,
29 government or governmental subdivision, agency, instrumentality, business
30 trust, partnership, limited liability company, association, joint venture, or any
31 other legal or commercial entity.
- 32 (18) Personal representative. – An executor, administrator, special administrator, or
33 person that performs substantially the same function under a law of this State
34 other than this Chapter.
- 35 (19) Power of attorney. – A record that grants an agent authority to act in the place
36 of a principal.
- 37 (20) Principal. – An individual who grants authority to an agent in a power of
38 attorney.
- 39 (21) Reserved.
- 40 (22) Record. – Information that is inscribed on a tangible medium or that is stored in
41 an electronic or other medium and is retrievable in perceivable form.
- 42 (23) Remote-computing service. – A custodian that provides to a user
43 computer-processing services or the storage of digital assets by means of an
44 electronic-communications system, as defined in 18 U.S.C. § 2510(14).
- 45 (24) Terms-of-service agreement. – An agreement that controls the relationship
46 between a user and a custodian.
- 47 (25) Trustee. – A fiduciary with legal title to property under an agreement or
48 declaration that creates a beneficial interest in another. The term includes an
49 original, additional, and successor trustee, whether or not confirmed by a court.
- 50 (26) User. – A person that has an account with a custodian.

1 (26a) Ward. – An individual for whom a guardian has been appointed. The term
2 includes an individual for whom an application for the appointment of a
3 guardian is pending.

4 (27) Will. – Includes a codicil, a testamentary instrument that only appoints an
5 executor, and an instrument that revokes or revises a testamentary instrument.

6 **"§ 36F-3. Applicability.**

7 (a) This Chapter applies to all of the following:

8 (1) A fiduciary acting under a will or power of attorney executed before, on, or
9 after the effective date of this act.

10 (2) A personal representative acting for a decedent who died before, on, or after the
11 effective date of this act.

12 (3) A guardian appointed before, on, or after the effective date of this act.

13 (4) A trustee acting under a trust created before, on, or after the effective date of
14 this act.

15 (b) This Chapter applies to a custodian if the user resides in this State or resided in this
16 State at the time of the user's death.

17 (c) This Chapter does not apply to a digital asset of an employer used by an employee in
18 the ordinary course of the employer's business.

19 **"§ 36F-4. User direction for disclosure of digital assets.**

20 (a) A user may use an online tool to direct the custodian to disclose to a designated
21 recipient or not to disclose some or all of the user's digital assets, including the content of
22 electronic communications. If the online tool allows the user to modify or delete a direction at all
23 times, a direction regarding disclosure using an online tool overrides a contrary direction by the
24 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 under subsection (a) of this
26 section or if the custodian has not provided an online tool, the user may allow or prohibit in a will,
27 trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user's digital
28 assets, including the content of electronic communications sent or received by the user.

29 (c) A user's direction under subsection (a) or (b) of this section overrides a contrary
30 provision in a terms-of-service agreement that does not require the user to act affirmatively and
31 distinctly from the user's assent to the terms of service.

32 **"§ 36F-5. Terms-of-service agreement.**

33 (a) This Chapter does not change or impair a right of a custodian or a user under a
34 terms-of-service agreement to access and use digital assets of the user.

35 (b) This Chapter does not give a fiduciary or designated recipient any new or expanded
36 rights other than those held by the user for whom, or for whose estate, the fiduciary or designated
37 recipient acts or represents.

38 (c) A fiduciary's or designated recipient's access to digital assets may be modified or
39 eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not
40 provided direction under G.S. 36F-4.

41 **"§ 36F-6. Procedure for disclosing digital assets.**

42 (a) When disclosing digital assets of a user under this Chapter, the custodian may, at its
43 sole discretion, do any of the following:

44 (1) Grant a fiduciary or designated recipient full access to the user's account.

45 (2) Grant a fiduciary or designated recipient partial access to the user's account
46 sufficient to perform the tasks with which the fiduciary or designated recipient
47 is charged.

48 (3) Provide a fiduciary or designated recipient a copy in a record of any digital
49 asset that, on the date the custodian received the request for disclosure, the user
50 could have accessed if the user were alive and had full capacity and access to
51 the account.

1 **(b)** A custodian may assess a reasonable administrative charge for the cost of disclosing
2 digital assets under this Chapter.

3 **(c)** A custodian need not disclose under this Chapter a digital asset deleted by the user.

4 **(d)** If a user directs or a fiduciary requests a custodian to disclose under this Chapter some,
5 but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of
6 the assets would impose an undue burden on the custodian. If the custodian believes the direction
7 or request imposes an undue burden, the custodian or fiduciary may seek an order from the court
8 to disclose any of the following:

9 **(1)** A subset limited by date of the user's digital assets.

10 **(2)** All of the user's digital assets to the fiduciary or designated recipient.

11 **(3)** None of the user's digital assets.

12 **(4)** All of the user's digital assets to the court for review in camera.

13 **"§ 36F-7. Disclosure of content of electronic communications of deceased user.**

14 If a deceased user consented or a court directs disclosure of the contents of electronic
15 communications of the user, the custodian shall disclose to the personal representative of the estate
16 of the user the content of an electronic communication sent or received by the user if the personal
17 representative gives the custodian all of the following:

18 **(1)** A written request for disclosure in physical or electronic form.

19 **(2)** A certified copy of the death certificate of the user.

20 **(3)** A certified copy of letters of administration or letters testamentary of the
21 personal representative, a certified copy of a small estate affidavit filed in
22 accordance with G.S. 28A-25-1(b), a certified copy of a summary
23 administration order described in G.S. 28A-28-3, or a court order.

24 **(4)** Unless the user provided direction using an online tool, a copy of the user's
25 will, trust, power of attorney, or other record evidencing the user's consent to
26 disclosure of the content of electronic communications.

27 **(5)** If requested by the custodian, any of the following:

28 a. A number, username, address, or other unique subscriber or account
29 identifier assigned by the custodian to identify the user's account.

30 b. Evidence linking the account to the user.

31 c. A finding by the court of any of the following:

32 1. That the user had a specific account with the custodian,
33 identifiable by the information specified in sub-subdivision a. of
34 this subdivision.

35 2. That disclosure of the content of electronic communications of
36 the user would not violate 18 U.S.C. § 2701, et seq., 47 U.S.C. §
37 222, or other applicable law.

38 3. That, unless the user provided direction using an online tool, the
39 user consented to disclosure of the content of electronic
40 communications.

41 4. That disclosure of the content of electronic communications of
42 the user is reasonably necessary for administration of the estate.

43 **"§ 36F-8. Disclosure of other digital assets of deceased user.**

44 Unless the user prohibited disclosure of digital assets or the court directs otherwise, a
45 custodian shall disclose to the personal representative of the estate of a deceased user a catalogue
46 of electronic communications sent or received by the user and digital assets, other than the content
47 of electronic communications, of the user, if the personal representative gives the custodian all of
48 the following:

49 **(1)** A written request for disclosure in physical or electronic form.

50 **(2)** A certified copy of the death certificate of the user.

1 (3) A certified copy of letters of administration or letters testamentary of the
2 personal representative, a certified copy of a small estate affidavit filed in
3 accordance with G.S. 28A-25-1(b), a certified copy of a summary
4 administration order described in G.S. 28A-28-3, or a court order.

5 (4) If requested by the custodian, any of the following:

6 a. A number, username, address, or other unique subscriber or account
7 identifier assigned by the custodian to identify the user's account.

8 b. Evidence linking the account to the user.

9 c. An affidavit stating that disclosure of the user's digital assets is
10 reasonably necessary for administration of the estate.

11 d. A finding by the court of any of the following:

12 1. That the user had a specific account with the custodian,
13 identifiable by the information specified in sub-subdivision a. of
14 this subdivision.

15 2. That disclosure of the user's digital assets is reasonably
16 necessary for administration of the estate.

17 **"§ 36F-9. Disclosure of content of electronic communications of principal.**

18 To the extent a power of attorney expressly grants an agent authority over the content of
19 electronic communications sent or received by the principal and unless directed otherwise by the
20 principal or the court, a custodian shall disclose to the agent the content of an electronic
21 communication if the agent gives the custodian all of the following:

22 (1) A written request for disclosure in physical or electronic form.

23 (2) An original or copy of the power of attorney expressly granting the agent
24 authority over the content of electronic communications of the principal.

25 (3) A certification by the agent, under penalty of perjury, that the power of attorney
26 is in effect.

27 (4) If requested by the custodian, any of the following:

28 a. A number, username, address, or other unique subscriber or account
29 identifier assigned by the custodian to identify the principal's account.

30 b. Evidence linking the account to the principal.

31 **"§ 36F-10. Disclosure of other digital assets of principal.**

32 Unless otherwise ordered by the court, directed by the principal, or provided by a power of
33 attorney, a custodian shall disclose to an agent with specific authority over digital assets or general
34 authority to act on behalf of a principal a catalogue of electronic communications sent or received
35 by the principal, and digital assets, other than the content of communications, of the principal if
36 the agent gives the custodian all of the following:

37 (1) A written request for disclosure in physical or electronic form.

38 (2) An original or a copy of the power of attorney that gives the agent specific
39 authority over digital assets or general authority to act on behalf of the
40 principal.

41 (3) A certification by the agent, under penalty of perjury, that the power of attorney
42 is in effect.

43 (4) If requested by the custodian, any of the following:

44 a. A number, username, address, or other unique subscriber or account
45 identifier assigned by the custodian to identify the principal's account.

46 b. Evidence linking the account to the principal.

47 **"§ 36F-11. Disclosure of digital assets held in trust when trustee is original user.**

48 Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a
49 trustee that is an original user of an account any digital asset of the account held in trust, including
50 a catalogue of electronic communications of the trustee and the content of electronic
51 communications.

1 **"§ 36F-12. Disclosure of contents of electronic communications held in trust when trustee**
2 **not original user.**

3 Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian
4 shall disclose to a trustee that is not an original user of an account the content of an electronic
5 communication sent or received by an original or successor user and carried, maintained,
6 processed, received, or stored by the custodian in the account of the trust if the trustee gives the
7 custodian all of the following:

- 8 (1) A written request for disclosure in physical or electronic form.
- 9 (2) A verified copy of the trust instrument, or a certification of the trust under
10 G.S. 36C-10-1013, that includes consent to disclosure of the content of
11 electronic communications to the trustee.
- 12 (3) A certification by the trustee, under penalty of perjury, that the trust exists and
13 the trustee is a currently acting trustee of the trust.
- 14 (4) If requested by the custodian, any of the following:
 - 15 a. A number, username, address, or other unique subscriber or account
16 identifier assigned by the custodian to identify the trust's account.
 - 17 b. Evidence linking the account to the trust.

18 **"§ 36F-13. Disclosure of other digital assets held in trust when trustee not original user.**

19 Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian
20 shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic
21 communications sent or received by an original or successor user and stored, carried, or
22 maintained by the custodian in an account of the trust and any digital assets, other than the content
23 of electronic communications, in which the trust has a right or interest if the trustee gives the
24 custodian all of the following:

- 25 (1) A written request for disclosure in physical or electronic form.
- 26 (2) A certified copy of the trust instrument or a certification of the trust under
27 G.S. 36C-10-1013.
- 28 (3) A certification by the trustee, under penalty of perjury, that the trust exists and
29 the trustee is a currently acting trustee of the trust.
- 30 (4) If requested by the custodian, any of the following:
 - 31 a. A number, username, address, or other unique subscriber or account
32 identifier assigned by the custodian to identify the trust's account.
 - 33 b. Evidence linking the account to the trust.

34 **"§ 36F-14. Disclosure of digital assets to guardian of ward.**

35 (a) After a hearing on a motion in the cause pursuant to G.S. 35A-1207, the court may
36 grant a guardian access to the digital assets of a ward.

37 (b) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose
38 to a guardian the catalogue of electronic communications sent or received by a ward and any
39 digital assets, other than the contents of electronic communications, in which the ward has a right
40 or interest if the guardian gives the custodian all of the following:

- 41 (1) A written request for disclosure in physical or electronic form.
- 42 (2) A certified copy of the court order that gives the guardian authority over the
43 digital assets of the ward.
- 44 (3) If requested by the custodian, any of the following:
 - 45 a. A number, username, address, or other unique subscriber or account
46 identifier assigned by the custodian to identify the account of the ward.
 - 47 b. Evidence linking the account to the ward.

48 (c) A guardian with general authority to manage the assets of a ward may request a
49 custodian of the digital assets of the ward to suspend or terminate an account of the ward for good
50 cause. A request made under this section must be accompanied by a certified copy of the court
51 order giving the guardian authority over the ward's property.

"§ 36F-15. Fiduciary duty and authority.

(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.
- (3) The duty of confidentiality.

(b) All of the following apply to a fiduciary's or designated recipient's authority with respect to a digital asset of a user:

- (1) Except as otherwise provided in G.S. 36F-4, it is subject to the applicable terms of service.
- (2) It is subject to other applicable law, including copyright law.
- (3) In the case of a fiduciary, it is limited by the scope of the fiduciary's duties.
- (4) It shall not be used to impersonate the user.

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

(d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, ward, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including G.S. 14-458.

(e) A fiduciary with authority over the tangible, personal property of a decedent, ward, principal, or settlor:

- (1) Has the right to access the property and any digital asset stored in it; and
- (2) Is an authorized user for the purpose of computer fraud and unauthorized-computer-access laws, including G.S. 14-458.

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

(g) 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 all of the following:

- (1) If the user is deceased, a certified copy of the death certificate of the user.
- (2) A certified copy of letters of administration or letters testamentary of the personal representative, a certified copy of a small estate affidavit filed in accordance with G.S. 28A-25.1(b), a certified copy of a summary administration order described in G.S. 28A-28-3, or a court order, power of attorney, or trust giving the fiduciary authority over the account.
- (3) If requested by the custodian, any of the following:
 - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account.
 - b. Evidence linking the account to the user.
 - c. A finding by the court that the user had a specific account with the custodian, identifiable by the information specified in sub-subdivision a. of this subdivision.

"§ 36F-16. Custodian compliance and immunity.

(a) Not later than 60 days after receipt of the information required under G.S. 36F-7 through G.S. 36F-15, a custodian shall comply with a request under this Chapter from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

(b) An order under subsection (a) of this section directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. § 2702.

1 (c) A custodian may notify the user that a request for disclosure or to terminate an account
2 was made under this Chapter.

3 (d) A custodian may deny a request under this Chapter from a fiduciary or designated
4 recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any
5 lawful access to the account following the receipt of the fiduciary's or designated recipient's
6 request.

7 (e) This Chapter does not limit a custodian's ability to obtain or require a fiduciary or
8 designated recipient requesting disclosure or termination under this Chapter to obtain a court order
9 which does all of the following:

10 (1) Specifies that an account belongs to the ward or principal.

11 (2) Specifies that there is sufficient consent from the ward or principal to support
12 the requested disclosure.

13 (3) Contains a finding required by law other than this Chapter.

14 (f) A custodian and its officers, employees, and agents are immune from liability for an
15 act or omission done in good faith in compliance with this Chapter.

16 **"§ 36F-17. Uniformity of application and construction.**

17 In applying and construing this uniform act, consideration must be given to the need to
18 promote uniformity of the law with respect to its subject matter among states that enact it.

19 **"§ 36F-18. Relation to Electronic Signatures in Global and National Commerce Act.**

20 This Chapter modifies, limits, or supersedes the Electronic Signatures in Global and National
21 Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede Section 101(c)
22 of that Act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in
23 Section 103(b) of that Act, 15 U.S.C. § 7003(b)."

24
25 **PART II. CONFORMING AMENDMENTS TO THE GENERAL STATUTES**

26 **SECTION 2.** G.S. 14-458 reads as rewritten:

27 **"§ 14-458. Computer trespass; penalty.**

28 (a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person
29 to use a computer or computer network without authority and with the intent to do any of the
30 following:

31 (1) Temporarily or permanently remove, halt, or otherwise disable any computer
32 data, computer programs, or computer software from a computer or computer
33 network.

34 (2) Cause a computer to malfunction, regardless of how long the malfunction
35 persists.

36 (3) Alter or erase any computer data, computer programs, or computer software.

37 (4) Cause physical injury to the property of another.

38 (5) Make or cause to be made an unauthorized copy, in any form, including, but not
39 limited to, any printed or electronic form of computer data, computer programs,
40 or computer software residing in, communicated by, or produced by a computer
41 or computer network.

42 (6) Falsely identify with the intent to deceive or defraud the recipient or forge
43 commercial electronic mail transmission information or other routing
44 information in any manner in connection with the transmission of unsolicited
45 bulk commercial electronic mail through or into the computer network of an
46 electronic mail service provider or its subscribers.

47 For purposes of this subsection, a person is "without authority" when (i) the person has no
48 right or permission of the owner to use a computer, or the person uses a computer in a manner
49 exceeding the right or permission, or (ii) the person uses a computer or computer network, or the
50 computer services of an electronic mail service provider to transmit unsolicited bulk commercial

1 electronic mail in contravention of the authority granted by or in violation of the policies set by the
2 electronic mail service provider.

3 ...
4 (d) It is not a violation of this section for a person to act pursuant to Chapter 36F of the
5 General Statutes."

6 **SECTION 3.** G.S. 28A-13-3(a) reads as rewritten:

7 **"§ 28A-13-3. Powers of a personal representative or fiduciary.**

8 (a) Except as qualified by express limitations imposed in a will of the decedent or a court
9 order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal
10 representatives, a personal representative has the power to perform in a reasonable and prudent
11 manner every act which a reasonable and prudent person would perform incident to the collection,
12 preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result
13 of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner
14 as provided by law, including the powers specified in the following subdivisions:

15 ...
16 (3a) To obtain the decedent's digital assets, as provided in Chapter 36F of the
17 General Statutes, including catalogues and content, and to request and authorize
18 disclosure of the digital assets.

19"

20 **SECTION 4.** G.S. 32-27 reads as rewritten:

21 **"§ 32-27. Powers which may be incorporated by reference in trust instrument.**

22 The following powers may be incorporated by reference as provided in G.S. 32-26:

23 ...
24 (32) Obtain Digital Assets. – To obtain any digital assets to the extent permitted by
25 Chapter 36F of the General Statutes, including catalogues and content, and to
26 request and authorize disclosure of the digital assets."

27 **SECTION 5.** G.S. 32A-1 reads as rewritten:

28 **"§ 32A-1. Statutory Short Form of General Power of Attorney.**

29 The use of the following form in the creation of a power of attorney is lawful, and, when used,
30 it shall be construed in accordance with the provisions of this Chapter.

31 "NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND
32 SWEEPING. THEY ARE DEFINED IN CHAPTER 32A OF THE NORTH CAROLINA
33 GENERAL STATUTES WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR
34 DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES
35 CONCERNED.

36 State of _____.

37 County of _____.

38 I _____, appoint _____ to be my attorney-in-fact, to act in my name in any way which
39 I could act for myself, with respect to the following matters as each of them is defined in Chapter
40 32A of the North Carolina General Statutes. (DIRECTIONS: Initial the line opposite any one or
41 more of the subdivisions as to which the principal desires to give the attorney-in-fact authority.)

- 42 (1) Real property transactions..... _____
- 43 (2) Personal property transactions _____
- 44 (2a) Obtain, request, and authorize disclosure of digital assets..... _____
- 45 (3) Bond, share, stock, ~~securities~~ securities, and commodity
46 transactions..... _____
- 47 (4) Banking transactions _____
- 48 (5) Safe deposits _____
- 49 (6) Business operating transactions _____
- 50 (7) Insurance transactions _____
- 51 (8) Estate transactions..... _____

- 1 (9) Personal relationships and affairs..... _____
- 2 (10) Social security and unemployment _____
- 3 (11) Benefits from military service..... _____
- 4 (12) Tax matters..... _____
- 5 (13) Employment of agents..... _____
- 6 (14) Gifts to charities, and to individuals other than the
- 7 attorney-in-fact..... _____
- 8 (15) Gifts to the named attorney-in-fact _____
- 9 (16) Renunciation of an interest in or power over property to
- 10 benefit persons other than the attorney-in-fact..... _____
- 11 (17) Renunciation of an interest in or power over property
- 12 to benefit persons including the attorney-in-fact _____

13 (If power of substitution and revocation is to be given, add: 'I also give to such person full
14 power to appoint another to act as my attorney-in-fact and full power to revoke such
15 appointment.')

16 (If period of power of attorney is to be limited, add: "This power terminates ____, __")

17 (If power of attorney is to be a durable power of attorney under the provision of Article 2 of
18 Chapter 32A and is to continue in effect after the incapacity or mental incompetence of the
19 principal, add: 'This power of attorney shall not be affected by my subsequent incapacity or mental
20 incompetence.')

21 (If power of attorney is to take effect only after the incapacity or mental incompetence of the
22 principal, add: 'This power of attorney shall become effective after I become incapacitated or
23 mentally incompetent.')

24 (If power of attorney is to be effective to terminate or direct the administration of a custodial
25 trust created under the Uniform Custodial Trust Act, add: 'In the event of my subsequent
26 incapacity or mental incompetence, the attorney-in-fact of this power of attorney shall have the
27 power to terminate or to direct the administration of any custodial trust of which I am the
28 beneficiary.')

29 (If power of attorney is to be effective to determine whether a beneficiary under the Uniform
30 Custodial Trust Act is incapacitated or ceases to be incapacitated, add: 'The attorney-in-fact of this
31 power of attorney shall have the power to determine whether I am incapacitated or whether my
32 incapacity has ceased for the purposes of any custodial trust of which I am the beneficiary.')

33 Dated _____, _____ .

34 _____ (Seal)

35 _____
Signature

36 STATE OF _____ COUNTY OF _____

37 On this _____ day of _____, _____, personally appeared before me, the said named
38 _____ to me known and known to me to be the person described in and who executed the
39 foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being
40 duly sworn by me, made oath that the statements in the foregoing instrument are true.

41 My Commission Expires _____.

42 _____
43 (Signature of Notary Public)
44 Notary Public (Official Seal)""

45 **SECTION 6.** G.S. 32A-2 reads as rewritten:
46 **"§ 32A-2. Powers conferred by the Statutory Short Form Power of Attorney set out in**
47 **G.S. 32A-1.**

48 The Statutory Short Form Power of Attorney set out in G.S. 32A-1 confers the following
49 powers on the attorney-in-fact named therein:

50 ...

1 (2a) Obtain, Request, and Authorize Disclosure of Digital Assets. – To obtain any
 2 digital assets, as provided in Chapter 36F of the General Statutes, including
 3 catalogues and content, and to request and authorize disclosure of the digital
 4 assets.

5 (3) ~~Bond, Share, Stock, Securities~~Securities, and Commodity Transactions. – To
 6 request, ask, demand, sue for, recover, collect, receive, and hold and possess
 7 any bond, share, instrument of similar character, commodity interest or any
 8 instrument with respect thereto together with the interest, dividends, proceeds,
 9 or other distributions connected therewith, as now are, or shall hereafter
 10 become, owned by, or due, owing payable, or belonging to, the principal at the
 11 time of execution or in which the principal may thereafter acquire interest, to
 12 have, use, and take all lawful means and equitable and legal remedies,
 13 procedures, and writs in the name of the principal for the collection and
 14 recovery thereof, and to adjust, sell, compromise, and agree for the same, and to
 15 make, execute, and deliver for the principal, all endorsements, acquittances,
 16 releases, receipts, or other sufficient discharges for the same.

17 "

18 **SECTION 7.** G.S. 35A-1251 reads as rewritten:

19 **"§ 35A-1251. Guardian's powers in administering incompetent ward's estate.**

20 In the case of an incompetent ward, a general guardian or guardian of the estate has the power
 21 to perform in a reasonable and prudent manner every act that a reasonable and prudent person
 22 would perform incident to the collection, preservation, management, and use of the ward's estate
 23 to accomplish the desired result of administering the ward's estate legally and in the ward's best
 24 interest, including but not limited to the following specific powers:

25 ...

26 (2a) To obtain the ward's digital assets, as provided in Chapter 36F of the General
 27 Statutes, including catalogues and content, and to request and authorize
 28 disclosure of the digital assets.

29 "

30 **SECTION 8.** G.S. 35A-1252 reads as rewritten:

31 **"§ 35A-1252. Guardian's powers in administering minor ward's estate.**

32 In the case of a minor ward, a general guardian or guardian of the estate has the power to
 33 perform in a reasonable and prudent manner every act that a reasonable and prudent person would
 34 perform incident to the collection, preservation, management, and use of the ward's estate to
 35 accomplish the desired result of administering the ward's estate legally and in the ward's best
 36 interest, including but not limited to the following specific powers:

37 ...

38 (2a) To obtain the ward's digital assets, as provided in Chapter 36F of the General
 39 Statutes, including catalogues and content, and to request and authorize
 40 disclosure of the digital assets.

41 "

42 **SECTION 9.** G.S. 36C-8-816 reads as rewritten:

43 **"§ 36C-8-816. Specific powers of trustee.**

44 Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

45 ...

46 (31) Distribute the assets of an inoperative trust consistent with the authority granted
 47 under G.S. 28A-22-110; ~~and~~

48 (32) Renounce, in accordance with Chapter 31B of the General Statutes, an interest
 49 in or power over property, including property that is or may be burdened with
 50 liability for violation of environmental ~~law~~law; and

1 (33) Obtain any digital assets, as provided in Chapter 36F of the General Statutes,
2 including catalogues and content, and to request and authorize disclosure of the
3 digital assets."
4

5 **PART III. EFFECTIVE DATE AND AUTHORIZATION FOR THE PRINTING OF**
6 **OFFICIAL AND DRAFTERS' COMMENTS**

7 **SECTION 10.** The Revisor of Statutes shall cause to be printed, as annotations to the
8 published General Statutes, all relevant portions of the Official Comments to the Revised Uniform
9 Fiduciary Access to Digital Assets Act (2015) and all explanatory comments of the drafters of this
10 act as the Revisor may deem appropriate.

11 **SECTION 11.** If any provision of this act or its application to any person or
12 circumstance is held invalid, the invalidity does not affect other provisions or applications of this
13 act that can be given effect without the invalid provision or application, and to this end, the
14 provisions of this act are severable.

15 **SECTION 12.** This act is effective when it becomes law.