

Testimony before the Senate Judiciary Committee
In support of SB 369
On behalf of the OSB Estate Planning and Elder Law Sections
3/24/2015

Chair Prozanski, members of the committee;

My name is Victoria Blachly and I am a trust and estate litigator with 18-years' experience, licensed in Washington and Oregon. I am here today as part of the enactment team for the Uniform Law Commission, an Executive Member of the Oregon State Bar Elder Law Executive Committee, and as a member of the Governor's Commission on Senior Services. I'm here today to talk about the Uniform Fiduciary Access to Digital Assets Act, or UFADAA.

UFADAA updates state fiduciary law for the Internet age. When a person dies or loses the capacity to manage his or her affairs, a fiduciary receives legal authority to manage or distribute the person's property as appropriate. In Oregon and at least 25 other states in the US this year legislation is being proposed by the Uniform Law Commission (ULC), seeking to confirm that fiduciaries have the same legal right to access online accounts and information as they have always had for conventional communications and property. Extending that authority to online information is a natural extension of the law.

It used to be that when someone died, the nominated personal representative ("PR") would bring the will to their attorney and say, "What do I do now?" The attorney would provide advice, including that the PR should have all of the decedent's mail forwarded to the PR, so the PR could begin to marshal the assets, pay the debts, and distribute according to the wishes of the decedent. Indeed, forwarding mail is not illegal for a fiduciary to do; it is not an invasion of privacy; it is one of the many duties a fiduciary must handle. Today however, there are so many financial and other documents online, it is very difficult for a fiduciary to do their job.

This is the problem that the Uniform Law Commission sought to address in UFADAA. In Oregon this is SB 369, which is substantially similar to the bill already adopted in Delaware.

Every single day fiduciaries deal with private information. There is a well-established body of law in every state that confirms that when a fiduciary gets confidential information, they don't get to broadcast it to the world: they have a duty of confidentiality. UFADAA does not change that. Most people now own a great variety of digital assets, including photographs, documents, social media accounts, web sites, and more. However, access to digital assets is often limited by custodians through restrictive terms-of-service agreements.

UFADAA ensures that fiduciaries have the access they need to carry out their duties in accordance with the account holder's estate plan, if there is one, and otherwise in the account holder's best interests.

UFADAA provides a predictable manner where a fiduciary, consistent with well-established fiduciary law, can deal with online accounts and assets. UFADAA does not create new law but rather allows fiduciaries and online providers to comply with the current law without inadvertent exposure to federal laws. Otherwise, fiduciaries are in the impossible position of being ordered to marshal and distribute assets, without the ability to gain access. UFADAA avoids such chaos.

With UFADAA, you choose what happens to your digital assets – what gets passed on to heirs in accordance with your instructions, and what gets deleted when you die.

Thank you for your time and your consideration, and I'd be happy to answer any questions that you have.