



# Bankers Advisory

## COMPLIANCE MONITOR

June 13, 2016

### *South Carolina Enacts Provisions Regarding Uniform Fiduciary Access to Digital Assets Act*

**By Zachary Pearlstein, J.D.**

The General Assembly of South Carolina has recently enacted the Uniform Fiduciary Access to Digital Assets Act, effective immediately.

The purpose of this Act is to provide clarification regarding the accessing of digital assets in the event of death or incapacitation. Digital assets include, but are not limited to, email accounts and their contents, social media accounts and any images they contain, and e-commerce accounts such as eBay and PayPal. There is an exception that if the digital asset belongs to the decedent's employer and was used by the decedent in the ordinary course of business, this regulation does not apply.

This regulation applies to fiduciaries (i.e. under a will or power of attorney), personal representatives, conservatorship proceedings, and trustees. The goal of the regulation is to grant such persons access to the decedent's online accounts, correspondences, and other computer files, if specified in the decedent's will, trust, or similar agreement.

If an individual chooses, the Act allows for him or her to direct a custodian to disclose (or not to disclose) to a designated recipient some or all of the individual's digital assets, including the content of electronic communications.

The custodian is given several options with regard to providing information to the designated recipient. He or she may grant full access to the accounts, or may grant partial access if sufficient to perform the task with which they have been charged. The custodian may also elect to provide a copy of a record from the digital asset, rather than allowing direct access. In addition, a custodian does not need to disclose a digital asset that was deleted by a decedent. Lastly, the Act provides that the fiduciary or recipient's access to digital assets may be restricted by either federal law or terms of a service agreement.

#### **About the Author**

Zachary Pearlstein, J.D. is a Senior Regulatory Compliance Consultant at Bankers Advisory. He is a graduate of Brandeis University and earned his Juris Doctor at Suffolk Law School, Boston. He is admitted to the Massachusetts Bar Association. Zach can be reached at [Zachary@bankersadvisory.com](mailto:Zachary@bankersadvisory.com)