

# House Research Act Summary

**CHAPTER:** 135

**SESSION:** 2016 Regular Session

**TOPIC:** Civil law omnibus; animal trusts; probate; RUFADAA; receivership; and LLC chapter updates

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## Overview

This law allows for a trust for the care of animals; updates the uniform probate code; adds a chapter creating the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA); updates receivership laws; and updates and makes conforming changes to the Minnesota Revised Uniform Limited Liability Company Act.

### Article 1: Trust for the Care of Animals

#### Overview

This act allows for a person to create a trust for the care of their pet.

- 1 **Others treated as qualified beneficiaries.** Adds the person who is charged with enforcing a trust for the care of animal or another noncharitable purpose to the list of people who can get notice and be treated as a qualified beneficiary under the trust code.
- 2 **Requirements for creation.** Adds a trust for the care of an animal to the list of alternatives to a traditional beneficiary in the trust code.
- 3 **Trust for the care of animal.** Allows for the creation of a trust to provide for the care of an animal. This section requires:
  - The animal be an animal that is alive during the settlor's lifetime.
  - The trust terminates after the death of the animal or animals who are the beneficiary of the trust, and no later than 90 years after the enforcement of the trust.

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- The trustee be appointed by the trust or by the court and that a person interested in the animals welfare can ask for someone to be appointed or removed
- The property in trust be used as intended by the trust, unless that court determines there is an excess of property in the trust for the intended purpose and then the amount in excess is distributed pursuant to the provisions in the trust or consistent with Minnesota probate law, as if the grantor had died intestate (without a will).
- The property remaining in the trust when the last beneficiary animal dies is to be distributed pursuant to the provisions in the trust or consistent with Minnesota probate law, as if the grantor had died intestate (without a will).
- The trust be available as an asset for the purposes of determining long-term care reimbursement through state health care programs.

- 4 **Noncharitable trust without ascertainable beneficiary.** Clarifies that a trust for the care of an animal are governed by the provisions in Minnesota Statutes, section 501C.0408 and are not subject to the provisions of section 501C.0409 as a noncharitable trust without an ascertainable benefit when they conflict.

## Article 2: Uniform Probate Code Updates

### Overview

This article updates some of the monetary thresholds used throughout the probate code which have not been changed in recent years so that the amounts reflect changes that are consistent with inflation. The article also makes other changes to make the probate code consistent with the new trust code passed in 2015 and adds definitions.

This article also adds a new chapter 521A for the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA). This act provides access to digital assets in certain situations including death or incapacity. Digital assets are content that is owned by an individual or business that is stored in a digital format such as photos, text, and other media and can also include online accounts. This act provides access to fiduciaries including conservators, attorneys-in-fact appointed pursuant to a power of attorney document, trustees to trust, and personal representatives in an estate. The act is based off of the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) that was passed by the National Conference of Commissioners on Uniform State Laws.

- 1 **Exclusions.** Removes guardianship and conservatorship matters from the list of cases that cannot be required by the court to attempt nonbinding arbitration. This allows judges to refer a guardianship or conservatorship case to nonbinding arbitration before the matter goes to trial when the district has set up a mandatory arbitration program.

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**2 Short title.** Provides a title to the act, “Revised Uniform Fiduciary Access to Digital Assets Act.”

**3 Definitions.** Provides definitions to terms used in the act. Some of definitions are based on the uniform probate code and definitions for terms already defined in Minnesota law.

Important definitions include:

- “Account” is an arrangement between an individual and a company to process, receive, store, or maintain digital assets, or provides good and services to the user;
- “Custodian” is a person that holds or maintains the digital assets of an account holder;
- “Digital asset” is defined as a record that is electronic, but does not include the underlying asset or liability unless that asset or liability is a record that is electronic;
- “Fiduciary” includes original or successor personal representatives, conservators, agents, or trustees;
- “Online tool” means a product that is used by a company that stores or maintains digital assets which allows the user to agree to directions to disclose or not disclose those digital assets to a third party. This online tool would be distinct from a “terms of service agreement” that many online companies use for their Web sites;
- “Protected person” is the person for whom a conservator has been appointed, also often referred to in law as a ‘ward’ in a guardianship or conservatorship case; and
- “Terms-of-service agreement” is an agreement between an individual using a Web site and the person running the Web site.

**4 Applicability.** Indicates the situations where the law can be used to provide a third party with access to digital assets. A third party can access digital assets when a power of attorney has been executed, when a personal representative has been appointed, when a conservator has been appointed or an appointment is pending, and when a trustee is acting under a trust.

This section prevents a fiduciary from getting at the digital assets of an employer that is used by an employee, such as an employee’s professional email account or a software program the employee used that belonged to the employer.

This law applies to custodians of digital assets (such as an email provider) if the account holder resides in Minnesota or resided in Minnesota at the time of their death.

**5 User direction for disclosure of digital assets.**

- Allows an individual to designate in a specific provision through a Web site who can access their digital assets, and allows that designation to override what is provided for in a will or other directive when the individual is able to update the designation at any time.
- Allows an individual to designate in a will or other directive (such as a trust or power of attorney) that a fiduciary may get access to their digital assets, including emails or prohibit a fiduciary from getting access to digital assets.
- Provides that a designation through a specific online tool that allows a user to designate a person to access their digital assets, or a will or other directive that

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provides that access to a fiduciary, overrides anything in a terms of service agreement.

- 6 Terms-of-service agreement.** Preserves the normal relationship between a Web site user and a Web site provider regarding the terms of service agreement. Provides that the fiduciary who can access the accounts of the account holder does not get any rights beyond the rights the account holder has. Provides that access to a user's account by a designee or fiduciary can be limited or terminated by the user, federal law, or when the user has not provided specific direction under section 4 (such as through an online tool designation or a will), then by the terms of service agreement the user entered into when it used the custodian's Internet services.
- 7 Procedure for disclosing digital assets.** Allows a custodian (Web site operator, such as an email provider or social network provider) to disclose digital assets when allowed under this chapter in the following manner:
- grant the fiduciary or designee full access to the user's account;
  - grant the fiduciary or designee partial access to the user's account; and
  - provide the fiduciary or designee with a copy of any digital assets that as of that time the user had access to if the user were able to access the account at that time.

This section also provides that a custodian can assess a reasonable administrative charge to disclose assets to a fiduciary or designee; does not have to disclose anything deleted by a user; and the Web site can refuse to disclose the assets if it is unduly burdensome to determine which assets are allowed to be disclosed to a fiduciary and which are not and allows the Web site to seek a court order identifying which assets to disclose.

- 8 Disclosure of content of electronic communications of deceased users.** Provides the process for a personal representative to gain access to the email of a deceased user. This includes providing a copy of the document creating the fiduciary relationship (such as a will or trust), and when requested by the Web site information about the account (such as a user name or account number) and a court order indicating that releasing the emails does not violate the federal Stored Communications Act.
- 9 Disclosure of other digital assets of deceased user.** Provides the requirements a fiduciary must meet to get access to digital assets (other than emails) of a deceased user.
- 10 Disclosure of content of electronic communications of principal.** Provides the requirements for an attorney in fact to gain access to the email accounts of a principal under a power of attorney.
- 11 Disclosure of other digital assets of principal.** Provides the requirements for attorney in fact to gain access to the digital assets of a principal other than emails.
- 12 Disclosure of digital assets held in trust when trustee is original user.** Provides that trustees have access to accounts where they are an original user for any digital assets of the account that is held in trust, including a catalog of emails of the trustee and the content of those emails.

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- 13 Disclosure of content of electronic communication held in trust when the trustee not original user.** Provides that a trustee can gain access to emails held by an original or successor user of an account by providing specific documentation identifying them as the trustee of a trust with approved access to emails for the trust.
- 14 Disclosure of other digital assets held in trust when the trustee not original user.** Provides directions for how a trustee can gain access to digital assets (other than emails) when a trustee is not one of the original account holders.
- 15 Disclosure of digital assets to conservator of a protected person.** Allows a conservator to gain access to digital assets of a protected person (ward) when the court has held a hearing under the probate code and allowed that access. This section also allows a conservator to suspend or terminate an account between a protected person (ward) and a company when the conservator shows that they have authority over the protected person's property.
- 16 Fiduciary duty and authority.** Provides the standards that the fiduciary owes in carrying out their duties. This section also allows fiduciaries to access digital assets when the assets are not held by a custodian or subject to a terms of service agreement. This section also provides that when a fiduciary is accessing a person's digital assets they are an authorized user for the purposes of computer fraud laws, including the Minnesota criminal law against unauthorized computer access. This section also allows a fiduciary to destroy a user account.
- 17 Custodian compliance and immunity.** Provides that a custodian has 60 days to comply with a request made under this chapter and if the custodian (such as Web site) does not comply the fiduciary may seek a court order to require them to comply with their request and that the request does not violate the federal Stored Communication Act.
- This section allows the custodian to notify users when a request for access by a fiduciary has been made. This section also allows the custodian of the digital assets to not comply with a fiduciary's request when they have found that there is lawful access to the account, such as the user or another authorized user is accessing the account.
- 18 Uniformity of application and construction.** Provides that the court should consider the interest of the chapter being construed consistently among the state's that have enacted it.
- 19 Relation to electronic signatures in global and national commerce act.** Provides that this chapter does not modify parts of the federal E-Sign law that provide specific requirements for legally required disclosure when those disclosure are sent electronically.
- 20 Severability.** Provides that if a portion of this statute is struck down by a court the other portions remain in effect.
- 21 General definitions.** Adds a definition for the probate code for the term "governing instrument," which is used throughout chapters 524 and 525. The definition would now clarify that a governing instrument includes many different legal forms for transferring assets, such as an account that is payable on death or a transfer on death deed.
- 22 Share of the spouse.** Amends the financial value of the intestate share of the estate that goes to the surviving spouse, changing the financial value of the surviving spouse's share from \$150,000 to \$225,000.

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- 23 Elective share amount.** Updates the supplemental elective-share amount a surviving spouse can take from \$50,000 to \$75,000 and also the threshold for when that supplemental elective-share amount can be used from \$50,000 to \$75,000.
- 24 Entitlement of spouse; premarital will.** Expands and clarifies when a surviving spouse will not receive a surviving spouse share when the decedent has a will made before the marriage. The new provisions allow other written evidence, trusts created for the surviving spouse, and other nonprobate transfers to be used to show that the surviving spouse is not eligible for the surviving spouse share under intestacy law.
- 25 Exempt property.** Updates the value of the exempt property the surviving spouse can take from the estate for household goods and furnishings and encumbered assets from \$10,000 to \$15,000.
- 26 Family allowance.** Changes the monthly family allowance the surviving spouse and minor child may be granted for maintenance from \$1,500 a month to \$2,300 a month.
- 27 Nonademption of specific devices; unpaid proceeds of sale.** Allows a devisee to make a claim for the value of property that was specifically devised by the decedent when the property has been sold or mortgaged by a trustee.
- 28 Reformation to correct mistakes.** Allows the court to alter the terms of will or other probate transfer if it is proven by clear and convincing evidence that the intent of the transfer was different than the terms provided in the governing instrument.
- 29 Modification to achieve transferor's tax objectives.** Allows the court to modify the terms of a governing instrument, such as a will or other nonprobate transfer, to achieve the transferor's tax objectives in certain circumstances, and allows the court's modification to be applied retroactively.
- 30 Formal testacy proceedings; contested cases; testimony of attesting witnesses.** Adds a provision to the law allowing witnesses to a will to provide proof of the execution of the will to the court by affidavit and adds a rebuttable presumption in cases where the will is contested that attestation clause that the will was signed at the attestation clause indicates.
- 31 Collection of personal property by affidavit.** Allows an affidavit of survivorship to be used to claim property and distribute assets in estates that are valued under \$75,000. The current law allows the affidavit of survivorship to be used when the estate is valued at under \$50,000.
- 32 Exhaustion of estate.** Allows the court to close an estate and property to be distributed when it appears that the estate will be sufficient to pay all claims and the property is valued at or below \$150,000, not including the value of homestead property.
- 33 Effective date.** The Revised UFADAA is effective on August 1, 2016, and applies to fiduciaries acting under a governing instrument executed before, on, or after that date.

Section**Article 3: Receiverships****Overview**

This article makes clarifying and conforming changes related assignments that are governed by Chapter 576 and Chapter 577.

- 1 **Assignment; conditions.** Clarifies how payments of rents and profits will be paid out to creditors, conforming this section to the requirements of section 576.25, passed in 2012.
- 2 **Applicability of chapter and of common law.** Adds references to other sections of law that could also govern a receivership to the applicability section of Chapter 576.
- 3 **Powers.** Clarifies that receiverships have the power to release rights, claims, and causes of action with the court's approval; and that the receivership when operating a business may hire employees and appoint officers on behalf of the business.
- 4 **Receivership as lien creditor; real property recording; subsequent sales of real property.** Clarifies the requirements for the transfer of real property during a receivership.
- 5 **Termination by receiver.** Clarifies that a receiver can receive services under contracts that are ongoing when the receivership occurs (executory contracts) and can sue for a breach under those contracts.
- 6 **Abandonment of property.** Clarifies that when a receiver abandon's property, the property reverts to the respondent.
- 7 **Requisites.** Allows assignees of property to be located outside Minnesota and clarifies that an assignee of property submits to jurisdiction in Minnesota. Receivers do not have to be Minnesota residents.
- 8 **Assignee as lien creditor; real property recording.** Creates a short form for assignment to be used for recording, along with the deed, to indicate the assignment of the real property.

**Article 4: Minnesota Revised Uniform Limited Liability Company Act****Overview**

This article makes clarifying and technical changes relating to the Minnesota Revised Uniform Limited Liability Company Act ("Revised Act").

- 1 - 14 **Corrects cross reference.** Inserts references to the Revised Act.
- 15 **Grammar.** Makes grammatical changes.
- 16 - 18 **Fees.** States the fees for different filings, which are the same as the fees charged under the prior limited liability company act.

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- 19**      **Abilities of board.** Clarifies that the board of a board-managed company does not need approval from members to engage in business activities, like granting a security interest in company assets and transferring assets to subsidiaries. Consistent with the prior limited liability company act, a board-managed company is only required to receive member approval for activities such as dissolution, merger, or conversion of the company.
- 20**      **Public benefit corporation.** Prohibits a company from converting into a public benefit corporation.
- 21, 22**    **Clarification.** Clarifies that a company can convert to a domestic or foreign company under the Revised Act, even if a foreign jurisdiction uses different terms to describe the conversion.