Re: House Bill 5606, AAC The Connecticut Revised Uniform Fiduciary Access to Digital Assets Act

Judiciary Committee

Public Hearing: Friday, March 18, 2016

WRITTEN TESTIMONY OF MARK W. DOST

IN SUPPORT OF HB 5606

Senator Coleman, Representative Tong, and other members of the Committee, my name is Mark Dost. I am an attorney and reside and work in Waterbury in Representative Berger's and Senator Hartley's districts. I am a member of the Executive Committee of the Estates and Probate Section and Elder Law Section of the Connecticut Bar Association, a past chair of the Elder Law Section, and a Fellow of the American College of Trust and Estate Counsel. I have come to **support** HB 5606, The Connecticut Revised Uniform Fiduciary Access to Digital Assets Act.

I work with hundreds of clients each year to plan for the management of their finances and their health care during incapacity and to plan for the disposition of their assets following death. The legal tools that we use for financial management – including powers of attorney and wills – are generally very effective in granting authority to fiduciaries to carry out their duties. When an individual dies, his executors or administrators are required to marshal his assets and identify his debts and other financial obligations, so that they may pay his creditors, pay any taxes that may be due, and distribute what is left over to his spouse, children, or other beneficiaries. Connecticut law *requires* executors or administrators to perform these duties and gives them the necessary authority, with one very big exception: the authority to access the individual's digital assets.

When internet users open an account or subscribe to a service and blindly click the "terms-of-service agreement," they often unwittingly forfeit the right of their agents, executors, and other fiduciaries to access their digital accounts during periods of incapacity and after death. In the past, executors and other fiduciaries could access financial information simply by waiting for statements to arrive in the mail. That's still often the case, but times are changing. In the past several years, more and more of us are turning to digital management of our accounts and are conducting all of our financial activity and receiving all of our financial records on-line. However, ease of access during our lifetimes often turns to *no* access after our deaths. Executors, administrators, and other fiduciaries are often prevented from accessing on-line accounts, because the right of access to the account is determined not by statute or by last will and testament, but by the provider's terms-of-service agreement, which often prohibits access.

The issue of fiduciary access to a consumer's account should be determined by the consumer, not by unread terms-of-service agreements that offer the consumer no choice. Our executors, administrators, and other fiduciaries need to be able to do their jobs. And for that to happen, the law needs to step in.

The revised Uniform Act remedies the problem, by enabling individuals to give their fiduciaries access to their digital assets. It also respects users' privacy rights, by enabling individuals to *prohibit* access to some digital assets, including electronic communications such as email. The act puts the consumer in charge.

The revised Uniform Act was adopted by the Uniform Law Commission only last summer, in 2015, and already four states – Florida, Tennessee, Wyoming, and Oregon – have enacted the legislation. The Uniform Act has been introduced in 22 other states this year, underscoring its importance and the urgency of its passage. The Act complies with federal law. And the Act, as revised, has received the endorsement of AARP and of Google and Facebook. In Connecticut, the Act has been endorsed by the Connecticut Bar Association.

The Committee will today hear testimony from Attorney Suzanne Brown Walsh from Hartford. Attorney Walsh is the chair of the Uniform Law Commission committee that drafted this landmark legislation, and it should be a source of pride to all of us in Connecticut that one of our own played such an important role in the development of this Uniform Act and in reconciling the competing interests of consumers and industry.

In conclusion, I urge the Committee to support this very important legislation and give Connecticut residents the right to give their executors, administrators, and other fiduciaries access to their digital assets.

Contact information:

Attorney Mark W. Dost
Tinley, Renehan & Dost LLP
134 Highland Avenue
Waterbury, CT 06708
Tel: 203-596-9030
Fax: 203-596-0304
Email: mdost@tnrdlaw.com

Residence:

31 Gaylord Glen
Waterbury, CT 06708