

MEMORANDUM

From: Suzanne Brown Walsh, Chair

Gerry W. Beyer, Reporter

To: Uniform Law Commission

Re: Electronic Estate Planning Documents Act

Date: June 16, 2022

This memo provides an introduction to and overview of the Uniform Electronic Estate Planning Documents Act, scheduled for its first and final reading at our 2022 Annual Meeting in Philadelphia.

Background. The Act compliments the Uniform Electronic Wills Act, but is more limited in scope. This committee was originally tasked with amending the Uniform Electronic Wills Act, Uniform Trust Code, and Uniform Power of Attorney Act to address the remote execution of paper documents (known as “Remote Ink Execution or Signing,”) and the use of electronic estate planning documents other than wills. (These are referred to as “non-testamentary estate planning documents” and defined in the act.) It was also asked to consider the use of a stand-alone act.

Although virtually all states have enacted the Uniform Electronic Transactions Act (UETA), UETA does not address the electronic signing of non-testamentary estate planning documents. UETA § 3(a) limits its application to “transaction[s],” defined as “actions occurring *between two or more persons* relating to the conduct of business, commercial, or governmental affairs.” (emphasis added). Accordingly, unilateral documents such as trusts and powers of attorney (and many other documents signed in the furtherance of an estate plan, or the administration of a decedent’s estate, guardianship, or trust) are not directly and clearly within UETA’s scope.

This conclusion is bolstered by Comment 1 to UETA §3, which states:

The scope of this Act is inherently limited by the fact that it only applies to transactions related to business, commercial (including

consumer) and governmental matters. Consequently, transactions with no relation to business, commercial or governmental transactions would not be subject to this Act. Unilaterally generated electronic records and signatures which are not part of a transaction also are not covered by this Act.

UETA does not “prohibit” the electronic signing of non-testamentary estate planning documents. However, its failure to include them within its scope leaves such electronically signed non-testamentary estate planning documents vulnerable to attack. UEEPDA bridges that gap.

In determining how best to rectify UETA’s stated inapplicability to non-commercial, unilateral documents, the UEEPDA drafting committee determined that drafting a standalone, “mini-UETA” would be the most feasible and practical solution. This allows states who predict, or who have encountered, enactment difficulties with the Uniform Electronic Wills Act (“UEWA”) to bifurcate the acts and propose them separately, increasing the enactment odds for one or both. Second, limiting this act’s scope to the execution of electronic non-testamentary estate planning documents greatly simplified the drafting committee’s work. Finally, it is the solution adopted by Florida in its E-Wills legislation, and more recently, by Delaware in 12 Del.C. Sec. 3550, (“Electronic Execution of Documents”).

The Committee considered whether or not to include a Remote Ink Execution option in the Act, and voted not to do so.

Key Policies. The major policy choices made by the committee were: 1) as in UEWA, to mandate that all documents be readable as text at the time of signing; 2) to define the non-testamentary electronic estate planning documents covered by the act fairly specifically, to avoid an overinclusive definition that might impede enactment; 3) to eliminate the requirement (similar to that in UETA Sec. 5) that the person signing the non-testamentary electronic estate planning document must agree that it be electronic or signed electronically (this change was suggested by the JEB for UTEA at its April 8th meeting); 4) to include a placeholder Article for UEWA, with a legislative note to guide states who wish to enact both Acts together.; and 5) to provide a bracketed option for

remote witnessing, a natural extension of the electronic signing of documents that often require witnesses.

Timing. From its inception, this project was time-sensitive, for three main reasons. One was the pandemic, which necessitated document executions by parties, notaries, and witnesses who, at a minimum, needed to be socially distant but often, had to be in separate locations, necessitating the use of video conferencing and other technology. The second was the demand for a law that expressly approves electronically signed estate planning documents that were not “covered” by UETA. The third was demand from state bar groups and others considering UEWA. Finally, lawyers, trustees, trust administrators, and financial institutions are either presently using, or wish to use, electronic document signing technology to facilitate the day-to-day documentation associated with their individual client practices and wealth management needs.